

---

---

**UNITED STATES  
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): August 4, 2011

---

**AMERIGON INCORPORATED**

(Exact name of registrant as specified in its charter)

---

**Michigan**  
(State or other jurisdiction  
of incorporation)

**0-21810**  
(Commission  
File Number)

**95-4318554**  
(I.R.S. Employer  
Identification No.)

**21680 Haggerty Road, Ste. 101,**  
**Northville, MI**  
(Address of principal executive offices)

**48167**  
(Zip Code)

Registrant's telephone number, including area code: (248) 504-0500

---

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 250.13e-4(c))
- 
-

**Item 8.01 Other Events.**

During the second quarter of 2011, Amerigon Incorporated (the "Company") acquired a controlling interest in W.E.T. Automotive Systems AG, a German company ("W.E.T."). The Form 10-Q for the reporting period that includes the second quarter of 2011 has not yet been filed. The Company has elected to report, on this Form 8-K, the material contracts of W.E.T.

**Item 9.01 Financial Statements and Exhibits.****(d) Exhibits**

<u>Number</u>	<u>Description</u>
10.1	Credit Agreement, dated as of March 30, 2011, among W.E.T. Automotive Systems AG, W.E.T. Automotive Systems Ltd., Banc of America Securities Limited, et al.
10.2	First Amendment to Credit Agreement, dated as of May 31, 2011, among W.E.T. Automotive Systems AG, W.E.T. Automotive Systems Ltd., Banc of America Securities Limited, et al.
10.3	Service Agreement, dated as of July 4, 2011, between W.E.T. Automotive Systems AG and Mr. Frithjof Oldorff
10.4	Service Agreement, dated as of July 4, 2011, between W.E.T. Automotive Systems AG and Mr. Thomas Liedl
10.5	Service Agreement, dated as of July 5, 2011, between W.E.T. Automotive Systems AG and Mr. Caspar Baumhauer

**SIGNATURES**

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

**AMERIGON INCORPORATED**

By: \_\_\_\_\_ /S/ BARRY G. STEELE

Barry G. Steele,  
Chief Financial Officer

Date: August 4, 2011

EXHIBIT INDEX

<u>Number</u>	<u>Description</u>
10.1	Credit Agreement, dated as of March 30, 2011, among W.E.T. Automotive Systems AG, W.E.T. Automotive Systems Ltd., Banc of America Securities Limited, et al.
10.2	First Amendment to Credit Agreement, dated as of May 31, 2011, among W.E.T. Automotive Systems AG, W.E.T. Automotive Systems Ltd., Banc of America Securities Limited, et al.
10.3	Service Agreement, dated as of July 4, 2011, between W.E.T. Automotive Systems AG and Mr. Frithjof Oldorff
10.4	Service Agreement, dated as of July 4, 2011, between W.E.T. Automotive Systems AG and Mr. Thomas Liedl
10.5	Service Agreement, dated as of July 5, 2011, between W.E.T. Automotive Systems AG and Mr. Caspar Baumhauer

**CREDIT AGREEMENT**

Dated as of March 30, 2011

among

**W.E.T. AUTOMOTIVE SYSTEMS AG,**  
and  
**W.E.T. AUTOMOTIVE SYSTEMS LTD.,**  
as Borrowers,

**BANC OF AMERICA SECURITIES LIMITED,**  
as Administrative Agent,

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

**JPMORGAN CHASE BANK, N.A. and COMERICA BANK,**  
as Co-Syndication Agents,

and

The Other Lenders Party Hereto

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

as

Sole Lead Arranger and Sole Book Manager

---

## TABLE OF CONTENTS

	Page
ARTICLE I	1
DEFINITIONS AND ACCOUNTING TERMS	1
1.01	1
1.02	34
1.03	35
1.04	35
1.05	35
1.06	36
1.07	36
1.08	36
ARTICLE II	36
THE COMMITMENTS AND CREDIT EXTENSIONS	36
2.01	36
2.02	37
2.03	39
2.04	47
2.05	50
2.06	53
2.07	54
2.08	54
2.09	55
2.10	56
2.11	56
2.12	57
2.13	59
2.14	60
2.15	63
2.16	64
2.17	66
ARTICLE III	66
TAXES, YIELD PROTECTION AND ILLEGALITY	66
3.01	66
3.02	70
3.03	71
3.04	71
3.05	73
3.06	74
3.07	74
ARTICLE IV	74
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	74
4.01	74
4.02	77
4.03	80

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
<b>ARTICLE V</b>	<b>81</b>
<b>REPRESENTATIONS AND WARRANTIES</b>	
5.01 Existence, Qualification and Power	81
5.02 Authorization; No Contravention	81
5.03 Governmental Authorization; Other Consents	81
5.04 Binding Effect	82
5.05 Financial Statements; No Material Adverse Effect	82
5.06 Litigation	83
5.07 No Default	83
5.08 Ownership of Property; Liens	83
5.09 Environmental Compliance	83
5.10 Insurance	83
5.11 Taxes	84
5.12 ERISA Compliance	84
5.13 Subsidiaries; Equity Interests	84
5.14 Margin Regulations; Investment Company Act	85
5.15 Disclosure	85
5.16 Compliance with Laws	85
5.17 Intellectual Property; Licenses, Etc	86
5.18 Solvency	86
5.19 Casualty, Etc	86
5.20 Labor Matters	86
5.21 Representations as to Foreign Obligors	86
5.22 Other Representations and Warranties	87
5.23 German Money Laundering Act (Geldwäschegesetz)	88
5.24 Pari Passu Ranking	88
<b>ARTICLE VI</b>	<b>88</b>
<b>AFFIRMATIVE COVENANTS</b>	
6.01 Financial Statements	88
6.02 Certificates; Other Information	89
6.03 Notices	92
6.04 Payment of Obligations	92
6.05 Preservation of Existence, Etc	93
6.06 Maintenance of Properties	93
6.07 Maintenance of Insurance	93
6.08 Compliance with Laws	93
6.09 Books and Records	93
6.10 Inspection Rights	93
6.11 Use of Proceeds	94
6.12 Approvals and Authorizations	94
6.13 Covenant to Guarantee Obligations	94
6.14 Compliance with Environmental Laws	94
6.15 Further Assurances	95
6.16 Compliance with Terms of Leaseholds	95

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>	
6.17	Material Contracts	95
6.18	Domination Agreement	95
6.19	Post Closing	95
ARTICLE VII	NEGATIVE COVENANTS	96
7.01	Liens	96
7.02	Investments	97
7.03	Indebtedness	98
7.04	Fundamental Changes	99
7.05	Dispositions	99
7.06	Restricted Payments	100
7.07	Change in Nature of Business	101
7.08	Transactions with Affiliates	101
7.09	Burdensome Agreements	101
7.10	Use of Proceeds	101
7.11	Financial Covenants	101
7.12	Amendments of Organization Documents	102
7.13	Accounting Changes	102
7.14	Prepayments, Etc. of Indebtedness	102
7.15	Amendment, Etc. of Related Documents and Indebtedness	102
7.16	Designation of Senior Debt	102
7.17	Lease Obligations	103
ARTICLE VIII	EVENTS OF DEFAULT AND REMEDIES	103
8.01	Events of Default	103
8.02	Remedies Upon Event of Default	105
8.03	Application of Funds	106
ARTICLE IX	ADMINISTRATIVE AGENT	107
9.01	Appointment and Authority	107
9.02	Rights as a Lender	107
9.03	Exculpatory Provisions	107
9.04	Reliance by Administrative Agent	108
9.05	Delegation of Duties	109
9.06	Resignation of Administrative Agent	109
9.07	Non-Reliance on Administrative Agent and Other Lenders	110
9.08	No Other Duties, Etc	110
9.09	Administrative Agent May File Proofs of Claim	110
9.10	Guaranty Matters	111
9.11	Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements	111



**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
ARTICLE X MISCELLANEOUS	111
10.01 Amendments, Etc	111
10.02 Notices; Effectiveness; Electronic Communication	114
10.03 No Waiver; Cumulative Remedies; Enforcement	116
10.04 Expenses; Indemnity; Damage Waiver	117
10.05 Payments Set Aside	118
10.06 Successors and Assigns	119
10.07 Treatment of Certain Information; Confidentiality	123
10.08 Right of Setoff	124
10.09 Interest Rate Limitation	125
10.10 Counterparts; Integration; Effectiveness	125
10.11 Survival of Representations and Warranties	125
10.12 Severability	125
10.13 Replacement of Lenders	126
10.14 Governing Law; Jurisdiction; Etc	126
10.15 Waiver of Jury Trial	127
10.16 No Advisory or Fiduciary Responsibility	128
10.17 Electronic Execution of Assignments and Certain Other Documents	128
10.18 USA PATRIOT Act	128
10.19 Judgment Currency	129
10.20 Entire Agreement	129

## SCHEDULES

- 1.01 Mandatory Cost Formulae
- 2.01 Commitments and Applicable Percentages
- 5.06 Litigation
- 5.13 Subsidiaries; Other Equity Investments
- 7.01 Existing Liens
- 7.03 Existing Indebtedness
- 7.17 Existing Operating Leases
- 10.02 Administrative Agent's Office; Certain Addresses for Notices

## EXHIBITS

### *Form of*

- A Committed Loan Notice
- B Swing Line Loan Notice
- C Note
- D Compliance Certificate
- E-1 Assignment and Assumption
- E-2 Administrative Questionnaire
- F Subsidiary Guaranty
- G Parent Guaranty
- H Opinion Matters
- I Letter of Credit

## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of March 30, 2011, among W.E.T. AUTOMOTIVE SYSTEMS AG, a German stock corporation (the "German Borrower"), W.E.T. AUTOMOTIVE SYSTEMS LTD., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), BANC OF AMERICA SECURITIES LIMITED, as Administrative Agent and BANK OF AMERICA, N.A., as Swing Line Lender and L/C Issuer.

### PRELIMINARY STATEMENTS

Pursuant to the Share Sale and Purchase Agreement, dated as of February 28, 2011 (the "Acquisition Agreement") among Indigo Capital IV LP ("Indigo"), ICWET LP ("ICWET"), Industrie-Beteiligungs-Gesellschaft mbH ("IBG" and together with Indigo and ICWET, the "Sellers" and each a "Seller"), Amerigon Europe GmbH, a German limited liability company ("Amerigon Germany"), as purchaser, Amerigon Incorporated, a Michigan corporation (the "Parent"), as guarantor and TMF Deutschland AG, as process agent, Amerigon Germany, will acquire (the "Acquisition") greater than seventy-five percent (75%) of the voting Equity Interests of the German Borrower, representing 71.80% of the total registered share capital of the German Borrower, from the Sellers and other selling parties pursuant to the Acquisition Agreement.

Pursuant to the Offer Documents and in accordance with the German Securities Acquisition and Takeover Act, Amerigon Germany has made a public offer (as that offer may be amended in accordance with the terms of this Agreement, the "Takeover Offer") to acquire the entire issued and to be issued share capital of the German Borrower, including the shares to be acquired pursuant to the Acquisition Agreement, which shares if acquired in connection with the Takeover Offer will not be acquired under the Acquisition Agreement.

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

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

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"Acquisition" has the meaning specified in the Preliminary Statements.

"Acquisition Agreement" has the meaning specified in the Preliminary Statements.

"Acquisition Transaction Expenses" means costs and expenses directly related to the Acquisition, the Takeover Offer, the financing transactions contemplated by the Agreement and the other Loan Documents, including the fees and expenses of advisors, lawyers and accountants

and related charges for services, in each case, which have been documented in form and substance reasonably satisfactory to the Administrative Agent and approved by the Administrative Agent (such approval not to be unreasonably withheld).

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

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the German Borrower and the Lenders.

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

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

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Alternative Currency” means each of U.S. Dollars and Canadian Dollars.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Euro, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Euro.

“Alternative Currency Sublimit” means an amount equal to the lesser of the Aggregate Commitments and €10,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Applicable Foreign Obligor Documents” has the meaning specified in Section 5.21(a).

“Applicable Percentage” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Funding Release Date, such Term Lender’s Term Commitment at such time and (ii) thereafter, the principal amount of such Term Lender’s Term Loans at such time and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, in each case, subject to adjustment as provided in Section 2.16. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable

Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, in respect of the Term Facility and the Revolving Credit Facility, (a) from the Closing Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 6.02(a) for the fiscal quarter ending September 30, 2011, 3.25% per annum for Eurocurrency Rate Loans and Letter of Credit Fees and 0.50% per annum for commitment fees payable in accordance with Section 2.09(a) and (b) thereafter, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Consolidated Leverage Ratio	Applicable Rate	
		Eurocurrency Rate; Letters of Credit	Commitment Fee
1	<0.50:1.00	2.50%	0.50%
2	<sup>3</sup> 0.50:1.00 but <0.75:1.00	3.00%	0.50%
3	<sup>3</sup> 0.75:1.00	3.25%	0.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 3 shall apply in respect of each applicable Facility, in each case, as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender, at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Applicable Time” means, with respect to any Borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, (a) with respect to either of the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

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

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole book manager.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

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

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with IFRS, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with IFRS if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of the German Borrower and its Subsidiaries for the fiscal year ended December 31, 2010, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the German Borrower and its Subsidiaries, including the notes thereto.

“Auditor’s Determination” has the meaning specified in Section 2.14(d).

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

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

“Banc of America Securities” means Banc of America Securities Limited and its successors.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in U.S. Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in U.S. Dollars, any fundings, disbursements, settlements and payments in U.S. Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in U.S. Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day on which dealings in deposits in U.S. Dollars are conducted by and between banks in the London interbank Eurocurrency market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than U.S. Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than U.S. Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than U.S. Dollars or Euro, or any other dealings in any currency other than U.S. Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Borrower” has the meaning specified in the introductory paragraph hereto.

“Canadian Dollar” and “CAD\$” mean lawful money of Canada.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

“Capitalized Leases” means all leases that have been or should be, in accordance with IFRS, recorded as capitalized leases.

“Cash Collateral Account” means a blocked, non-interest bearing deposit account of one or more of the Loan Parties at Bank of America in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by either Borrower or any of its Material Subsidiaries free and clear of all Liens (other than Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or the government of a Participating Member State or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that, with respect to the United States of America, the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank (i) that (A)(1) is a Lender or (2) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the federal Reserve System, (B) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (C) has combined capital and surplus of at least the Euro Equivalent of \$1,000,000,000, in each case, with maturities of not more than 90 days from the date of acquisition thereof or (ii) that has a long term unsecured debt rating of at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America or any other Person for which a recognized trading market exists and, in each case, rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case, with maturities of not more than 180 days from the date of acquisition thereof; and



(d) Investments, classified in accordance with IFRS as current assets of the Borrower or any of its Material Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

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

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of 25% or more of the equity securities of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a

fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors);

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Parent, or control over the equity securities of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities;

(d) the Parent shall cease to own, directly or indirectly, 100% of the outstanding Equity Interests of Amerigon Germany; or

(e) Amerigon Germany shall cease to own, directly or indirectly, the percentage of the outstanding Equity Interests of the German Borrower and each other Loan Party held by it on the Funding Release Date, which shall not be less than 75% of the voting Equity Interests of the German Borrower and each such other Loan Party.

“Chinese Subsidiary” means any, direct or indirect, Subsidiary of the German Borrower domiciled in the People’s Republic of China.

“Closing Date” means March 30, 2011.

“Closing Date Loan Parties” means, collectively, the Parent, Amerigon Germany and each Borrower.

“Code” means the Internal Revenue Code of 1986.

“Comair Acquisition” means the acquisition by Motion Holdings LLC, a Delaware limited liability company, of all of the Equity Interests and IP Rights of Shanghai Comair Cooling Fan, Co., a Chinese company pursuant to that certain Asset Purchase Agreement, dated as of October 14, 2008, by and among Motion Holdings LLC and Joel B. Weinberg, as receiver for Comair Rotron, Inc., Thermoflo, Inc. and Comair Parent Corp.

“Commitment” means a Term Commitment or a Revolving Credit Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the German Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense, (iv) Acquisition Transaction Expenses in an aggregate amount not exceeding the Alternative Currency Equivalent of €1,500,000, (v) non-cash unrealized losses on Swap Contracts and (vi) other non-recurring expenses, as approved by the Administrative Agent in its reasonable discretion, reducing such Consolidated Net Income in such period or any future period (in each case of or by the German Borrower and its Subsidiaries on a consolidated basis for such Measurement Period) and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) federal, state, local and foreign income tax credits, (ii) non-cash unrealized gains on Swap Contracts and (iii) all non-cash items increasing Consolidated Net Income, in each case, of or by the German Borrower and its Subsidiaries for such Measurement Period.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA minus (ii) the aggregate amount of all Capital Expenditures not financed from proceeds of Consolidated Funded Indebtedness (excluding proceeds of the Revolving Loans) minus (iii) the aggregate amount of federal, state, local and foreign income taxes paid in cash minus (iv) the aggregate amount of all Restricted Payments paid in cash (excluding the portion of any Restricted Payment made by any Subsidiary of Amerigon Germany, directly or indirectly, to Amerigon Germany) to (b) the sum of (i) Consolidated Interest Charges plus (ii) the aggregate principal amount of all regularly scheduled principal payments or redemptions or similar acquisitions for value of outstanding debt for borrowed money, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.03, in each case, of or by the German Borrower and its Subsidiaries for the most recently completed Measurement Period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the German Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including

Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the German Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the German Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the German Borrower or such Subsidiary.

"Consolidated Interest Charges" means, for any Measurement Period, for the German Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the German Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case, to the extent treated as interest in accordance with IFRS plus (b) all interest paid or payable in connection with discontinued operations plus (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with IFRS, in each case, of or by the German Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA of the German Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of the German Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the German Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the German Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the German Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the German Borrower as described in clause (b) of this proviso).

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

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

“CRS Transaction” means the transactions contemplated by the currency related swap entered into by the German Borrower in March 2008 with Bayerische Hypo- und Vereinsbank AG (*HVB*) with a notional principal amount of €10,000,000 and a maturity of ten years.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, the German Insolvency Code (*Insolvenzordnung*) of 1994 and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Germany or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Eurocurrency Rate plus (ii) the Applicable Rate and any Mandatory Cost plus (iii) 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower, the Administrative Agent or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Demand” has the meaning specified in Section 2.14(d).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Domination Agreement” means that certain domination agreement (*Beherrschungsvertrag*) and profit and loss transfer agreement (*Gewinnabführungsvertrag*) within the meaning of Sec. 291 para 1 of the German Stock Corporations Act (*AktG*) to be entered into by the German Borrower and Amerigon Germany, which shall, *inter alia*, provide for the ability of Amerigon Germany to issue binding instructions, subject to applicable Law, directly to the governing body of the German Borrower and the transfer of up to the entire balance sheet profit of the German Borrower to Amerigon Germany.

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

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Escrow Account” means the account designated under the Equity Escrow Agreement to receive and hold the proceeds of the Preferred Equity Investment on or prior to the Closing Date to be invested in or loaned to Amerigon Germany in connection with the Acquisition and/or the Takeover Offer, as applicable, and in accordance with the terms of the Parent Credit Facility Documents.

“Equity Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Preferred Equity Investors, the Parent, Amerigon Germany and the Escrow Agent in connection with the establishment and maintenance of the Equity Escrow Account and the release of proceeds therefrom to pay all or any portion of the consideration in connection with the Acquisition or Takeover Offer in accordance with the applicable Related Documents, or otherwise as permitted under Section 6.11, in form and substance reasonably satisfactory to the Administrative Agent.

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

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with either Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of either Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by either Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon either Borrower or any ERISA Affiliate.

“Escrow Account” means each of the Senior Loan Escrow Account, the Equity Escrow Account and the Parent Cash Escrow Account.

“Escrow Agent” means BNP PARIBAS Securities Services S.A. Zweigniederlassung Frankfurt am Main, in its capacity as escrow agent under, and pursuant to, each Escrow Agreement.

“Escrow Agreement” means each of the Senior Loan Escrow Agreement, the Equity Escrow Agreement and the Parent Cash Escrow Agreement.

“Euro” and “€” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Loan denominated in Euro, (i) the applicable Screen Rate; or (ii) if no Screen Rate is available for the Interest Period of such Loan the Reference Bank Rate as of the Specified Time on the Quotation Day for Euro and for a period comparable to the Interest Period of such Loan; and

(b) for any Interest Period with respect to a Loan denominated in any Alternative Currency, (i) the applicable Screen Rate; or (ii) if no Screen Rate is available for the applicable currency or Interest Period of such Loan, the Reference Bank Rate as of the Specified Time on the Quotation Day for such Alternative Currency and a period comparable to the Interest Period of such Loan.

“Eurocurrency Rate Loan” means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Euro or in an Alternative Currency.

“Euro Equivalent” means, at any time, (a) with respect to any amount denominated in Euro, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Euro as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Euro with such Alternative Currency.

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

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of either Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), 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 recipient 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, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Borrower is located, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Foreign Lender (other than



an assignee pursuant to a request by the German Borrower under Section 10.13), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from such Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) or (iii) and (e) taxes imposed and required by law to be deducted on any "withholdable payment" (as defined under FATCA) payable to a Lender that fails to deliver the documentation described in Section 3.01(g)(i) and (ii), other than where, due to a Change in Law that occurs after such Lender becomes a party hereto, such Lender is not legally entitled to deliver the documentation described in Section 3.01(g)(i) and (ii). Notwithstanding anything to the contrary contained in this definition, "Excluded Taxes" shall not include any withholding tax imposed at any time on payments made by or on behalf of a Foreign Obligor to any Lender hereunder or under any other Loan Document, provided that such Lender shall have complied with Section 3.01(e)(i).

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments to the extent that such proceeds, awards or payments in respect of loss or damage to equipment, fixed assets or real property are applied (or in respect of which expenditures were previously incurred) to replace or repair the equipment, fixed assets or real property in respect of which such proceeds were received in accordance with the terms of Section 2.05(b)(iv).

"Facility" means the Term Facility or the Revolving Credit Facility, as the context may require.

"Facility Termination Date" means the earlier of:

- (a) the Offer Expiration Date; and
- (b) July 1, 2011.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code and any treasury regulations or official interpretations thereof.

"Fee Letter" means the letter agreement, dated February 28, 2011, among the Parent, Amerigon Germany, the Administrative Agent and the Arranger.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 5.12(b).

“Foreign Lender” means, with respect to either Borrower, any Lender that is organized under the Laws of a jurisdiction other than that in which such Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Plan” has the meaning specified in Section 5.12(b).

“Foreign Plan Event” means (a) termination in whole of a Foreign Plan by the German Borrower or any of its Subsidiaries; (b) commencement of proceedings by the applicable pension regulator to terminate in whole a Foreign Plan; (c) withdrawal by the German Borrower or any of its Subsidiaries from a “multi-employer pension plan,” as defined under any applicable Foreign Government Scheme or Arrangement; or (d) an event which constitutes grounds under any applicable Foreign Government Scheme or Arrangement for the applicable pension regulator to remove the administrator of a Foreign Plan.

“Foreign Obligor” means a Loan Party that is not organized under the Laws of the United States.

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

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

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

“Funding Date Loan Parties” means, collectively, each Material Subsidiary (other than a Chinese Subsidiary if the requirements of Section 6.13(a) have been met) that did not become a Subsidiary Guarantor on the Closing Date.

“Funding Release Date” means the first date on which all the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 10.01.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the

accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“German Borrower” has the meaning specified in the introductory paragraph hereto.

“German Civil Code” means *Bürgerliches Gesetzbuch (BGB)* as amended.

“German Law” means the Laws of Germany.

“German Loan Party” means the German Borrower, Amerigon Germany and any Subsidiary Guarantor domiciled in Germany.

“German Net Assets” has the meaning specified in Section 2.14(a).

“German Obligation” has the meaning specified in Section 2.14(a).

“Germany” means the Federal Republic of Germany.

“GmbH” means a limited liability company under the Laws of Germany (*Gesellschaft mit beschränkter Haftung*).

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

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

determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Guaranteed Hedge Agreement” means any Swap Contract required or permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

“Guarantor” means any Parent Guarantor or any Subsidiary Guarantor.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract required or permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“Helbako JV Agreement” means, collectively, one or more joint venture agreements entered into or to be entered into among the German Borrower (or any Material Subsidiary) and Helbako GmbH, Germany (or any of its Affiliates) on terms and conditions in form and substance reasonably satisfactory to the Administrative Agent.

“Honor Date” has the meaning specified in Section 2.03(c).

“IBG” has the meaning specified in the Preliminary Statements.

“ICWET” has the meaning specified in the Preliminary Statements.

“IFRS” means the International Financial Reporting Standards set by the International Accounting Standard Board as in effect from time to time or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 90 days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capitalized Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

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

“Indigo” has the meaning specified in the Preliminary Statements.

“Information” has the meaning specified in Section 10.07.

“Information Memorandum” means the information memorandum dated March 2011 used by the Arranger in connection with the syndication of the Commitments.

“Interest Payment Date” means the last day of each Interest Period applicable to a Loan and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition); provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates.

“Interest Period” means, as to each Loan, the period commencing on the date such Loan is disbursed and ending on the date one, two, three or six months thereafter, as selected by the Company in its Committed Loan Notice or such other period that is twelve months or less requested by the Company and consented to by all the Appropriate Lenders; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

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

“IP Rights” has the meaning specified in Section 5.17.

“IRS” means the United States Internal Revenue Service.

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

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

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any

Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage. All L/C Advances shall be denominated in Euro.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing. All L/C Borrowings shall be denominated in Euro.

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

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

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

“Lender Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

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

“Letter of Credit” means any standby letter of credit issued hereunder substantially in the form of Exhibit I. Letters of Credit may be issued in Euro.

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

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

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

“Letter of Credit Sublimit” means an amount equal to €2,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

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

“Loan Documents” means this Agreement, each Note, each Subsidiary Guaranty, each Guaranteed Hedge Agreement, each Cash Management Agreement, each Issuer Document, the Fee Letter and each other agreement, certificate, document or instrument delivered in connection with any of the foregoing, whether or not specifically mentioned herein or therein; provided that Loan Documents shall not include any Parent Credit Facility Document.

“Loan Parties” means, collectively, the Parent, Amerigon Germany, each Borrower and each Subsidiary Guarantor.

“Management Determination” has the meaning specified in Section 2.14(d).

“Mandatory Cost” means, with respect to any period, the percentage rate per annum determined in accordance with Schedule 1.01.

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

“Material Contract” means any contract or other arrangement (other than the Loan Documents or Related Documents) to which a Borrower or any Subsidiary is a party (a) involving aggregate consideration payable to or by such Person or such Subsidiary of €750,000 or more or (b) as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

“Material Subsidiary” means, as of any date of determination, any Subsidiary (a) which, as of the end of the then most recently ended fiscal quarter of the German Borrower for the Measurement Period then ended, contributes greater than five percent (5.0%) of Consolidated EBITDA (adjusted to eliminate the effect of intercompany transactions) for such period, (b) the



consolidated total assets of which reflected on the balance sheet of such Subsidiary as of the end of such fiscal quarter were greater than five percent (5.0%) of the total assets (adjusted to eliminate intercompany transactions) of the German Borrower and its Subsidiaries on a consolidated basis, (c) which is a supplier of critical components that are material to the operation of the business of the German Borrower and its Subsidiaries taken as a whole or (d) which, as of the end of such fiscal quarter for the Measurement Period then ended, contributes greater than five percent (5.0%) of the total revenue (adjusted to eliminate the effect of intercompany transactions) of the German Borrower and its Subsidiaries on a consolidated basis for such period; provided however that at any time that any two or more Subsidiaries (other than Material Subsidiaries) of the German Borrower, directly or indirectly, (x) contribute greater than 15% of Consolidated EBITDA (adjusted to eliminate the effect of intercompany transactions) for such period; (y) have consolidated total assets of reflected on the balance sheet of such Subsidiaries as of the end of such fiscal quarter greater than 15% of the total assets or (z) as of the end of such fiscal quarter for the Measurement Period then ended, contribute greater than 15% of the total revenue (adjusted to eliminate the effect of intercompany transactions) of the German Borrower and its Subsidiaries on a consolidated basis for such period, then the fewest number of such two or more Subsidiaries that satisfy the test in the immediately preceding subclause (x), (y) or (z), shall also collectively be included and considered to be a Material Subsidiary.

“Maturity Date” means for each Facility, March 30, 2016; provided that if the Funding Release Date shall not have occurred on or prior to the Facility Termination Date, the Maturity Date shall be the Facility Termination Date; provided, however, that if any such day is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the German Borrower or, if fewer than four consecutive fiscal quarters of the German Borrower have been completed since the Closing Date, the fiscal quarters of the German Borrower that have been completed since the Closing Date; provided that: (a) for purposes of determining an amount of any item included in the calculation of a financial ratio or financial covenant for the fiscal quarter ended June 30, 2011, such amount for the Measurement Period then ended shall equal such item for such fiscal quarter multiplied by four; (b) for purposes determining an amount of any item included in the calculation of a financial ratio or financial covenant for the fiscal quarter ended September 30, 2011, such amount for the Measurement Period then ended shall equal such item for the two fiscal quarters then ended multiplied by two; and (c) for purposes of determining an amount of any item included in the calculation of a financial ratio or financial covenant for the fiscal quarter ended December 31, 2011, such amount for the Measurement Period then ended shall equal such item for the three fiscal quarters then ended multiplied by 4/3.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which either Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including either Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by either Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of either Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Borrower or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the sale or issuance of any Equity Interest by either Borrower or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by either Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Borrower or such Subsidiary in connection therewith.

“Ningbo JV Agreement” means, collectively, one or more joint venture agreements entered into or to be entered into among the German Borrower (or any Material Subsidiary) and Ningbo Hezhen Automotive Electronics System Co. Zhejiang Province, People’s Republic of China (or any of its Affiliates) on terms and conditions in form and substance reasonably satisfactory to the Administrative Agent.

“Note” means a Term Note or a Revolving Credit Note, as the context may require.

“NPL” means the National Priorities List under CERCLA.

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

“Offer Documents” means each document to be delivered to the shareholders of the German Borrower setting out the terms of the Takeover Offer in accordance with the German Securities Acquisition and Takeover Act.

“Offer Expiration Date” means the date on which the Takeover Offer lapses, terminates or is withdrawn in accordance with its terms.

“Organization Documents” means, (a)(i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity and (b) with regards to a Person organized under German Law (i) the articles of association or partnership agreement (*Satzung* or *Gesellschaftsvertrag*), (ii) to the extent applicable, a current excerpt of the entry of such Person in the commercial register (*Handelsregisterauszug*) and (iii) any standing orders, by-laws or internal guidelines of or applicable to such Person.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means (a) with respect to Term Loans and Revolving Credit Loans on any date, the Euro Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Term Loans and Revolving Credit Loans occurring on such date; (b) with respect to Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swing Line Loans occurring on such date; and (c) with respect to any L/C Obligations on any date, the Euro Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Company of Unreimbursed Amounts.

“Overnight Rate” means, for any day, the greater of (a) an overnight rate determined by the Administrative Agent or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation and (b) the rate of interest per annum at which overnight deposits in Euro or any Alternative Currency, as applicable, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Parent Cash Escrow Account” means the account designated under the Parent Cash Escrow Agreement to receive and hold the funds of the Parent on or prior to the Closing Date to be invested in Amerigon Germany in connection with the Acquisition and/or the Takeover Offer, as applicable, and in accordance with the terms of the Parent Credit Facility Documents.

“Parent Cash Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Parent, Amerigon Germany, Bank of America and the Escrow Agent in connection with the establishment and maintenance of the Parent Cash Escrow Account and the release of proceeds therefrom to pay all or any portion of the consideration in connection with the Acquisition or Takeover Offer in accordance with the applicable Related Documents, or otherwise as permitted under Section 6.11, in form and substance reasonably satisfactory to the Administrative Agent.

“Parent Credit Facility Documents” means that certain Credit Agreement, dated as of March 30, 2011 by and among the Parent and Amerigon Germany, as borrowers, each lender from time to time party thereto, Bank of America, as administrative agent, swing line lender and L/C issuer and each other agreement, certificate, document or instrument delivered in connection therewith, whether or not specifically mentioned herein or therein.

“Parent Guarantor” means each of the Parent and Amerigon Germany and any other Person who becomes party to the Parent Guaranty.

“Parent Guaranty” means that certain Parent Guaranty made by a Parent Guarantor in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit G.

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

“Participating Member State” means each state so described in any EMU Legislation.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by either Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of either Borrower or any ERISA Affiliate or any such Plan to which either Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Preferred Equity Documents” means the Securities Purchase Agreement, dated as of March 30, 2011 by and among the Company and the Preferred Equity Investors and each other

agreement, certificate, document or instrument delivered in connection therewith and with the Preferred Equity Investment, whether or not specifically mentioned herein or therein.

“Preferred Equity Investment” means the issuance by the Company of 7,000 shares of Series C Convertible Preferred Stock to Preferred Equity Investors in an aggregate amount of at least \$70,000,000 to be used in connection with the payment of the Acquisition consideration.

“Preferred Equity Investors” means Kingsbrook Opportunities Master Fund LP and other accredited institutional investors as investors under the Preferred Equity Documents.

“Preferred Equity Subordination Agreement” means that certain Subordinated Agreement, dated as of the Closing Date, by and among the Preferred Equity Investors, Bank of America and the Parent.

“Press Release” means the press release made or to be made by or on behalf of the Parent announcing the terms of the Takeover Offer or the Scheme.

“Process Agent” means, with respect to any Person, the Person (if any) identified on Schedule 10.02 as the “Process Agent” for such Person.

“Public Lender” has the meaning specified in Section 6.02.

“Quotation Day” means, in relation to any Interest Period for which an interest rate is to be determined, (a) for Loans denominated in Euro, two TARGET Days before the first day of such Interest Period or (b) for Loans denominated in any Alternative Currency, two Business Days before the first day of such Interest Period, unless market practice differs in the Relevant Interbank Market for an Alternative Currency, in which case, the Quotation Day for such Alternative Currency will be determined by the Administrative Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of such days).

“Reduction Amount” has the meaning set forth in Section 2.05(b)(vii).

“Reference Bank Rate” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Administrative Agent at its request by the Reference Banks:

(a) with respect to Loans denominated in Euro, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market; or

(b) with respect to Loans denominated in an Alternative Currency, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in such currency and for such period.

“Reference Banks” means, the principal London offices of Bank of America, Barclays Bank Plc and Lloyds TSB Bank Plc or such other banks as may be appointed by the Administrative Agent in consultation with the German Borrower.

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

“Regulation” has the meaning specified in Section 5.21(f).

“Related Documents” means the Acquisition Agreement, the Offer Documents, the Press Release, the Parent Credit Facility Documents and each other agreement, certificate, document or instrument delivered in connection therewith, whether or not specifically mentioned herein or therein.

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

“Relevant Interbank Market” means with respect to Euro, the European interbank market and, with respect to any Alternative Currency, the London interbank market.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

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

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) of the Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term Lenders” means, as of any date of determination, Term Lenders holding more than 50% of the Term Facility on such date; provided that the portion of the Term Facility

held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, general manager (*Geschäftsführer*) assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Company or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent thereof) or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Revaluation Date” means with respect to any Loan, each of the following: (a) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (b) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, and (c) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

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

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b).

“Revolving Credit Note” means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C.

“Same Day Funds” means (a) with respect to disbursements and payments in U.S. Dollars, immediately available funds, and (b) with respect to disbursements and payments in Euro or Canadian Dollars, same day or other funds as may be determined by the Administrative Agent to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Screen Rate” means:

(a) with respect to Loans denominated in Euro, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period; and

(b) with respect to Loans denominated in an Alternative Currency, the British Bankers’ Association Interest Settlement Rate for the relevant currency and period,

in each case, displayed on the appropriate page of the Reuters screen; provided that if the agreed page is replaced or service ceases to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the German Borrower and the Lenders.

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

“Seller” has the meaning specified in the Preliminary Statements.

“Senior Loan Escrow Account” means the account designated under the Senior Loan Escrow Agreement to receive and hold the funds of the initial credit extensions under the Parent Credit Facility Documents on the Closing Date.

“Senior Loan Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Parent, Amerigon Germany, Bank of America and the Escrow Agent in connection with the establishment and maintenance of the Senior Loan Escrow Account and the release of proceeds therefrom to pay all or any portion of the consideration in connection with the Acquisition or Takeover Offer in accordance with the applicable Related Documents, or otherwise as permitted under Section 6.11, in form and substance reasonably satisfactory to the Administrative Agent.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property and assets of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the property and assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a



transaction, for which such Person's property and assets would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Time" means, (a) with respect to Loans denominated in Euro, the Quotation Day as of 11:00 a.m. (Brussels time) and (b) with respect to Loans denominated in any Alternative Currency, the Quotation Day as of 11:00 a.m..

"Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

"Sterling" and "£" mean the lawful currency of the United Kingdom.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrowers.

"Subsidiary Guarantors" means, collectively, as of the Funding Release Date, WET Hungary, WET Malta, WET Ukraine and WET Texas and each other direct or indirect Subsidiary of the German Borrower who shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.13.

"Subsidiary Guaranty." means any Subsidiary Guaranty made by a Subsidiary Guarantor in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit F.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing),

whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

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

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

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

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

“Swing Line Sublimit” means an amount equal to the lesser of (a) €2,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP; provided that for the avoidance of doubt Synthetic Debt shall not include any obligation arising under any Swap Contract including any CRS Transaction.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Takeover Offer” has the meaning specified in the Preliminary Statements.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, value added taxes as provided for in the Value Added Tax Act (*Umsatzsteuergesetz*) of Germany and any other tax of a similar nature or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrowers pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means at any time, (a) on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

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

“Threshold Amount” means €750,000.

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

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

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

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

“**WET China**” means W.E.T. Automotive Systems (China) Ltd., Langfang, China, a Chinese company having its registered seat in Langfang Economic and Technical Development Zone Jinyuan Road Langfang 065001 P.R. China.

“**WET Hungary**” means W.E.T. Automotive Systems Magyarország Kft, a Hungarian company with registered seat in Pilisszentiván, Hungary, registered in the register court of Pest under the number Cg. 13-09-80441.

“**WET Malta**” means W.E.T. Automotive Systems (Malta) Ltd. (a private limited liability company registered in Malta under registration number C. 30702) and having its registered office at Paolo Court, Flat 6, Triq Giuseppe Cali, Ta’ Xbiex MSD 14, Malta.

“**WET Texas**” means W.E.T. Automotive Systems (Texas), Inc., a Texas corporation.

“**WET Ukraine**” means W.E.T. Automotive Ukraine TOV, a limited liability company incorporated under the laws of Ukraine having its business seat in Vinogradiv/Ukraine.

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

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

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

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

**1.03 Accounting Terms.** (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP or IFRS, as applicable, in each case, applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the German Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20, if applicable, on financial liabilities shall be disregarded.

(b) Changes in GAAP or IFRS. If at any time any change in GAAP or IFRS, as the case may be, would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the German Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the German Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or IFRS, as the case may be (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP or IFRS, as the case may be, prior to such change therein and (ii) the German Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or IFRS, as the case may be.

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

**1.05 Exchange Rates; Currency Equivalents.** (a) The Administrative Agent shall determine the Spot Rates as of each Revaluation Date to be used for calculating Euro Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Euro) for purposes of the Loan Documents shall be such Euro Equivalent amount as so determined by the Administrative Agent.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or

extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent.

**1.06 Change of Currency.** (a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

**1.07 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to London time.

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

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Loans.** (a) The Term Borrowings. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a loan to each Borrower on the Funding Release Date in an aggregate amount not to exceed such Term Lender's Term Commitment. The Term Borrowings shall consist of Term Loans made simultaneously by the Term Lenders in

accordance with their respective Applicable Percentage of the Term Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be borrowed by the German Borrower only in Euro. Term Loans may be borrowed by the Canadian Borrower in any Alternative Currency.

(b) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Revolving Credit Lender’s Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender’s Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender’s Revolving Credit Commitment. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be borrowed by the German Borrower only in Euro. Revolving Credit Loans may be borrowed by the Canadian Borrower in any Alternative Currency.

(c) Obligations for the Loans. The Borrowers shall be jointly and severally liable obligated for all Loans and other Obligations hereunder and under the other Loan Documents, including all payments of principal, interest and fees in connection with the Loans; provided that unless and until the legal opinions set forth in Section 6.19(a) have been delivered (i) the provisions of this Agreement shall not be effective against the Canadian Borrower; (ii) the Canadian Borrower shall not be deemed to be a Borrower hereunder and (iii) the Canadian Borrower shall not request, and no Lender shall be obligated to make, any Credit Extension to the Canadian Borrower.

**2.02 Borrowings, Conversions and Continuations of Loans.** (a) Each Borrowing and each continuation of Loans shall be made upon each Borrower’s irrevocable notice to the Administrative Agent. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing or continuation of Loans denominated in U.S. Dollars and (ii) four Business Days prior to the requested date of any Borrowing or continuation of Loans denominated in Euro or Canadian Dollars; provided, however, that if a Borrower wishes to request Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. (A) four Business Days prior to the requested date of such Borrowing denominated in U.S. Dollars, or (B) five Business Days prior to the requested date of such Borrowing or continuation of Loans denominated in Euro or Canadian Dollars, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., (x) three Business Days before the requested date of such Borrowing or continuation of Loans denominated in U.S. Dollars, or (y) four Business Days prior to the requested date of such

Borrowing or continuation of Loans denominated in Euro and Canadian Dollars, the Administrative Agent shall notify the German Borrower whether or not the requested Interest Period has been consented to by all the Lenders. Each Committed Loan Notice by a Borrower pursuant to this Section 2.02(a) must be delivered to the Administrative Agent, appropriately completed and signed by a Responsible Officer of a Borrower. Each Borrowing or continuation of Loans shall be in a principal amount of €2,000,000 or a whole multiple of €1,000,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the applicable Borrower is requesting a Revolving Credit Borrowing or a continuation of Loans, (ii) the requested date of the Borrowing or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed or continued, (iv) the duration of the Interest Period with respect thereto and (v) the currency of the Loans to be borrowed. If a Borrower fails to specify a currency in a Committed Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Euro. If a Borrower requests a Borrowing or continuation of Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be continued as a Loan denominated in a different currency, but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount (and currency) of its Applicable Percentage under the applicable Facility of the applicable Loans, and if no timely notice of continuation is provided by a Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Loans denominated in a currency other than Euro, in each case, as described in Section 2.02(c). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 2:00 p.m., in the case of any Loan denominated in Euro, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an Alternative Currency, in each case, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.03 with respect to any Borrowing (and, if such Borrowing is the initial Credit Extension Section 4.02), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the German Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the applicable Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the applicable Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued only on the last day of an Interest Period for such Eurocurrency Rate Loan.

(d) The Administrative Agent shall promptly notify the German Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate.



(e) After giving effect to all Borrowings and all continuations of Loans, there shall not be more than eight Interest Periods in effect with respect to Loans.

### **2.03 Letters of Credit.**

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

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

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

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

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

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

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

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

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than €100,000;

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Euro;

(E) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

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

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

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

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

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

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of either Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, such Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on

the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) If either Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, neither Borrower shall be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or either Borrower that one or more of the applicable conditions specified in Section 4.03 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

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

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrowers and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If either Borrower fails to so reimburse the L/C Issuer by

such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Applicable Revolving Credit Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Credit Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Loans, but subject to the amount of the unutilized portion of the Revolving Credit and the conditions set forth in Section 4.03 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer, in Euro, at the Administrative Agent’s Office for Euro-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Euro.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing because the conditions set forth in Section 4.03 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender’s payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

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

(v) Each Revolving Credit Lender’s obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the L/C Issuer, either Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other

occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.03 (other than delivery by a Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of either Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the L/C Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

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

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

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

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

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

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

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

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to either Borrower or any Subsidiary or in the relevant currency markets generally; or

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

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

(f) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the

authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude either Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Sections 2.03(e)(i) through (iv); provided, however, that anything in such clauses to the contrary notwithstanding, the applicable Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(h) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, in Euro, a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Euro Equivalent of the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be



determined in accordance with Section 1.08. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account, in Euro, a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Euro Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account, in Euro, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

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

#### **2.04 Swing Line Loans.**

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Revolving Credit Lender, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.04, may in its sole discretion make loans in Euro (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Credit Percentage of the Outstanding Amount of Revolving

Credit Loans and L/C Obligations of the Revolving Credit Lender acting as Swing Line Revolving Credit Lender, may exceed the amount of such Revolving Credit Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Revolving Credit Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon either Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 11:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of €200,000, and (ii) the requested borrowing date, which shall be a Business Day. Each Swing Line Loan Notice must be delivered to the Swing Line Lender and the Administrative Agent, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 1:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 2:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Borrower at its office by crediting the account of the applicable Borrower on the books of the Swing Line Lender in Same Day Funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (each of which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be

made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.03. The Swing Line Lender shall furnish the applicable Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office for Euro-denominated payments not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

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

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

(iv) Each Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other

occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.03. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

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

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

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

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

**2.05 Prepayments.** (a) Optional. (i) Each Borrower may, upon notice from the German Borrower to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in U.S. Dollars, (B) four Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Euro or Canadian Dollars, and (C) on the date of prepayment of Loans; (ii) any prepayment of Eurocurrency Rate Loans denominated in U.S. Dollars shall be in a principal amount of €2,000,000 or a whole multiple of €1,000,000 in excess thereof and (iii) any prepayment of Eurocurrency Rate Loans denominated in Euro or Canadian Dollars shall be in a minimum principal amount of the Alternative Currency Equivalent of

€2,000,000 or a whole multiple of €1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the German Borrower, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the Term Facility and to the principal repayment installments thereof in inverse order of maturity, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

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

(b) Mandatory. (i) If the German Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition (A) of any property permitted by Section 7.05(a), (b), (c)(i) or (ii) or (d), (B) to any Subsidiary (other than a Loan Party) not greater than €1,000,000 in the aggregate per fiscal year, (C) to any Person (other than pursuant to clause (A) or (B), above) not greater than €250,000 in the aggregate per fiscal year) and (D) by any Subsidiary (other than a Loan Party or Material Subsidiary) to any Subsidiary (other than a Loan Party or Material Subsidiary) which results in the realization by such Person of Net Cash Proceeds, the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds immediately upon receipt thereof by such Person (such prepayments to be applied as set forth in clauses (v) and (vii) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition described in this Section 2.05(b)(i), at the election of the German Borrower (as notified by the German Borrower to the Administrative Agent on or prior to the date of such Disposition), and so long as no Default shall have occurred and be continuing, the German Borrower or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as within 180 days after the receipt of such Net Cash Proceeds, such purchase shall have been consummated (as certified by the German Borrower in writing to the Administrative Agent); and provided further, however, that any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(i).

(ii) Upon the sale or issuance by the German Borrower or any of its Subsidiaries of any of its Equity Interests (other than any sales or issuances of Equity

Interests to another Loan Party), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the German Borrower or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (vii) below).

(iii) Upon the incurrence or issuance by the German Borrower or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.03), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the German Borrower or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (vii) below).

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of the German Borrower or any of its Subsidiaries, and not otherwise included in Sections 2.05(b)(i), (ii) or (iii), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the German Borrower or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (vii) below); provided, however, that with respect to any proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments, at the election of the German Borrower (as notified by the German Borrower to the Administrative Agent on or prior to the date of receipt of such insurance proceeds, condemnation awards or indemnity payments), and so long as no Default shall have occurred and be continuing, the German Borrower or such Subsidiary may apply within 270 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received; and provided, further, however, that any cash proceeds not so applied shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(iv).

(v) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, first, to the Term Facility and to the principal repayment installments thereof in inverse order of maturity and, second, to the Revolving Credit Facility in the manner set forth in Section 2.05(b)(vii).

(vi) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrowers shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

(vii) Prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, in the case of prepayments of the Revolving Credit Facility required pursuant to Section 2.05(b)(i), (ii), (iii) or (iv), the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Swing Line Loans and Revolving Credit Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full (the sum of such

prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the “Reduction Amount”) may be retained by the Borrowers for use in the ordinary course of its business, and the Revolving Credit Facility shall be automatically and permanently reduced by the Reduction Amount as set forth in Section 2.06(b)(iii). Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

(c) If the Administrative Agent notifies the German Borrower at any time that the Outstanding Amount of all Revolving Credit Loans denominated in Alternative Currencies at such time exceeds an amount equal to 102% of the Alternative Currency Sublimit then in effect, then, within two Business Days after receipt of such notice, the Borrowers shall prepay Loans in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

**2.06 Termination or Reduction of Commitments.** (a) Optional. The German Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative Currency Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative Currency Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of €2,000,000 or any whole multiple of €1,000,000 in excess thereof and (iii) the German Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit or (D) the Alternative Currency Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Revolving Credit Loans denominated in an Alternative Currency would exceed the Alternative Currency Sublimit.

(b) Mandatory. (i) The aggregate Term Commitments shall be automatically and permanently reduced to zero on the date of the Term Borrowing.

(ii) The Revolving Credit Facility shall be automatically and permanently reduced on each date on which the prepayment of Revolving Credit Loans outstanding thereunder is required to be made pursuant to Section 2.05(b)(i), (ii), (iii) or (iv) by an amount equal to the applicable Reduction Amount.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative Currency Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative

Currency Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, Alternative Currency Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

**2.07 Repayment of Loans.** (a) Term Loans. The Borrowers shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding on the Maturity Date and on the last Business Day of each of August 2011 and September 2011 as set forth below and the last Business Day of each of March, June, September and December occurring during each other period set forth below commencing December 2011, in each case, in the respective amounts set forth opposite such periods (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05):

<u>Period</u>	<u>Amount</u>
August 31, 2011	€1,000,000
September 30, 2011	€500,000
December 31, 2011 through December 31, 2015	€1,500,000
Maturity Date	The then aggregate outstanding principal amount of Term Loans

(b) Revolving Credit Loans. The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

**2.08 Interest.** (a) Subject to the provisions of clause (b) below, (i) each Loan (other than Swing Line Loans) under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate for such Facility plus (in the case of a Eurocurrency Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost and (ii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate



per annum equal to the Overnight Rate plus the Applicable Rate for the Revolving Credit Facility.

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

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

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

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

**2.09 Fees.** In addition to certain fees described in Section 2.03(h) and (i):

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

(b) Other Fees. (i) The Borrowers shall pay to the Arranger and the Administrative Agent for their own respective accounts, in Euro or the applicable Alternative Currency, fees in

the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) Each Borrower shall pay to the Lenders, in Euro or the applicable Alternative Currency, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

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

(a) All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Loans denominated in Euro or any Alternative Currency as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the German Borrower or for any other reason, the German Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the German Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, each Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to either Borrower under the applicable Debtor Relief Law, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

**2.11 Evidence of Debt.** (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by

any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to a Borrower made through the Administrative Agent, such Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to such Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

**2.12 Payments Generally; Administrative Agent's Clawback.** (a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Euro and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, either Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Euro, in the Euro Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Euro, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by either Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans that such Lender will not make available to the

Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by such Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

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

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

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c).

on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

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

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

**2.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time then the Lender receiving such greater proportion shall (x) notify the Administrative Agent of such fact and (y) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to either Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

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

**2.14 German Loan Parties.** The liability by a German Loan Party which is a GmbH or a limited partnership (*Kommanditgesellschaft*) where the sole general partner is a GmbH (GmbH & Co. KG) for Obligations of any other Foreign Subsidiaries shall be limited as follows:

(a) The obligation of such German Loan Party under this Section 2.14(a) (the "German Obligation") shall be limited if and to the extent that it secures the obligations of an affiliated company (*verbundenes Unternehmen*) within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz*) (other than a direct or indirect Subsidiary), and if and to the extent that (i) the enforcement of the German Obligation would cause such German Loan Party's assets or, in case of GmbH & Co. KG, the assets of its sole general partner (the calculation of which shall include all items set forth in section 266(2) A, B and C of the German Commercial Code (*Handelsgesetzbuch*)) less such German Loan Party's and/or, in case of GmbH & Co. KG, its general partner's liabilities (the calculation of which shall include, but not be limited to, all items set forth in section 266(3) B, C and D of the German Commercial Code) (*Handelsgesetzbuch*) (the "German Net Assets") to be less than its or, in case of GmbH & Co. KG, its sole general partner's registered share capital (*Stammkapital*) (*Begründung einer Unterbilanz*) or (ii) (if such German Loan Party's or, in case of GmbH & Co. KG, its sole general partner's Net Assets are already less than its registered share capital) to cause such amount to be further reduced (*Vertiefung einer Unterbilanz*).

(b) For the purposes of such calculation, the following balance sheet items shall be adjusted as follows:

(i) the amount of any increase of such German Loan Party's and/or, in case of GmbH & Co. KG, its sole general partner's registered share capital out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) after the date of this Agreement that has been effected without the prior written consent of the Administrative Agent shall be deducted from the registered share capital;

(ii) loans and other liabilities shall be disregarded if and to the extent such loans and other liabilities or would, in the case of any insolvency, be considered subordinated (*nachrangig*) within the meaning of section 39 para 2 or section 39 para 1 No. 5 of the German Insolvency Code (*Insolvenzordnung*); and

(iii) loans and other contractual liabilities incurred in violation of the provisions of any Loan Document shall be disregarded.

(c) Each German Loan Party shall realize by sale, after receipt of written demand by the Administrative Agent, to the extent legally permitted and commercially reasonable, in a situation where after enforcement of the German Obligation such German Loan Party and/or, in case of GmbH & Co. KG, its sole general partner would not have German Net Assets in excess of its registered share capital, any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of such asset if such asset is not necessary for such German Loan Party's and/or, in case of GmbH & Co. KG, its sole general partner's business (*nicht betriebsnotwendig*). After the expiry of the above mentioned period, such German Loan Party shall inform the Administrative Agent in writing of the amount of the proceeds from any such sale and provide a new Management Determination regarding the German Net Assets taking into account such sale proceeds. Upon request of the Administrative Agent, such calculation is to be confirmed in the form of an Auditor's Determination within 30 Business Days after the Administrative Agent's receipt thereof.

(d) The limitations set out in clause (a) above shall only apply (i) if, and to the extent that, within ten (10) Business Days following the demand under this Section 2.14 by the Administrative Agent (the "Demand"), the managing directors of such German Loan Party have confirmed in writing to the Administrative Agent (A) the extent to which the German Obligation is an up-stream or cross-stream security and (B) the amount of which cannot be enforced as such enforcement would cause the German Net Assets of such German Loan Party and/or, in case of GmbH & Co. KG, its sole general partner to fall below its stated share capital; provided that such confirmation shall be supported by interim financial statements through the end of the most recently ended calendar month (taking into account the adjustments set out in clause (b) above (the "Management Determination"); provided further that the Administrative Agent shall not have contested the Management Determination for any reason, including the Administrative Agent's determination that no amount or a lesser amount would be necessary for such German Loan Party and/or, in case of GmbH & Co. KG, its sole general partner to maintain its stated share capital; or (ii) within forty-five (45) Business Days from the date the Administrative Agent has contested the Management Determination, the Administrative Agent receives a determination by auditors of international standard and reputation (the "Auditor's Determination") as appointed by such German Loan Party that such amount would have been necessary on the date of the Demand to maintain such German Loan Party's and/or, in case of GmbH & Co. KG, its sole general partner's stated share capital based on an up to date balance sheet which was produced using the same accounting principles applied to the establishment of the previous year's balance sheet and calculated and adjusted in accordance with clauses (a) and (b) above.

(e) If such German Loan Party fails to deliver an Auditor's Determination within forty-five (45) Business Days after the date the Administrative Agent has contested the Management Determination, the Administrative Agent shall be entitled to enforce the German Obligation without limitation or restriction. If such German Loan Party delivers to the Administrative Agent an Auditor's Determination as provided for in clause (d) within two (2) months after the commencement of any enforcement action, the Administrative Agent agrees to repay to such German Loan Party, without interest or recourse, the difference between the

amount enforced pursuant to first sentence of this clause (e) and the amount which is determined as enforceable pursuant to the Auditor's Determination.

(f) If the Administrative Agent disagrees with the Management Determination and/or the Auditor's Determination, the German Obligation shall be enforceable up to the amount which is undisputed between the Administrative Agent and such German Loan Party. In relation to the amount which is disputed, the Administrative Agent shall be entitled to further pursue its claims by legal action provided that it shall be incumbent upon the Administrative Agent to produce evidence that the amount required for the German Loan Party and/or, in case of GmbH & Co. KG, its sole general partner to maintain the relevant state share capital is in fact lower.

(g) For the avoidance of doubt, nothing in this Agreement shall be interpreted as a restriction or limitation of the enforcement of the German Obligation to the extent it secures the prompt and complete payment and discharge of any and all obligations of such German Loan Party or any of such German Loan Party's Subsidiaries. The limitations set out in clauses (a) through (d) shall not apply:

(i) in relation to any amounts borrowed under any Loan Document to the extent such proceeds were on-lent to such German Loan Party or any of such German Loan Party's Subsidiaries from time to time and which have not been repaid by such German Loan Party or any of such German Loan Party's Subsidiaries; provided that any repayment by such German Loan Party or any of such German Loan Party's Subsidiaries shall only reduce the enforceable amount to an extent it has effectively resulted in a discharge of the secured claims of the Lenders which have advanced such Loans to the Borrowers or which were otherwise made available to such German Loan Party or any of such German Loan Party's Subsidiaries;

(ii) if such German Loan Party is a party as dominated entity (*beherrschtes Unternehmen*) pursuant to a domination agreement (*Beherrschungsvertrag*) and/or profit and loss transfer agreement (*Gewinnabführungsvertrag*) (so that the restrictions of § 30 of the German Limited Liability Companies Act (*GmbH-Gesetz*) do not apply);

(iii) if and to the extent such German Loan Party does not fulfill its obligations set out in clause (c) above; or

(iv) if, at the time of enforcement of the German Obligation, the limitations set out in clauses (a) through (d) are (due to a Change in Law or otherwise) no longer required in order to protect the managing director(s) of such German Loan Party from being personally liable for such obligation.

(h) Any German Loan Party which is a stock corporation (*Aktiengesellschaft – AG*) shall only be liable, if and to the extent that it secures the obligations of an affiliated company (*verbundenes Unternehmen*) within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz*) (other than a direct or indirect Subsidiary), if the relevant German Loan Party is a party as dominated entity (*beherrschtes Unternehmen*) pursuant to a domination agreement (*Beherrschungsvertrag*) and/or profit and loss transfer agreement (*Gewinnabführungsvertrag*) provided that any claim for compensation of losses incurred by such German Loan Party during



the term of that domination agreement and/or profit and loss transfer agreement which arises by operation of law against the relevant counterparty is fully recoverable at all times.

## **2.15 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrowers shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv)) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrowers, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrowers or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance

of a Default or Event of Default (and following application as provided in this [Section 2.15](#) may be otherwise applied in accordance with [Section 8.03](#)), and (y) the Person providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

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

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in [Section 10.01](#).

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to [Article VIII](#) or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to [Section 10.08](#)), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; fourth, as the German Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the German Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by either Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in [Section 4.03](#) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other

amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii), shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (A) shall be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the Outstanding Amount of the Revolving Credit Loans funded by it and (2) its Applicable Percentage of the stated amount of Letters of Credit and Swing Line Loans for which it has provided Cash Collateral pursuant to Section 2.03, Section 2.04, Section 2.15, or Section 2.16(a)(ii), as applicable (and the Borrowers shall (x) be required to pay to each of the L/C Issuer and the Swing Line Lender, as applicable, the amount of such fee allocable to its Fronting Exposure arising from that Defaulting Lender and (y) not be required to pay the remaining amount of such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (B) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; provided, that, (A) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (B) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Credit Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole and reasonable discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder

from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**2.17 Appointment of Borrower Agent.** The Canadian Borrower hereby irrevocably appoints the German Borrower as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (a) the giving and receipt of notices and (b) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by each Borrower acting singly, shall be valid and effective if given or taken only by the German Borrower, whether or not the Canadian Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to the German Borrower in accordance with the terms of this Agreement shall be deemed to have been delivered to the Canadian Borrower.

### **ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (i) Any and all payments by or on account of any obligation of the respective Borrowers hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require either Borrower or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by such Borrower or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to clause (e) below.

(ii) If either Borrower or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to clause (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by such Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If either Borrower or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Borrower or the Administrative Agent, as required by such Laws, shall

withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to clause (e) below, (B) such Borrower or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount so withheld or deducted by it to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by such Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of clause (a) above, each Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnifications. (i) Without limiting the provisions of clause (a) or (b) above, each Borrower shall, and does hereby, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by such Borrower or the Administrative Agent or paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this clause (c). A certificate as to the amount of any such payment or liability delivered to a Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of clauses (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify each Borrower and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for such Borrower or the Administrative Agent) incurred by or asserted against such Borrower or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to such Borrower or the Administrative Agent pursuant to clause (e). Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any

other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by a Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by such Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation. (i) Each Lender shall deliver to the German Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the German Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the German Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the respective Borrowers hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the respective Borrowers pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions.

(ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the German Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the German Borrower on behalf of such Borrower or the Administrative Agent as will enable such Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the German Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the German Borrower on behalf of the Borrowers or the

Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

- (I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,
- (II) executed originals of Internal Revenue Service Form W-8ECI,
- (III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,
- (IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of such Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or
- (V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the German Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that either Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) Each of the Borrowers shall promptly deliver to the Administrative Agent or any Lender, as the Administrative Agent or such Lender shall reasonably request, on or prior to the Closing Date (or such later date on which it first becomes a Borrower), and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by such Borrower, as are required to be furnished by such Lender or the Administrative Agent under such Laws in connection with any payment by the Administrative Agent or any Lender of Taxes or Other Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by either Borrower or with respect to which either Borrower has paid additional amounts pursuant to this Section, it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Borrower, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This clause shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to either Borrower or any other Person.

(g) FATCA. If a payment made to a Lender or L/C Issuer under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender or L/C Issuer fails to comply with the applicable requirements of FATCA, such Lender or L/C Issuer shall, to the extent legally entitled, deliver to the German Borrower and the Administrative Agent (i) a certification signed by the chief financial officer, principal accounting officer, treasurer or controller and (ii) other documentation reasonably requested by the German Borrower and the Administrative Agent sufficient for the Administrative Agent and the German Borrower to comply with their obligations under FATCA and to establish that such Lender or L/C Issuer has complied with such applicable requirements.

**3.02 Illegality**. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans (whether denominated in Euro or an Alternative Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Euro or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the German Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies shall be suspended until such Lender notifies the Administrative Agent and the German Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all such Eurocurrency Rate Loans of such Lender to Loans bearing interest by reference to the Reference Bank Rate, either on the



last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Euro or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Euro or an Alternative Currency), or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the German Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of or continuation of Eurocurrency Rate Loans in the affected currency or currencies or, failing that, will be deemed to have converted such request into a request for a Borrowing of Loans bearing interest by reference to the Reference Bank Rate.

**3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except (A) any reserve requirement contemplated by Section 3.04(e) and (B) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank reflected in the Mandatory Cost, other than as set forth below) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer);

(iii) result in the failure of the Mandatory Cost, as calculated hereunder, to represent the cost to any Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining Eurocurrency Rate Loans; or

(iv) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan, the interest on which is determined by reference to the Eurocurrency Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in clauses (a) or (b) and delivered to the German Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that no Borrower shall be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the German Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-

month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrowers shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which, in each case, shall be due and payable on each date on which interest is payable on such Loan; provided the German Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation or payment or prepayment of any Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by either Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow or continue any Loan on the date or in the amount notified by such Borrower;

(c) any failure by either Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the German Borrower pursuant to Section 10.13;

including any loss of anticipated profits, any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or either Borrower is required to pay any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if either Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the German Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival**. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01 Conditions of Closing Date**. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Closing Date Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and the Parent Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender, the German Borrower and WET Canada, as applicable;

(ii) Notes executed by the Borrowers in favor of each Lender requesting Notes;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Closing Date Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Closing Date Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Closing Date Loan Party is duly organized or formed, and that each Closing Date Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of (A) Honigman Miller Schwartz and Cohn LLP, U.S. counsel to the Parent Guarantors, (B) P&P Pöllath & Partners, German counsel to the German Borrower and (C) Milbank, Tweed, Hadley & McCloy LLP, German counsel to Amerigon Germany, in each case, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit H and such other matters concerning the Closing Date Loan Parties and the Loan Documents to which they are party as the Required Lenders may reasonably request;

(vi) a certificate of a Responsible Officer of each Closing Date Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Closing Date Loan Party and the validity against such Closing Date Loan Party of the Loan Documents to which it is a party other than merger control filings and other governmental approvals required in connection with the Acquisition, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required other than merger control filings and other governmental approvals required in connection with the Acquisition;

(vii) a certificate signed by a Responsible Officer of each Borrower certifying that (A) the conditions specified in Sections 4.03(a) and (b) have been satisfied, (B) there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) except as set forth on Schedule 5.06, no action, suit, investigation or proceeding is pending or, to the knowledge of either Borrower, threatened in any court or before any arbitrator or governmental authority that could

reasonably be expected to have a Material Adverse Effect and (D) the execution and delivery of the Loan Documents will not conflict with or result in a default under any existing Indebtedness of the German Borrower and its Subsidiaries;

(viii) pro forma financial statements and budget of the German Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the German Borrower, of consolidated balance sheets and statements of income or operations and cash flows of the German Borrower and its Subsidiaries on a monthly basis through December 31, 2011 and on an annual basis for each year thereafter, in each case, after giving effect to the transactions contemplated hereby and the Related Documents, each in form and substance reasonably satisfactory to the Lenders;

(ix) certificates attesting to the Solvency of each Closing Date Loan Party before and after giving effect to the transactions contemplated hereby, from its chief financial officer;

(x) certified copies of each of the Related Documents, duly executed by the parties thereto, together with all agreements, instruments and other documents delivered in connection therewith as the Administrative Agent shall request;

(xi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(xii) all asset appraisals, field audits, and such other reports, audits or certifications as the Administrative Agent may reasonably may require, in each case, in form and substance reasonably satisfactory to the Administrative Agent; and

(xiii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arranger on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date.

(d) The Administrative Agent and the Lenders shall have completed a due diligence investigation of the Borrowers and their respective Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and the Lenders and shall have been given such access to the management, records, books of account, contracts and properties of the Borrowers and their respective Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing persons and businesses as they shall have requested, including, without limitation, information as to possible contingent liabilities, tax matters, collective bargaining agreements and other arrangements with employees, the annual (or other

audited) financial statements of the Borrowers and their respective Subsidiaries for the fiscal years ended 2008, 2009 and 2010, interim financial statements of the Borrowers and their respective Subsidiaries dated the end of the most recent fiscal quarter for which financial statements are available (or, in the event the Lenders' due diligence review reveals material changes since such financial statements, as of a later date within 45 days of the Closing Date); all of the information made available to the Administrative Agent and the Lenders prior to the Closing Date is complete and correct in all material respects and no changes or developments have occurred and no new or additional information shall have been received or discovered by the Administrative Agent or the Lenders regarding the Borrowers and their respective Subsidiaries or the transactions contemplated hereby that (1) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (2) purports to adversely affect the Loan Documents or any aspect of the transactions contemplated thereby, and nothing shall come to the attention of the Administrative Agent or the Lenders during the course of such due diligence investigation to lead them to believe (x) that the Information Memorandum was or has become misleading, incorrect or incomplete in any material respect or (y) that the transactions contemplated hereby and by the Related Documents will have a Material Adverse Effect.

(e) The final terms and conditions of each aspect of the transactions contemplated hereby and by the Related Documents, including all tax aspects thereof, shall be as previously described to the Administrative Agent and the Lenders and otherwise consistent with the description thereof received in writing as part of the information delivered to the Administrative Agent in connection with the syndication of the Facilities.

(f) The Administrative Agent and the Lenders shall be reasonably satisfied with the Related Documents (including all schedules and exhibits thereto) regarding the German Borrower and its Subsidiaries; the Acquisition Agreement shall provide for an aggregate purchase price not in excess of the Euro Equivalent of \$200,000,000; the Offer Documents shall provide for a purchase price of no more than €40 per share tendered and all other agreements, instruments and documents relating to the transactions contemplated hereby and by the Related Documents and shall not have been altered, amended or otherwise changed or supplemented or any condition therein waived without the prior written consent of the Lenders.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions of Initial Credit Extension.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly

executed by a Responsible Officer of the signing Funding Date Loan Party, each dated the Funding Release Date (or, in the case of certificates of governmental officials, a recent date before the Funding Release Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of the Subsidiary Guaranties, sufficient in number for distribution to the Administrative Agent, each Lender, and each Funding Date Loan Party, as applicable;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Funding Date Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Funding Date Loan Party is a party;

(iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Funding Date Loan Party is duly organized or formed, and that each Funding Date Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(iv) a favorable opinion of (A) Hungarian counsel to the Funding Date Loan Parties, (B) Maltese counsel to the Funding Date Loan Parties, (C) Ukranian counsel to the Funding Date Loan Parties, (D) Texas counsel to the Funding Date Loan Parties and (E) Chinese counsel to the Funding Date Loan Parties, in each case, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit H (unless, with respect to Chinese counsel, such opinion is being delivered to confirm that the Chinese Subsidiaries cannot be Loan Parties in accordance with Section 6.13(a)) and such other matters concerning the Funding Date Loan Parties and the Loan Documents to which they are party as the Required Lenders may reasonably request;

(v) a certificate of a Responsible Officer of each Funding Date Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Funding Date Loan Party and the validity against such Funding Date Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vi) a certificate signed by a Responsible Officer of each Borrower certifying that (A) the conditions specified in Sections 4.03(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the Closing Date that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) no action, suit, investigation or proceeding is pending or, to the knowledge



of either Borrower, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect;

(vii) certificates attesting to the Solvency of each Funding Date Loan Party before and after giving effect to the transactions contemplated hereby, from its chief financial officer; and

(viii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) The expiration or termination of the waiting period under Hart-Scott-Rodino to the effect that the Takeover Offer and the Acquisition Agreement may be consummated as well as the achievement of Ukrainian merger control clearance for the consummation of the Takeover Offer and the Acquisition Agreement.

(c) Amerigon Germany has secured the acquisition of a number of shares in the German Borrower which represent at least 71.80% of the German Borrower's registered share capital. Such number of shares shall be deemed to have been secured if the sum of the Equity Interests of the German Borrower for which the Takeover Offer has been validly accepted and for which the right of withdrawal has not been validly exercised at the time of the expiry of the acceptance period under the Takeover Offer amounts to at least 71.80% of the German Borrower's registered share capital.

(d) All conditions to the release of funds on deposit in each Escrow Account shall have been met without dispute, or concurrently with the funding of the initial Credit Extensions hereunder will be met without dispute, and such funds held on deposit in each Escrow Account shall have been released, or concurrently with the funding of the initial Credit Extensions hereunder will be released, to or on behalf of Amerigon Germany in order to consummate the Acquisition, the Takeover Offer and any other transaction contemplated by the Related Documents.

(e) The Preferred Equity Investment shall have been made on terms and conditions and pursuant to the Preferred Equity Documents and shall be reasonably satisfactory to the Lenders.

(f) The proceeds of the Preferred Equity Investment in an amount equal to at least \$70,000,000 shall be funded into the Equity Escrow Account and at least \$20,000,000 in cash from the Parent shall be funded into the Parent Cash Escrow Account, in each case, concurrently with the funding of the initial credit extensions under the Parent Credit Facility Documents into the Senior Loan Escrow Account and such aggregate amounts together with any cash on hand of the Parent and Amerigon Germany shall be sufficient to consummate the Acquisition and any portion of the Takeover Offer, pay all fees, commissions and expenses related to the transactions contemplated thereby and by the Related Documents and meet the ongoing financial needs of the Parent and Amerigon Germany and their respective Subsidiaries after giving effect to the transactions contemplated thereby and by the Related Documents.

(g) The proceeds of each Escrow Account shall have been released in accordance with the applicable Escrow Agreement and applied to pay all or any portion of the Acquisition or the Takeover Offer, in accordance with the applicable Related Documents.

(h) The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent, evidence that (i) any and all existing Indebtedness (other than Indebtedness permitted under Section 7.03) of the German Borrower and each of its Subsidiaries has been, or concurrently with the funding of the initial Credit Extensions hereunder, will be terminated and (ii) any and all Liens (other than Liens permitted under Section 7.01) securing the obligations thereunder have been, or concurrently with the funding of the initial Credit Extensions hereunder, will be terminated and otherwise released.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Funding Release Date specifying its objection thereto.

**4.03 Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrowers contained in Article V and (ii) each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.03, the representations and warranties contained in Section 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to, respectively, of Section 6.01(a) and (b).

(b) No Default shall exist, or would result from such proposed Credit Extension or the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a continuation of Eurocurrency Rate Loans) submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.03(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

Each Borrower, solely with respect to such Borrower and each Subsidiary Guarantor, and each Parent Guarantor, solely with respect to such Parent Guarantor and in accordance with the terms of the Parent Guaranty, represent and warrant to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.** Such Borrower and each of its Material Subsidiaries and such Parent Guarantor (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents and Related Documents to which it is a party and consummate the transactions contemplated thereby, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, of each Loan Document and Related Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation in excess of the Threshold Amount to which such Person is a party or affecting such Person or the properties of such Person or any of its Material Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

**5.03 Governmental Authorization; Other Consents.** (a) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, of this Agreement or any other Loan Document or Related Document, or for the consummation of the transactions contemplated hereby or thereby or (ii) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents.

(b) As of the Funding Release Date, (i) all applicable waiting periods in connection with the transactions contemplated hereby and by the Related Documents have expired without

any action having been taken by any Governmental Authority restraining, preventing or imposing materially adverse conditions upon the Transaction or the rights of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, or their respective Material Subsidiaries freely to transfer or otherwise dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them and (ii) the Acquisition has been consummated in accordance with the Acquisition Agreement and applicable Law, other than merger control filings and other governmental approvals required in connection with the Acquisition.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, enforceable against each such Person that is party thereto in accordance with its terms.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with IFRS consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the German Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the German Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The most recently delivered unaudited consolidated balance sheets of the German Borrower and its Subsidiaries, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the period ended on that date (i) were prepared in accordance with IFRS consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated pro forma balance sheet of the German Borrower and its Subsidiaries as at December 31, 2010, and the related consolidated pro forma statements of income and cash flows of the German Borrower and its Subsidiaries for the twelve (12) months then ended, certified by the chief financial officer or treasurer of the German Borrower, copies of which have been furnished to each Lender, fairly present the consolidated pro

forma financial condition of the German Borrower and its Subsidiaries as at such date and the consolidated pro forma results of operations of the German Borrower and its Subsidiaries for the period ended on such date, all in accordance with IFRS.

(e) The consolidated forecasted balance sheet and statements of income and cash flows of the German Borrower and its Subsidiaries delivered pursuant to Section 6.01(c), were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the German Borrower's best estimate of its future financial condition and performance.

**5.06 Litigation.** Except as set forth on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, or any of their respective Material Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or Related Document, or any of the transactions contemplated hereby or thereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** Neither such Borrower, any Subsidiary Guarantor or such Parent Guarantor, as applicable, nor any of their respective Material Subsidiaries is in default under or with respect to, or party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property; Liens.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and their respective Material Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the German Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries are

insured with financially sound and reputable insurance companies not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where any such Person operates.

**5.11 Taxes.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with IFRS or GAAP, as applicable to such Person. There is no proposed tax assessment against such Borrower or any Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Such Borrower and each Subsidiary Guarantor have no Plans.

(b) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Material Subsidiary of any Loan Party that is not subject to United States law (a “Foreign Plan”):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(c) Neither the Borrowers nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan.

**5.13 Subsidiaries; Equity Interests.** As of the Closing Date, the Borrowers have no Subsidiaries or Material Subsidiaries other than those specifically disclosed as a Subsidiary or

Material Subsidiary in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Parent Credit Facility Documents or, prior to the Funding Release Date, set forth on Schedule 7.01. The Borrowers have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrowers and its Subsidiaries have been validly issued, are fully paid and non-assessable. Set forth on Part (c) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(iv) is a true and correct copy of each such document, each of which is valid and in full force and effect.

**5.14 Margin Regulations; Investment Company Act.**

(a) No Borrower is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. No proceeds of any Loans will be used to purchase or carry margin stock (within the meaning of Regulation T, U or X issued by the FRB).

(b) None of the Borrowers, any Person Controlling the Borrowers, or any Subsidiary of the Borrowers is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** The Borrowers have disclosed to the Administrative Agent and the Lenders all Material Contracts and corporate or other restrictions to which it or any of its Material Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. No Information provided to the Administrative Agent for itself or to be distributed to any Guaranteed Party will give rise to any claim for breach of any confidentiality requirements of any holder of the Equity Interest of the German Borrower.

**5.16 Compliance with Laws.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries is in

compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Intellectual Property; Licenses, Etc.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, and each of their respective Material Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by such Person or any of its Material Subsidiaries infringes upon any rights held by any other Person. Except as set forth on Schedule 5.06, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 Solvency.** Such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, is, individually and together with its Material Subsidiaries on a consolidated basis, Solvent.

**5.19 Casualty, Etc.** Neither the businesses nor the properties of such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.20 Labor Matters.** There are no collective bargaining agreements covering the employees of the Borrowers or any of their Material Subsidiaries as of the Closing Date and neither the Borrowers nor any Material Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

**5.21 Representations as to Foreign Obligors.** Each Foreign Obligor represents and warrants to the Administrative Agent and the Lenders that:

(a) Such Foreign Obligor is subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Foreign Obligor, the "Applicable Foreign Obligor Documents"), and the execution, delivery and performance by such Foreign Obligor of the Applicable Foreign Obligor Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Obligor nor any of its property has any immunity from



jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its obligations under the Applicable Foreign Obligor Documents.

(b) The Applicable Foreign Obligor Documents are in proper legal form under the Laws of the jurisdiction in which such Foreign Obligor is organized and existing for the enforcement thereof against such Foreign Obligor under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents that the Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Obligor Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Obligor Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents or (ii) on any payment to be made by such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents, except as has been disclosed to the Administrative Agent.

(d) The execution, delivery and performance of the Applicable Foreign Obligor Documents executed by such Foreign Obligor are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Obligor is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date (provided that any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

(e) The choice of governing law of the Loan Documents will be recognized and enforced in each jurisdiction in which a Foreign Obligor is organized and existing. Any judgment obtained in relation to a Loan Document in the jurisdiction of the governing law of such Loan Document will be recognized and enforced in each jurisdiction a Foreign Obligor is organized and existing.

(f) In the case of each such Foreign Obligor (other than WET Canada), for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in such Foreign Obligor's jurisdiction of organization and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

## **5.22 Other Representations and Warranties.**

(a) All representations and warranties made by such Borrower and each Subsidiary Guarantor or such Parent Guarantor, as applicable, under the Acquisition Agreement and the other Related Documents to which it is party, if any, are, in each case, true and correct in all material respects as of the Closing Date (except to the extent any such representation and warranty is stated to relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) and no material default has occurred and is continuing under the Acquisition Agreement or the other Related Documents.

(b) The Offer Documents contain all the material terms of the Takeover Offer.

**5.23 German Money Laundering Act (*Geldwäschegesetz*).** All Credit Extensions to be made by the Lenders under this Agreement will solely be drawn for the account of each Borrower and each Borrower qualifies in connection with this Agreement as an economic beneficiary (*wirtschaftlich Berechtigter*) under § 1 Section 6 in connection with § 3 Section 1 number 3 of the German Money Laundering Act (*Geldwäschegesetz*).

**5.24 Pari Passu Ranking.** The payment obligations of each Foreign Obligor under the Loan Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by applicable Law generally.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Material Subsidiary to and each Parent Guarantor shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03), as applicable:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the German Borrower (commencing with the fiscal year ended December 31, 2011), a consolidated balance sheet of the German Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with IFRS, to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the German Borrower (commencing with the fiscal quarter ended June 30, 2011), a consolidated balance sheet of the German Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the German Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity, and cash flows for the portion of the German Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of the German Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the German Borrower and its Subsidiaries in accordance with IFRS, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the German Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the German Borrower and its Subsidiaries; and

(c) as soon as available, but in any event at least 15 days before the end of each fiscal year of the German Borrower, an annual business plan and budget of the German Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the German Borrower, in form satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the German Borrower and its Subsidiaries on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs).

As to any information contained in materials furnished pursuant to Section 6.02(c), the German Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the German Borrower to furnish the information and materials described in Section 6.01(a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrowers;

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of either Borrower by independent accountants in connection with the accounts or books of the Borrowers or any Subsidiary of the Borrowers, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the German Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the German Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange (or comparable agency in any applicable non-U.S. jurisdiction), and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of either Borrower or any Material Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(e) promptly, and in any event within five Business Days after receipt thereof by either Borrower or any Material Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of either Borrower or any Material Subsidiary thereof;

(f) promptly, and in any event within five Business Days after receipt thereof by either Borrower or any Material Subsidiary thereof, copies of each notice or other correspondence received in accordance with section 21 of the German Securities Trading Act (*WpHG*);

(g) not later than five Business Days after receipt thereof by either Borrower or any Material Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any Related Document or instrument, indenture, loan or credit or similar agreement and, from time to time upon request by the Administrative Agent, such information and reports regarding the Related Documents and such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request;

(h) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by either Borrower or any Material Subsidiary thereof with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(i) within 30 days after the end of each fiscal year of the German Borrower, a report supplementing Schedule 5.13 containing a description of all changes in the information included in such Schedule as may be necessary for such Schedule to be accurate and complete, each such report to be signed by a Responsible Officer of the German Borrower and to be in a form reasonably satisfactory to the Administrative Agent; and

(j) promptly, such additional information regarding the business, financial or corporate affairs of the Borrowers or any Material Subsidiary of the Borrowers, or compliance

with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the German Borrower posts such documents, or provides a link thereto on the German Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the German Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the German Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the German Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the German Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents to the extent not readily available on any such Intranet or website. Notwithstanding anything contained herein, in every instance the German Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the German Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents. Any document required to be delivered under this Section 6.02 or any other provision of Loan Documents shall be delivered in English or an English translation thereof and each such delivery shall be a certification by the German Borrower that such English version or translation is true and accurate in all material respects.

Each Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of such Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to any of the Borrowers or their respective Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive proprietary) with respect to the Borrowers or their respective securities for purposes of United States federal and state securities laws (provided, however, that to the extent such

Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and the Arranger shall be entitled to treat either Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

**6.03 Notices.** Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Material Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Material Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Material Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event or Foreign Plan Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party; and

(e) of the (i) occurrence of any Disposition of property or assets for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(i), (ii) occurrence of any sale of capital stock or other Equity Interests for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(ii), (iii) incurrence or issuance of any Indebtedness for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(iii), and (iv) receipt of any Extraordinary Receipt for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(iv).

Each notice pursuant to this Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer of the German Borrower setting forth details of the occurrence referred to therein and stating what action the German Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its material obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with IFRS are being maintained by such Person or such Material Subsidiary and (b) all lawful claims which, if unpaid, would by law become a Lien upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently

conducted and adequate reserves are being maintained by such Person or such Material Subsidiary.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.** Maintain with financially sound and reputable insurance companies not Affiliates of the Borrowers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.** Maintain proper books of record and account, in which full, true and correct entries in conformity with IFRS consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrowers or such Material Subsidiary, as the case may be.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the German Borrower; provided that except following the occurrence and during the continuance of an Event of Default, only such visits and inspections by the Administrative Agent shall be at the expense of the Borrowers; provided, further that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the

foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

**6.11 Use of Proceeds.** Use the proceeds of the Credit Extensions (a) to refinance existing Indebtedness of the Borrowers and certain Material Subsidiaries, including certain Subsidiary Guarantors, (b) to pay fees and expenses incurred in connection with the transactions contemplated hereby and by the Related Documents, (c) to provide ongoing working capital and (d) for other general corporate purposes of the Borrowers and their respective Material Subsidiaries not in contravention of any Law or of any Loan Document.

**6.12 Approvals and Authorizations.** Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Foreign Obligor is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents.

**6.13 Covenant to Guarantee Obligations.** After the Funding Release Date, upon the formation or acquisition of any new direct or indirect Material Subsidiary of the German Borrower or any Subsidiary becoming a Material Subsidiary, then the German Borrower shall, at the German Borrower's expense:

(a) within 10 days after such event, cause such Material Subsidiary and cause each direct and indirect parent of such Material Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Administrative Agent, guaranteeing the obligations of the German Borrower and its Material Subsidiaries under the Loan Documents, subject to the limitations as specified under Section 2.14, with respect to a German Loan Party; provided that no Chinese Subsidiary shall be required to comply with this Section 6.13, if the German Borrower receives an opinion of counsel to the German Borrower and its Subsidiaries as to the legality under the Laws of the People's Republic of China of any Chinese Subsidiary becoming a Subsidiary Guarantor; provided further that the guaranty by any such Material Subsidiary shall provide for any limitations on liability as required by applicable Law to protect the directors of such Material Subsidiary from personal liability in connection therewith; and

(b) within 60 days after such event, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Guaranteed Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clause (a) above, and as to such other matters as the Administrative Agent may reasonably request.

**6.14 Compliance with Environmental Laws.** Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action reasonably necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the



Borrowers nor any Material Subsidiary of the Borrowers shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with IFRS.

**6.15 Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative 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, and (b) 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 the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, and (ii) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Lender Parties the rights granted or now or hereafter intended to be granted to the Lender Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Material Subsidiaries is or is to be a party, and cause each of its Material Subsidiaries to do so.

**6.16 Compliance with Terms of Leaseholds.** Make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrowers or any Material Subsidiary of the Borrowers is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Material Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

**6.17 Material Contracts.** Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**6.18 Domination Agreement.** Until the effectiveness of the Domination Agreement, vote at each annual shareholder's meeting of the German Borrower with all voting rights resulting from the Equity Interest in the German Borrower in favor of the distribution of all available profits of the German Borrower, in accordance with applicable Laws, to the German Borrower's shareholders whereas for the annual shareholders meetings in 2011 and 2012 such distribution shall be limited to an amount of €2 per share.

**6.19 Post Closing.**

(a) Within six (6) months (or such later date as the Administrative Agent may agree in its sole discretion) after the Funding Release Date, (i) obtain all necessary shareholder approvals required in connection with the Domination Agreement, (ii) deliver a fully executed Domination Agreement and a certificate of a Responsible Officer of the German Borrower certifying that the Domination Agreement has been delivered for registration to the relevant Governmental Authority and that such application for registration has not been and is not subsequently withdrawn for any reason.

(b) Within six (6) months (or such later date as the Administrative Agent may agree in its sole discretion) after the Funding Release Date, deliver evidence satisfactory to the Administrative Agent and the Lenders certifying that any restrictions imposed by any Governmental Authority on the ability of the German Borrower to make Restricted Payments to any of its direct or indirect equity holders, including Amerigon Germany, have been removed or otherwise ceased to be effective.

(c) Within two (2) Business Days (or such later date as the Administrative Agent may agree in its sole discretion) after the Closing Date, deliver a favorable opinion of each of Kirwin Partners LLP and Fraser Milner Casgrain LLP, each Canadian counsel to the Canadian Borrower, as to the matters set forth in Exhibit H and such other matters concerning the Canadian Borrower and the Loan Documents to which it is party as the Required Lenders may reasonably request.

## ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall not, nor shall the Borrowers permit any Material Subsidiary of the Borrowers to, directly or indirectly:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Parent Credit Facility Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.03(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.03(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with IFRS;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than

30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) with respect to the German Loan Parties, customary retention of title arrangements (*Eigentumsvorbehalte*) arising in the ordinary course of business and pledges in favor of account banks pursuant to their general terms and conditions (*Allgemeine Geschäftsbedingungen*) with respect to bank accounts;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

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

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(j) Liens securing Indebtedness permitted under Section 7.03(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition; and

(k) Liens against the assets of WET China securing the Indebtedness incurred by WET China in connection with the transactions contemplated by the Helbako JV Agreement as permitted under Section 7.03(g).

**7.02 Investments.** Make any Investments, except:

(a) Investments held by the Borrowers or such Material Subsidiary in the form of Cash Equivalents;

(b) advances to officers, directors and employees of each Borrower and its Material Subsidiaries (other than any Chinese Subsidiary) in an aggregate amount not to exceed €500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) Investments of the German Borrower in any Loan Party and Investments of any Material Subsidiary in the German Borrower or in another Material Subsidiary (other than any Chinese Subsidiary);

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.03;

(f) Investments in connection with the Helbako JV Agreement, including Investments in WET China in connection therewith, in an aggregate amount not to exceed €2,000,000 and the Ningbo JV Agreement in an aggregate amount not to exceed €2,000,000; and

(g) other Investments in any Subsidiary not exceeding €1,000,000 in the aggregate at any one time outstanding.

**7.03 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents and the Parent Credit Facility Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Guarantees of the Borrowers or any Loan Party in respect of Indebtedness otherwise permitted hereunder of the Borrowers or any other Loan Party;

(d) obligations (contingent or otherwise) of the Borrowers or any Material Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section

7.01(j); provided, however, that the aggregate amount of all such Indebtedness incurred after the Closing Date at any one time outstanding shall not exceed €750,000;

(f) intercompany Indebtedness among the Loan Parties and their respective Subsidiaries to the extent permitted under Section 7.02(c);

(g) Indebtedness incurred by WET China and/or the joint venture entity under the Helbako JV Agreement in connection with the Helbako JV Agreement in an aggregate amount not to exceed €2,000,000 and Indebtedness incurred in connection with the Ningbo JV Agreement in an aggregate amount not to exceed €2,000,000;

(h) Guarantees by the German Borrower of the Indebtedness of TOV WET Automotive Ukraine in an aggregate amount not to exceed €4,000,000;

(i) Indebtedness incurred in connection with the Comair Acquisition as in existence on the Closing Date; and

(j) unsecured Indebtedness in an aggregate principal amount not to exceed €750,000 at any time outstanding.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) either Borrower, provided that such Borrower shall be the continuing or surviving Person, (ii) any one or more Material Subsidiaries; provided that when any Loan Party is merging with a Subsidiary, such Loan Party shall be the continuing or surviving Person or (iii) any Subsidiary (other than a Loan Party or Material Subsidiary);

(b) the German Borrower may merge or otherwise consolidate with Amerigon Germany; provided that after giving effect to any such merger or consolidation the surviving entity shall be able to and shall assume the obligations of a borrower under the Loan Documents and the Parent Credit Facility Documents; and

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the German Borrower or to any Material Subsidiary; provided that if the transferor in such a transaction is a Borrower or other Loan Party, then the transferee must either be a Borrower or such other Loan Party.

**7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property; (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property or (iii) solely with respect to real property, the Net Cash Proceeds of which are applied to the prepayment of the Loans pursuant to Section 2.05(b);

(d) Dispositions of property by either Borrower or any Material Subsidiary to another Borrower or Material Subsidiary; provided that if the transferor of such property is a Borrower or Loan Party, then the transferee thereof must either be a Borrower or a Loan Party; provided further that the transferee thereof may be WET China so long as such transfer is in compliance with Section 7.08;

(e) Dispositions permitted by Section 7.04;

(f) non-exclusive licenses of IP Rights (i) to any Loan Party or any Subsidiary of any Loan Party or (ii) in the ordinary course of business and substantially consistent with past practice for terms not exceeding five years; and

(g) Dispositions by the German Borrower and its Material Subsidiaries not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition and (ii) the aggregate book value of all property Disposed of in reliance on this clause (g) in any fiscal year shall not exceed €750,000;

provided, however, that any Disposition pursuant to clauses (a) through (g) shall be for fair market value.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests, except that:

(a) (i) the German Borrower may make Restricted Payments, including in cash (A) to any other Loan Party that, directly or indirectly, owns an Equity Interest in the German Borrower and (B) any other Person in connection with the vote required under Section 6.18 or otherwise in accordance with the Domination Agreement and (ii) each Material Subsidiary may make Restricted Payments to the Borrowers, the Subsidiary Guarantors and any other Loan Party that owns an Equity Interest in such Material Subsidiary, in each case, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the German Borrower and each Material Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the German Borrower and each Material Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(d) the German Borrower may issue and sell its common Equity Interests, so long as the Net Cash Proceeds thereof are applied to the prepayment of the Loans pursuant to Section 2.05(b).

**7.07 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by the German Borrower and its Material Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of the German Borrower, whether or not in the ordinary course of business, other than (a) intercompany loans among Loan Parties and their respective Subsidiaries permitted under Section 7.02(c) or 7.03(f) or (b) otherwise on fair and reasonable terms substantially as favorable to the German Borrower or such Material Subsidiary as would be obtainable by the German Borrower or such Material Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

**7.09 Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement, any other Loan Document or the Domination Agreement) that (a) limits the ability (i) of any Material Subsidiary to make Restricted Payments to either Borrower or any Guarantor or to otherwise transfer property to either Borrower or any Guarantor, (ii) of any Material Subsidiary to Guarantee the Indebtedness of either Borrower or any Guarantor or (iii) of either Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.03(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

**7.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of the German Borrower to be less than 1.25:1.00.

(b) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio at any time during any period of four fiscal quarters of the German Borrower set forth below to be greater than the ratio set forth below opposite such period:

Four Fiscal Quarters Ending	Maximum Consolidated Leverage Ratio
Closing Date through December 31, 2011	2.00:1.00
March 31, 2012 through December 31, 2012	1.75:1.00
March 31, 2013 and each fiscal quarter thereafter	1.50:1.00

**7.12 Amendments of Organization Documents.** Amend any of its Organization Documents without the consent of the Required Lenders, except any amendment which (a) is minor or technical in nature or (b) would be reasonably likely to adversely affect the rights and remedies of the Administrative Agent or other Secured Parties under this Agreement or the other Loan Documents.

**7.13 Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by IFRS, or (b) fiscal year.

**7.14 Prepayments, Etc. of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Schedule 7.03 and refinancings and refundings of such Indebtedness in compliance with Section 7.03(b) and (c) regularly scheduled or required repayments or redemptions of Indebtedness permitted under Section 7.03(f) and (i).

**7.15 Amendment, Etc. of Related Documents and Indebtedness.** (a) Cancel or terminate any Related Document or consent to or accept any cancellation or termination thereof, (b) amend, modify or change in any manner any term or condition of any Related Document or give any consent, waiver or approval thereunder, (c) waive any default under or any breach of any term or condition of any Related Document, (d) take any other action in connection with any Related Document that would impair the value of the interest or rights of any Loan Party thereunder or that would impair the rights or interests of the Administrative Agent or any Lender or (e) amend, modify or change in any manner any term or condition of any Indebtedness set forth in Schedule 7.03, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.03(b) or that would not reasonably be expected to impair the rights or interests of the Administrative Agent or any Lender.

**7.16 Designation of Senior Debt.** Designate any Indebtedness (other than the Obligations and Indebtedness under the Loan Documents) of either Borrower or any of its Material Subsidiaries as "Designated Senior Debt" (or any similar term) under, and as defined in, any agreement, instrument or document governing any Indebtedness permitted under Section 7.03.



**7.17 Lease Obligations.** Create, incur, assume or suffer to exist any obligations as lessee (a) for the rental or hire of real or personal property in connection with any sale and leaseback transaction, or (b) for the rental or hire of other real or personal property of any kind under leases or agreements to lease (excluding Capitalized Leases) having an original term of one year or more that would cause the direct and contingent liabilities of the German Borrower and its Material Subsidiaries, on a consolidated basis, in respect of all such obligations (other than building leases and other such obligations as in effect on the Closing Date and set forth on Schedule 7.17) to exceed €500,000 payable in any period of 12 consecutive months.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. Either Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Either Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.10, 6.11, 6.13, 6.18 or 6.19 or Article VII, or any Guarantor fails to perform or observe any term, covenant or agreement contained in Article IV of the applicable Guaranty to the extent such failure would constitute an Event of Default under this clause (b); or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in clause (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or misleading when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any of its Material Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee, including, after the Funding Release Date, any Indebtedness of the Parent or Amerigon Germany under the Parent Credit Facility Documents (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the

beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrowers or any Material Subsidiary of the Borrowers is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrowers or any Material Subsidiary of the Borrowers is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Borrower or such Material Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Material Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any of its Material Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any of its Material Subsidiaries (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding €1,000,000 over any amount covered by independent third-party insurance as to which the insurer is rated as least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage, or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA; Foreign Government Scheme or Arrangement. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrowers under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, (ii) either Borrower or any ERISA Affiliate fails to pay when due, after the

expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount, or (iii) a Foreign Plan Event occurs, or either Borrower or any Loan Party fails to pay amounts due or fails to take any other action, with respect to any Foreign Plan resulting in (or that could reasonably be expected to result in) liabilities in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Subordination. (i) The subordination provisions of the documents evidencing or governing any Indebtedness that is subordinated or otherwise junior to the obligations of the Loan Parties under the Loan Documents (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any such holder of Indebtedness; or (ii) either Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Administrative Agent, the Lenders and the L/C Issuer or (C) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Company Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to either Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and Obligations then owing under Guaranteed Hedge Agreements and Guaranteed Cash Management Agreements, ratably among the Lenders, the L/C Issuer and the applicable Hedge Banks and Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the German Borrower (on behalf of the Borrowers) or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## **ARTICLE IX ADMINISTRATIVE AGENT**

**9.01 Appointment and Authority.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints Banc of America Securities to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither either Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or

by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of the Borrowers or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the German Borrower, a Lender or the L/C Issuer.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for

any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the German Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the German Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the German Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Banc of America Securities as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the

other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles as necessary listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on either Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements



and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

**9.10 Guaranty Matters.** The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Subsidiary Guarantor from its obligations under any Subsidiary Guaranty if such Person ceases to be a Subsidiary Guarantor as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Subsidiary Guarantor from its obligations under any Subsidiary Guaranty pursuant to this Section 9.10. As specified in this Section 9.10, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to release such Subsidiary Guarantor from its obligations under any Subsidiary Guaranty in accordance with the terms of the Loan Documents and this Section 9.10.

**9.11 Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements.** No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03 or any Guaranty by virtue of the provisions hereof or of any Guaranty shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of any Guarantor (including the release or impairment of any Guarantor) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

## ARTICLE X MISCELLANEOUS

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), Section 4.02 or, in the case of the initial Credit Extension or the release of funds from the Senior Loan Escrow Account, Section 4.03 or modify the definitions of “Offer Expiration Date” or “Facility Termination Date,” without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of either Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or 2.06(b), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (i) if such Facility is the Term Facility, the Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(f) amend the definition of “Alternative Currency” without the written consent of each Lender;

(g) change (i) any provision of this Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(g)), without the written consent of each Lender or (ii) the definition of “Required Revolving Lenders,” or “Required Term Lenders” without the written consent of each Lender under the applicable Facility;

(h) release any Parent Guaranty or all or substantially all of the value of any Subsidiary Guaranty without the written consent of each Lender, except to the extent the release

of any such Subsidiary Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(i) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (w) the waiver, forgiveness or reduction of the principal amount of any Obligations owing to such Defaulting Lender may not be made without the consent of such Lender, (x) the final maturity date(s) of such Defaulting Lenders' portion of any of the Indebtedness may not be extended without the consent of such Lender, (y) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the German Borrower may replace such non-consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the German Borrower to be made pursuant to this paragraph).

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional revolving credit or term loan facilities to this Agreement and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the

existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below, shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the German Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications; provided further that notices of any Default or Event of Default shall not be effective if delivered by electronic communication, unless the same shall have been also delivered by facsimile or otherwise in accordance with clause (a) above.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested")

function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to either Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of either Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to either Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the German Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with

respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of either Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of either Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by either Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by either Borrower or any of its Material Subsidiaries, or any Environmental Liability related in any way to either Borrower or any of its Material Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by either Borrower or any other Loan Party or any of such Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by either

Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fails to indefeasibly pay any amount required under Section 10.04(a) or (b) to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Borrower shall assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of either Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be



repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither either Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this clause (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal

outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than the Euro Equivalent of \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or the Euro Equivalent of \$1,000,000, in the case of any assignment in respect of the Term Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the German Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section and, in addition:

(A) the consent of the German Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Credit Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of the Euro Equivalent of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to either Borrower or either Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the German Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not

comply with this clause shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, either Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or the Borrowers or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to clause (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the German Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the German Borrower is notified of the participation sold to such

Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to clause (b) above, Bank of America may, (i) upon 30 days' notice to the German Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the German Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the German Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the German Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the

enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to a Borrower and its obligations, (g) with the consent of the German Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the German Borrower.

For purposes of this Section, "Information" means all information received from the German Borrower or any Subsidiary relating to the German Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the German Borrower or any Subsidiary; provided that, in the case of information received from the German Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the German Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of either Borrower against any and all of the obligations of such Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to

such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the German Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the German Borrower (on behalf of the Borrowers). In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The

invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if either Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the German Borrower the right to replace a Lender as a party hereto, then the German Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the German Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the German Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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

**10.14 Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT



OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST EITHER BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO AGREES THAT THE PROCESS BY WHICH ANY SUIT, ACTION OR PROCEEDING IS BEGUN MAY BE SERVED ON IT BY BEING DELIVERED IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN NEW YORK TO THE PROCESS AGENT FOR SUCH PARTY. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS, INCLUDING SERVICE ON ANY PROCESS AGENT, IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. EACH PARTY HERETO FURTHER IRREVOCABLY AGREES THAT THE PROCESS BY WHICH ANY SUIT, ACTION OR PROCEEDING IS BEGUN MAY BE SERVED ON IT BY BEING DELIVERED IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN NEW YORK TO THE PROCESS AGENT FOR SUCH PARTY. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger, are arm's-length commercial transactions between such Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) such Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for such Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to such Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of such Borrower and its Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by Law, each of the Borrowers hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 Electronic Execution of Assignments and Certain Other Documents.** The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of

Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from either Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

**10.20 Entire Agreement.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**W.E.T. AUTOMOTIVE SYSTEMS AG**

By: /s/ Thomas Liedl \_\_\_\_\_

Name: Thomas Liedl

Title: CFO

**W.E.T. AUTOMOTIVE SYSTEMS LTD.**

By: /s/ Caspar Baumhauer \_\_\_\_\_

Name: Caspar Baumhauer

Title: CEO

*WET Credit Agreement*

**BANC OF AMERICA SECURITIES LIMITED,**  
as Administrative Agent

By: /s/ Kevin Day  
Name: Kevin Day  
Title: Vice President

*WET Credit Agreement*

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

By: /s/ David K. Komrska  
Name: David K. Komrska  
Title: Senior Vice President

*WET Credit Agreement*

---

**JPMORGAN CHASE BANK, N.A.,  
as a Lender**

By: /s/ Thomas A. Lakocy  
Name: Thomas A. Lakocy  
Title: Senior Vice President

*WET Credit Agreement*

**COMERICA BANK,  
as a Lender**

By: /s/ Kimberly S. Kersten

Name: Kimberly S. Kersten

Title: Vice President

*WET Credit Agreement*



**THE HUNTINGTON NATIONAL BANK,  
as a Lender**

By: /s/ Steven J. McCormack

---

Name: Steven J. McCormack

Title: Vice President

*WET Credit Agreement*

**KEYBANK NATIONAL ASSOCIATION,  
as a Lender**

By: /s/ Erik Siersma  
Name: Erik Siersma  
Title: Vice President

*WET Credit Agreement*

## MANDATORY COST FORMULAE

1. The Mandatory Cost (to the extent applicable) is an addition to the interest rate to compensate Lenders for the cost of compliance with:
  - (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions); or
  - (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Administrative Agent shall calculate, as a percentage rate, a rate (the "Additional Cost Rate") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Administrative Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum. The Administrative Agent will, at the request of the German Borrower or any Lender, deliver to the German Borrower or such Lender as the case may be, a statement setting forth the calculation of any Mandatory Cost.
3. The Additional Cost Rate for any Lender lending from a Lending Office in a Participating Member State will be the percentage notified by that Lender to the Administrative Agent. This percentage will be certified by such Lender in its notice to the Administrative Agent to be its reasonable determination of the cost (expressed as a percentage of such Lender's participation in all Loans made from such Lending Office) of complying with the minimum reserve requirements of the European Central Bank in respect of Loans made from that Lending Office.
4. The Additional Cost Rate for any Lender lending from a Lending Office in the United Kingdom will be calculated by the Administrative Agent as follows:
  - (a) in relation to any Loan in Sterling:

$$\frac{AB+C(B-D)+E \times 0.01}{100 - (A+C)} \quad \text{per cent per annum}$$

- (b) in relation to any Loan in any currency other than Sterling:

$$\frac{E \times 0.01}{300} \quad \text{per cent per annum}$$

Where:

"A" is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as

an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.

“B” is the percentage rate of interest (excluding the Applicable Rate, the Mandatory Cost and any interest charged on overdue amounts pursuant to the first sentence of Section 2.08(b)) and, in the case of interest (other than on overdue amounts) charged at the Default Rate, without counting any increase in interest rate effected by the charging of the Default Rate) payable for the relevant Interest Period of such Loan.

“C” is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.

“D” is the percentage rate per annum payable by the Bank of England to the Administrative Agent on interest bearing Special Deposits.

“E” is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Administrative Agent as being the average of the most recent rates of charge supplied by the Lenders to the Administrative Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

- (a) “Eligible Liabilities” and “Special Deposits” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
- (b) “Fees Rules” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
- (c) “Fee Tariffs” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
- (d) “Tariff Base” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (*i.e.* 5% will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7. If requested by the Administrative Agent or the German Borrower, each Lender with a Lending Office in the United Kingdom or a Participating Member State shall, as soon as practicable after publication by the Financial Services Authority, supply to the

Schedule 1.01

Administrative Agent and the German Borrower, the rate of charge payable by such Lender to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by such Lender as being the average of the Fee Tariffs applicable to such Lender for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of such Lender.

8. Each Lender shall supply any information required by the Administrative Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information in writing on or prior to the date on which it becomes a Lender:
  - (a) the jurisdiction of the Lending Office out of which it is making available its participation in the relevant Loan; and
  - (b) any other information that the Administrative Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Administrative Agent in writing of any change to the information provided by it pursuant to this paragraph.

9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Lender for the purpose of E above shall be determined by the Administrative Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Administrative Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a lending office in the same jurisdiction as its Lending Office.
10. The Administrative Agent shall have no liability to any Person if such determination results in an Additional Cost Rate which over- or under-compensates any Lender and shall be entitled to assume that the information provided by any Lender pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
11. The Administrative Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender pursuant to paragraphs 3, 7 and 8 above.
12. Any determination by the Administrative Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all parties hereto.
13. The Administrative Agent may from time to time, after consultation with the German Borrower and the Lenders, determine and notify to all parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other

Schedule 1.01

authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all parties hereto.

Schedule 1.01

4

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Term Loan Percentage</u>	<u>Revolving Credit Commitment</u>	<u>Applicable Revolving Credit Percentage</u>
Bank of America, N.A.	€6,714,862.24	22.3828742%	€2,238,287.41	22.3828742%
JPMorgan Chase Bank, N.A.	€6,414,196.75	21.3806558%	€2,138,065.58	21.3806558%
Comerica Bank	€6,414,196.75	21.3806558%	€2,138,065.58	21.3806558%
The Huntington National Bank	€5,712,643.98	19.0421466%	€1,904,214.66	19.0421466%
KeyBank National Association	€4,744,100.28	15.8136676%	€1,581,366.76	15.8136676%
Total	€ 30,000,000	100.000000000%	€ 10,000,000	100.000000000%

Schedule 2.01

COMMITMENTS  
AND APPLICABLE PERCENTAGES

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 5.06

1



**SUBSIDIARIES, OTHER EQUITY INVESTMENTS  
AND LOAN PARTIES**

Part (a). Subsidiaries.

Part (b). Other Equity Investments.

Part (c). Loan Parties.

Loan Party	Jurisdiction of Organization	Address of Principal Place of Business	US Tax Identification Number	State (or other jurisdiction) Organizational Identification Number
------------	---------------------------------	--	------------------------------------	--

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 5.13

**EXISTING LIENS**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 7.01

**EXISTING INDEBTEDNESS**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 7.03

**EXISTING OPERATING LEASES**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 7.17

**ADMINISTRATIVE AGENT'S OFFICE;  
CERTAIN ADDRESSES FOR NOTICES**

**BORROWERS:**

W.E.T. AUTOMOTIVE SYSTEMS AG  
W.E.T. AUTOMOTIVE SYSTEMS LTD.

c/o Amerigon Incorporated  
21680 Haggerty Road  
Suite 101  
Northville, Michigan 48167

Attention: Barry Steele

Telephone: (248) 504-0485

Telecopier:

Electronic Mail: [bsteele@amerigon.com](mailto:bsteele@amerigon.com)

Website Address:

U.S. Taxpayer Identification Number(s): N/A

**ADMINISTRATIVE AGENT:**

Administrative Agent's Office

Banc of America Securities Limited  
5 Canada Square  
London E14 5AQ

Attention: Loans Agency

Facsimile: 44 (0) 20 83132149

Electronic Mail: [emea.7115loansagency@bankofamerica.com](mailto:emea.7115loansagency@bankofamerica.com)

Schedule 10.02

FORM OF COMMITTED LOAN NOTICE

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

To: Banc of America Securities Limited, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of March 30, 2011 (the "Agreement;" the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation (the "German Borrower"), W.E.T. Automotive Systems Ltd., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

The undersigned hereby requests (select one):

A Borrowing of Loans  A continuation of Loans

1. On \_\_\_\_\_ (a Business Day).
2. In the amount of \_\_\_\_\_.
3. In the following currency: \_\_\_\_\_.
4. For Eurocurrency Rate Loans: with an Interest Period of \_\_ months.

The Borrowing, if any, requested herein complies with the proviso to the first sentence of Section 2.01(c) of the Agreement.

**[W.E.T. AUTOMOTIVE SYSTEMS AG]  
[W.E.T. AUTOMOTIVE SYSTEMS LTD.]**

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

FORM OF SWING LINE LOAN NOTICE

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

To: Bank of America, N.A., as Swing Line Lender  
Banc of America Securities Limited, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of March 30, 2011 (the "Agreement;" the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation (the "German Borrower"), W.E.T. Automotive Systems Ltd., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

The undersigned hereby requests a Swing Line Loan:

- 1. On \_\_\_\_\_ (a Business Day).
- 2. In the amount of €\_\_\_\_\_.

The Swing Line Borrowing requested herein complies with the requirements of the provisos to the first sentence of Section 2.04(a) of the Agreement.

**[W.E.T. AUTOMOTIVE SYSTEMS AG]**  
**[W.E.T. AUTOMOTIVE SYSTEMS LTD.]**

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

## FORM OF NOTE

FOR VALUE RECEIVED, the undersigned (the "Borrower") hereby promises to pay to \_\_\_\_\_ or registered assigns (the "Lender"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement, dated as of March 30, 2011 (the "Agreement," the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation and W.E.T. Automotive Systems Ltd., a Canadian corporation, as borrowers, each lender from time to time party hereto, Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

The Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. Except as otherwise provided in Section 2.04(f) of the Agreement with respect to Swing Line Loans, all payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Loan was denominated and in Same Day Funds at the Administrative Agent's Office for such currency. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of each Guaranty. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount, currency and maturity of its Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.



THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**[W.E.T. AUTOMOTIVE SYSTEMS AG]  
[W.E.T. AUTOMOTIVE SYSTEMS LTD.]**

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

C - 2  
Form of Note

**LOANS AND PAYMENTS WITH RESPECT THERETO**

Date	Currency and Amount of Loan Made	End of Interest Period	Amount of Principal or Interest Paid This Date	Outstanding Principal Balance This Date	Notation Made By

## FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_,

To: Banc of America Securities Limited, as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of March 30, 2011 (the "Agreement;" the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation (the "German Borrower"), W.E.T. Automotive Systems Ltd., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the German Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the German Borrower, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The German Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the German Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The German Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the German Borrower ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of the German Borrower and its Subsidiaries in accordance with IFRS as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the German Borrower and its Subsidiaries during the accounting period covered by such financial statements.

3. A review of the activities of the German Borrower and its Material Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to

D - 1

Form of Compliance Certificate

determining whether during such fiscal period each Loan Party performed and observed all its Obligations under the Loan Documents, and

*[select one:]*

**[to the best knowledge of the undersigned, during such fiscal period each Loan Party performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]**

—*or*—

**[to the best knowledge of the undersigned, during such fiscal period the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]**

4. The representations and warranties of (i) the Borrowers contained in Article V of the Agreement and (ii) each Loan Party contained in each other Loan Document to which it is a party or in any document furnished by any such Person at any time under or in connection with the Loan Documents, are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in of Sections 5.05(a) and (b) of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. The financial covenant analyses and information set forth on Schedule 1 attached hereto are true and accurate on and as of the date of this Certificate.

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

**W.E.T. AUTOMOTIVE SYSTEMS AG**

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

Name:

Title:

**SCHEDULE 1**  
to the Compliance Certificate  
(€ in 000’s)

**I. Section 7.11 (a) – Consolidated Fixed Charge Coverage Ratio.**

A. Consolidated EBITDA for four consecutive fiscal quarters ending on above date (“Subject Period”):

- |   |          |
|---|----------|
| 1. Consolidated Net Income for Subject Period:  | € _____  |
| 2. Consolidated Interest Charges for Subject Period:  | € _____  |
| 3. Provision for income taxes for Subject Period:   | € _____  |
| 4. Depreciation expenses for Subject Period:  | € _____  |
| 5. Amortization expenses for Subject Period:  | € _____  |
| 6. Acquisition Transactions Expenses for Subject Period<br>in an aggregate amount not exceeding €1,500,000:   | € _____  |
| 7. Non-cash unrealized losses on Swap Contracts:  | € _____  |
| 8. Non-recurring reductions of Consolidated Net Income<br>as approved by the Administrative Agent in its<br>reasonable discretion for Subject Period: | € _____  |
| 9. Income tax credits for Subject Period:   | € _____  |
| 10. Non-cash unrealized gains on Swap Contracts:  | € _____  |
| 11. Non-cash additions to Consolidated Net Income for<br>Subject Period:  | € _____  |
| 12. Consolidated EBITDA (Lines I.A.1 + 2 + 3 + 4 + 5 +<br>6 + 7 + 8 – 9 – 10 – 11):   | \$ _____ |

B. Capital Expenditures for Subject Period: € \_\_\_\_\_

C. Income taxes paid in cash for Subject Period: € \_\_\_\_\_

D. Restricted Payments made in cash for Subject Period: € \_\_\_\_\_

E. Line I.A.12 - Line I.B - Line I.C - Line I.D: € \_\_\_\_\_

F. Consolidated Interest Charges for Subject Period: € \_\_\_\_\_

- G. Debt amortization for Subject Period: €\_\_\_\_\_
- H. Line I.F + Line I.G: €\_\_\_\_\_
- I. Consolidated Interest Coverage Ratio (Line I.E ÷ Line I.H): \_\_\_\_\_ to 1.00
- Minimum required:* 1.25 to 1.00

**II. Section 7.11 (b) – Consolidated Leverage Ratio.**

- A. Consolidated Funded Indebtedness at Statement Date: €\_\_\_\_\_
- B. Consolidated EBITDA for Subject Period (Line I.A.12 above): €\_\_\_\_\_
- C. Consolidated Leverage Ratio (Line II.A ÷ Line II.B): \_\_\_\_\_ to 1.00
- Maximum permitted:*

<u>Four Fiscal Quarters Ending</u>	<u>Maximum Consolidated Leverage Ratio</u>
Closing Date through December 31, 2011	2.00:1.00
March 31, 2012 through December 31, 2012	1.75:1.00
March 31, 2013 and each fiscal quarter thereafter	1.50:1.00

**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit and the Swing Line Loans included in such facilities<sup>5</sup>) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>2</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>3</sup> Select as appropriate.

<sup>4</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

<sup>5</sup> Include all applicable subfacilities.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrower(s): \_\_\_\_\_

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: Credit Agreement, dated as of March 30, 2011 (the "Agreement," the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation (the "German Borrower"), W.E.T. Automotive Systems Ltd., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

6. Assigned Interest[s]:<sup>6</sup>

<u>Assignor[s]</u> <sup>7</sup>	<u>Assignee[s]</u> <sup>8</sup>	<u>Facility Assigned</u> <sup>9</sup>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u> <sup>10</sup>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans</u> <sup>11</sup>	<u>CUSIP Number</u>
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. Trade Date: \_\_\_\_\_]<sup>12</sup>

<sup>6</sup> The reference to "Loans" in the table should be used only if the Credit Agreement provides for Term Loans.

<sup>7</sup> List each Assignor, as appropriate.

<sup>8</sup> List each Assignee, as appropriate.

<sup>9</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment", "Term Loan Commitment", etc.).

<sup>10</sup> Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>11</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>12</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.



Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

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

ASSIGNEE  
[NAME OF ASSIGNEE]

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

[Consented to and]<sup>13</sup> Accepted:  
BANK OF AMERICA, N.A., as  
Administrative Agent

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

[Consented to:]<sup>14</sup>  
W.E.T. AUTOMOTIVE SYSTEMS AG

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

<sup>13</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.  
<sup>14</sup> To be added only if the consent of the Company and/or other parties (e.g. Swing Line Lender, L/C Issuer) is required by the terms of the Credit Agreement.

Credit Agreement, dated as of March 30, 2011 (the "Agreement," the terms defined therein being used herein as therein defined), by and among W.E.T. Automotive Systems AG, a German stock corporation (the "German Borrower"), W.E.T. Automotive Systems Ltd., a Canadian corporation (the "Canadian Borrower") and, together with the German Borrower, the "Borrowers" and each, a "Borrower", each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Banc of America Securities Limited, as Administrative Agent and Bank of America, N.A., as Swing Line Lender and L/C Issuer.

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into

this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**FORM OF ADMINISTRATIVE QUESTIONNAIRE**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Exhibit to the Commission upon request.

E-2 - 1

Form of Administrative Questionnaire

**FORM OF SUBSIDIARY GUARANTY**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Exhibit to the Commission upon request.

F - 1  
Form of Subsidiary Guaranty

**FORM OF PARENT GUARANTY**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Exhibit to the Commission upon request. The executed Parent Guaranty was filed with the SEC on March 31, 2011 as Exhibit 10.6 to the Registrant's Current Report on Form 8-K.

G - 1  
Form of Parent Guaranty

**OPINION MATTERS**

The matters contained in the following Sections of the Credit Agreement should be covered by the legal opinion on behalf of each Loan Party:

- Section 5.01
- Section 5.02
- Section 5.03
- Section 5.04
- Section 5.06
- Section 5.14
- Section 5.21
- Section 5.22

Additionally, the legal opinion on behalf of each Loan Party shall cover such additional matters as the Administrative Agent shall reasonably request.

H - 1  
Opinion Matters

## FORM OF LETTER OF CREDIT

To: [Beneficiary]  
(the **Beneficiary**)

[Date]

**Irrevocable Standby Letter of Credit no.[—]**

At the request of [—], [L/C Issuer] (the **L/C Issuer**) issues this irrevocable standby letter of credit (**Letter of Credit**) in your favor on the following terms and conditions:

**1. DEFINITIONS**

In this Letter of Credit:

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

**Demand** means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

**Expiry Date** means [—].

**Total L/C Amount** means [—].

**2. L/C ISSUER'S AGREEMENT**

- (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the L/C Issuer a duly completed Demand. A Demand must be received by the L/C Issuer by [ ] p.m. (London time) on the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the L/C Issuer unconditionally and irrevocably undertakes to the Beneficiary that, within [ten] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.
- (c) The L/C Issuer will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

**3. EXPIRY**

- (a) The L/C Issuer will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the L/C Issuer as the date upon which the obligations of the L/C Issuer under this Letter of Credit are released.



- (b) Unless previously released under paragraph (a) above, on [—] p.m. (London time) on the Expiry Date the obligations of the L/C Issuer under this Letter of Credit will cease with no further liability on the part of the L/C Issuer except for any Demand validly presented under the Letter of Credit that remains unpaid.
- (c) When the L/C Issuer is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the L/C Issuer.

**4. PAYMENTS**

All payments under this Letter of Credit shall be made in [—] and for value on the due date to the account of the Beneficiary specified in the Demand.

**5. DELIVERY OF DEMAND**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter and must be received in legible form by the L/C Issuer at its address and by the particular department or officer (if any) as follows:

[  
 ]

**6. ASSIGNMENT**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

**7. ISP 98**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

**8. GOVERNING LAW**

This Letter of Credit and any non-contractual obligations arising out of or in connection with it are governed by the Laws of the State of New York.

**9. JURISDICTION**

The courts of the State of New York have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully,

[L/C Issuer]

By:

**SCHEDULE**  
**FORM OF DEMAND**

To: [L/C ISSUER]

[Date]

Dear Sirs

**Standby Letter of Credit no. [—] issued in favour of [BENEFICIARY] (the *Letter of Credit*)**

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of [ ] is due [and has remained unpaid for at least [ ] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [ ].
2. Payment should be made to the following account:  
Name:  
Account Number:  
Bank:
3. The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorized Signatory)

(Authorized Signatory)

For  
[BENEFICIARY]

I - 3  
Form of Letter of Credit

FIRST AMENDMENT  
TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT, dated as of May 31, 2011 (this "Amendment") to the Existing Credit Agreement (such capitalized term and other capitalized terms used in this preamble and the recitals below to have the meanings set forth in, or are defined by reference in, Article I below) is entered into by and among W.E.T. AUTOMOTIVE SYSTEMS, AG, a German stock corporation (the "German Borrower"), W.E.T. AUTOMOTIVE SYSTEMS LTD., a Canadian corporation (the "Canadian Borrower" and, together with the German Borrower, the "Borrowers" and each, a "Borrower"), each lender party hereto (collectively, the "Lenders" and individually, a "Lender"), BANC OF AMERICA SECURITIES LIMITED, as administrative agent (in such capacity, the "Administrative Agent") and BANK OF AMERICA, N.A., as Swing Line Lender and L/C Issuer ("Bank of America").

## WITNESSETH:

WHEREAS, the Borrowers, the Lenders, Bank of America and the Administrative Agent are all parties to the Credit Agreement, dated as of March 30, 2011 (as amended or otherwise modified prior to the date hereof, the "Existing Credit Agreement", and as amended by this Amendment and as the same may be further amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"); and

WHEREAS, the Borrowers have requested that the Lenders amend certain provisions of the Existing Credit Agreement and the Lenders are willing to effect such amendments, on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto hereby covenant and agree as follows:

## ARTICLE I

## DEFINITIONS

SECTION 1.1. Certain Definitions. The following terms when used in this Amendment shall have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Amendment" is defined in the preamble.

"Amendment Effective Date" is defined in Article III.

"Bank of America" is defined in the preamble.

"Borrower" is defined in the preamble.

"Canadian Borrower" is defined in the preamble.

“Credit Agreement” is defined in the first recital.

“Existing Credit Agreement” is defined in the first recital.

“German Borrower” is defined in the preamble.

“Lender” is defined in the preamble.

SECTION 1.2. Other Definitions. Terms for which meanings are provided in the Credit Agreement are, unless otherwise defined herein or the context otherwise requires, used in this Amendment with such meanings.

## ARTICLE II

### AMENDMENTS TO CREDIT AGREEMENT

Effective on (and subject to the occurrence of) the Amendment Effective Date, the provisions of the Existing Credit Agreement referred to below are hereby amended in accordance with this Article II. Except as expressly so amended, the Existing Credit Agreement shall continue in full force and effect in accordance with its terms.

SECTION 2.1. Amendment to Article I. Article I of the Existing Credit Agreement is hereby amended as follows:

SECTION 2.1.1. Amendment to Section 1.01. Section 1.01 of the Existing Credit Agreement is hereby amended by inserting the following definition in the appropriate alphabetical order:

*“Unrestricted Loan Party” means each Loan Party other than WET Ukraine.*

SECTION 2.1.2. Amendment to Section 1.01. The definition of “Subsidiary Guaranty” in Section 1.01 of the Existing Credit Agreement is hereby amended and restated in its entirety to read as follows:

*“Subsidiary Guaranty” means (a) any Subsidiary Guaranty made by a Subsidiary Guarantor in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit F and (b) the Ukraine Surety Agreement, dated as of May 31, 2011 made by WET Ukraine in favor of the Administrative Agent for the benefit of the Guaranteed Parties.*

SECTION 2.2. Amendments to Article II. Article II of the Existing Credit Agreement is hereby amended as follows:

SECTION 2.2.1. Amendment to Section 2.03(b). Section 2.03(b) of the Existing Credit Agreement is hereby amended by deleting the reference to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.2.2. Amendment to Section 2.05(b)(i). Section 2.05(b)(i) of the Existing Credit Agreement is hereby amended by deleting all references to “a Loan Party” and inserting “an Unrestricted Loan Party” in lieu thereof.

SECTION 2.2.3. Amendment to Section 2.05(b)(ii). Section 2.05(b)(ii) of the Existing Credit Agreement is hereby amended by deleting all references to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.3. Amendments to Article VII. Article VII of the Existing Credit Agreement is hereby amended as follows:

SECTION 2.3.1. Amendments to Section 7.01. Section 7.01 of the Existing Credit Agreement is hereby amended by (a) deleting the “and” at the end of clause (j) thereof, (b) deleting the “.” at the end of clause (k) thereof and inserting “; and” in lieu thereof and (c) inserting a new clause (l) as follows:

*(l) the pledge of bank account by the German Borrower in favor of Unicredit Bank AG, Munich, and Unicredit Luxembourg Société Anonyme, Luxemburg (or such other bank or financial institution satisfactory to the Administrative Agent), pursuant to that certain cash collateral agreement, dated as of May 27, 2011 to secure an outstanding letter of credit with respect to certain customs duties in an amount not to exceed HUF (Hungarian Forint) 35,000,000.*

SECTION 2.3.2. Amendment to Section 7.02(c). Section 7.02(c) of the Existing Credit Agreement is hereby amended and restated in its entirety to read as follows:

*(c) Investments of the German Borrower in any Unrestricted Loan Party and Investments of any Material Subsidiary in the German Borrower or in another Material Subsidiary (other than any Chinese Subsidiary or WET Ukraine); provided, that, notwithstanding the foregoing WET Hungary shall be permitted to make Investments in the form of advance loans and other similar Indebtedness to WET Ukraine to be used by WET Ukraine for working capital purposes, but only in an aggregate amount not to exceed € 1,000,000 at any time outstanding;*

SECTION 2.3.3. Amendment to Section 7.03(c). Section 7.03(c) of the Existing Credit Agreement is hereby amended by deleting all references to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.3.4. Amendment to Section 7.03(f). Section 7.03(f) of the Existing Credit Agreement is hereby amended by deleting the reference to “Loan Parties” and inserting “Unrestricted Loan Parties” in lieu thereof.

SECTION 2.3.5. Amendment to Section 7.04(a). Section 7.04(a) of the Existing Credit Agreement is hereby amended by inserting the following parenthetical at the end of the proviso to clause (ii) thereof:

*(provided, further, if such merger involves WET Ukraine and an Unrestricted Loan Party such Unrestricted Loan Party shall be the continuing or surviving Person)*

SECTION 2.3.6. Amendment to Section 7.04(c). Section 7.04(c) of the Existing Credit Agreement is hereby amended by deleting all references to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.3.7. Amendment to Section 7.05(d). Section 7.05(d) of the Existing Credit Agreement is hereby amended and restated in its entirety to read as follows:

*(d) Dispositions of property by either Borrower or any Material Subsidiary to another Borrower or Material Subsidiary; provided that if the transferor of such property is a Borrower or Unrestricted Loan Party, then the transferee thereof must either be a Borrower or an Unrestricted Loan Party; provided further that the transferee thereof may be WET China so long as such transfer is in compliance with Section 7.08;*

SECTION 2.3.8. Amendment to Section 7.05(f). Section 7.05(f) of the Existing Credit Agreement is hereby amended by deleting all references to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.3.9. Amendment to Section 7.06(a). Section 7.06(a) of the Existing Credit Agreement is hereby amended by deleting all references to “Loan Party” and inserting “Unrestricted Loan Party” in lieu thereof.

SECTION 2.3.10. Amendment to Section 7.08. Section 7.08 of the Existing Credit Agreement is hereby amended by deleting the reference to “Loan Parties” and inserting “Unrestricted Loan Parties” in lieu thereof.

### ARTICLE III

#### CONDITIONS TO EFFECTIVENESS

This Amendment shall become effective on and as of the date first written above (the “Amendment Effective Date”) following receipt by the Administrative Agent of counterparts hereof executed on behalf of the Borrowers and the Required Lenders.

### ARTICLE IV

#### MISCELLANEOUS

SECTION 4.1. Cross-References. References in this Amendment to any Article or Section are, unless otherwise specified, to such Article or Section of this Amendment.

SECTION 4.2. Loan Document Pursuant to Existing Credit Agreement. This Amendment is a Loan Document executed pursuant to the Existing Credit Agreement and shall (unless otherwise expressly indicated therein) be construed, administered and applied in accordance with all of the terms and provisions of the Existing Credit Agreement, as amended hereby, including Article X thereof.

SECTION 4.3. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 4.4. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 4.5. Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING FOR SUCH PURPOSES SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK.**

SECTION 4.6. Full Force and Effect; Limited Amendment and Waiver. Except as expressly amended or waived hereby, all of the representations, warranties, terms, covenants, conditions and other provisions of the Existing Credit Agreement and the other Loan Documents shall remain unchanged and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The amendments and waivers set forth herein shall be limited precisely as provided for herein to the provisions expressly amended or waived herein and shall not be deemed to be an amendment to, waiver of, consent to or modification of any other term or provision of the Existing Credit Agreement or any other Loan Document or of any transaction or further or future action on the part of any Loan Party which would require the consent of the Lenders under the Existing Credit Agreement or any of the Loan Documents.

SECTION 4.7. Representations and Warranties. In order to induce the Lenders to execute and deliver this Amendment, the Borrower hereby represents and warrants to the Lenders that, both before and after giving effect to this Amendment, all statements set forth in clauses (a) and (b) of Section 4.03 of the Credit Agreement are true and correct.

SECTION 4.8. Acknowledgement of the Lenders. Each of the Lenders acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Amendment and its own investigations into the financial condition,

creditworthiness, condition, affairs, status and nature of the Loan Parties, all of the matters and transactions contemplated in this Amendment and all other matters incidental thereto and hereby confirms that it is not relying and has not relied on any statement or representation of the Administrative Agent or any other Lender or any of their Related Parties, including legal counsel, in connection with its decision to enter into this Amendment.



IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the date first above written.

**W.E.T. AUTOMOTIVE SYSTEMS, AG,**

a German stock corporation

By: /s/ Frithjof Oldoriff                      /s/ Thomas Liedl

Name: Frithjof Oldoriff

Thomas Liedl

Title: COO

CFO

**W.E.T. AUTOMOTIVE SYSTEMS LTD.,**

a Canadian corporation

By: /s/ Caspar Baumhauer

Name: Caspar Baumhauer

Title: CEO

*First Amendment to Credit Agreement*

**BANC OF AMERICA SECURITIES LIMITED,**  
as Administrative Agent

By: /s/ Kevin Day

Name: Kevin Day

Title: Vice President

*First Amendment to Credit Agreement*

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

By: /s/ David K. Komrska  
Name: David K. Komrska  
Title: Senior Vice President

*First Amendment to Credit Agreement*

**JPMORGAN CHASE BANK, N.A.**

By: /s/ Joseph Bomberski

Name: Joseph Bomberski

Title: Vice President

*First Amendment to Credit Agreement*

**COMERICA BANK**

By: /s/ Kimberly S. Kersten

Name: Kimberly S. Kersten

Title: Vice President

*First Amendment to Credit Agreement*

**THE HUNTINGTON NATIONAL BANK**

By: /s/ Steven J. McCormack

Name: Steven J. McCormack

Title: Vice President

*First Amendment to Credit Agreement*

**KEYBANK NATIONAL ASSOCIATION**

By: /s/ Erik Siersma

Name: Erik Siersma

Title: Vice President

*First Amendment to Credit Agreement*

**Dienstvertrag**

zwischen

der **W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 - vertreten durch den Aufsichtsrat,  
 dieser wiederum vertreten durch  
 den Aufsichtsratsvorsitzenden,  
 Herrn Dr. Franz Scherer -  
 (die „**Gesellschaft**“),

und

Herrn **Frithjof Oldorff**,  
 Ligsalzstr. 2, 85241 Hebertshausen  
 („**FO**“, gemeinsam mit der Gesellschaft  
 die „**Parteien**“).

**I.**  
**Präambel**

1. Die Parteien haben am 15. Mai 2007 einen Dienstvertrag geschlossen (der „**Dienstvertrag**“), der durch Nachträge vom 30. Januar 2010 („**Erster Nachtrag**“) und 4. Juli 2011 („**Zweiter Nachtrag**“) geändert und ergänzt wurde.
2. Die Amerigon Europe GmbH mit Sitz in Augsburg, eingetragen im Handelsregister des Amtsgerichts Augsburg unter HRB 25596 („**Amerigon Europe**“), hat am 11. April 2011 ein freiwilliges öffentliches Übernahmeangebot gemäß §§ 29 ff. des Wertpapiererwerbs- und Übernahmegesetzes (WpÜG) zum Erwerb sämtlicher Aktien der

**Service Agreement**

between

**W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 Germany  
 - represented by the supervisory board,  
 the latter represented by its chairman,  
 Dr. Franz Scherer -  
 (the „**Company**“),

and

Mr. **Frithjof Oldorff**,  
 Ligsalzstr. 2, 85241 Hebertshausen,  
 Germany  
 („**FO**“, together with the Company  
 the „**Parties**“).

**I.**  
**Preamble**

1. The Parties have entered into, on 15 May 2007, a service agreement (the „**Service Agreement**“), which was amended and supplemented by the amendments dated 30 January 2010 („**First Amendment**“) and 4 July 2011 („**Second Amendment**“).
2. Amerigon Europe GmbH with its registered seat in Augsburg, Germany, registered with the commercial register at the local court of Augsburg under HRB 25596 („**Amerigon Europe**“), has issued, on 11 April 2011, a voluntary public tender offer pursuant to Sections 29 *et seq.* of the German Securities Acquisition and Takeover Act (*WpÜG*) for the acquisition of all shares of the



Gesellschaft abgegeben (das „**Übernahmeangebot**“). Amerigon Europe ist eine 100 %-ige Tochtergesellschaft der Amerigon, Inc. mit Sitz in Northville, Michigan, USA („**Amerigon, Inc.**“).

3. Das Übernahmeangebot erfolgte in Übereinstimmung mit dem am 28. Februar 2011 zwischen der Gesellschaft, Amerigon Europe und Amerigon, Inc. geschlossenen Business Combination Agreement („**BCA**“), das nähere Regelungen zur (aus damaliger Sicht: künftigen) Beteiligung der Amerigon Europe an der Gesellschaft enthält. Unter anderem sieht das BCA in Ziffer III.2. vor, dass Amerigon Europe und die Gesellschaft nach dem Vollzug des Übernahmeangebots, vorbehaltlich der Zustimmung der entsprechenden Gesellschaftsorgane, insbesondere der Hauptversammlung der Gesellschaft, einen Beherrschungs- und Gewinnabführungsvertrag gemäß §§ 291 ff. AktG schließen (der „**Beherrschungs- und Gewinnabführungsvertrag**“). Darüber hinaus sieht das BCA in Ziffer III.4. vor, dass die Gesellschaft, vertreten durch den Aufsichtsrat, und die derzeitigen Mitglieder des Vorstands der Gesellschaft (die „**Vorstandsmitglieder**“, jedes einzelne ein „**Vorstandsmitglied**“) neue Dienstverträge mit Wirkung zum Wirksamwerden des Beherrschungs- und Gewinnabführungsvertrages durch Eintragung im Handelsregister schließen (der Zeitpunkt des Wirksamwerdens des Beherrschungs- und Gewinnabführungsvertrages das „**BGAV-Wirksamkeitsdatum**“).

Company (the “**Tender Offer**“). Amerigon Europe is a 100 % subsidiary of Amerigon, Inc. with its registered seat in Northville, Michigan, USA (“**Amerigon, Inc.**”).

3. The Tender Offer was made in accordance with the Business Combination Agreement entered into on 28 February 2011 by the Company, Amerigon Europe and Amerigon, Inc. (“**BCA**”), which contains further provisions regarding the (then: future) participation of Amerigon Europe in the Company. *Inter alia*, the BCA provides in Section III.2. that Amerigon Europe and the Company shall enter into, after the consummation of the Tender Offer, subject to the approval of the respective corporate bodies, in particular the shareholders’ meeting of the Company, a domination and profit and loss transfer agreement within the meaning of Sections 291 *et seq.* of the German Stock Corporation Act (*Beherrschungs- und Gewinnabführungsvertrag im Sinne der §§ 291 ff. AktG*) (the “**Domination and Profit and Loss Transfer Agreement**”). Further, the BCA provides in Section III.4. that the Company, represented by the supervisory board, and the current members of the management board of the Company (the “**Members of the Management Board**”, each a “**Member of the Management Board**”) enter into new service agreements as of the Domination and Profit and Loss Transfer Agreement becoming effective by its registration with the commercial register (the effective date of the Domination and Profit and Loss Transfer Agreement the “**DPLTA Effective Date**”). Finally, the BCA

Schließlich sieht das BCA, ebenfalls in Ziffer III.4., vor, dass die derzeitigen Dienstverträge der Vorstandsmitglieder vor Abschluss des Beherrschungs- und Gewinnabführungsvertrages dahingehend ergänzt werden, dass jedes Vorstandsmitglied berechtigt ist, von seinem Amt zurückzutreten und seinen Dienstvertrag zu kündigen, wenn die Gesellschaft und das betreffende Vorstandsmitglied nicht bis zum BGAV-Wirksamkeitsdatum einen neuen Dienstvertrag geschlossen haben.

4. Mit dem Abschluss dieser Vereinbarung (die „**Vereinbarung**“) soll der Dienstvertrag in der Fassung des Ersten und des Zweiten Nachtrags weiter ergänzt und -aus Gründen der Übersichtlichkeit - in eine konsolidierte Fassung zusammengeführt werden. Hiernach soll diese Vereinbarung die einzige bindende Vereinbarung zwischen den Parteien sein.

Dies vorausgeschickt, vereinbaren die Parteien hiermit was folgt:

## II.

### § 1

#### Position / Vertretung

1. FO wurde durch Beschluss des Aufsichtsrates vom 26. Januar 2010 für die Zeit vom 1. Januar 2011 bis zum 31. Dezember 2013 zum Vorstandsmitglied bestellt.
2. Dienstsitz von FO ist der Sitz der Gesellschaft in Odelzhausen.
3. FO vertritt die Gesellschaft nach

provides, also in Section III.4., that the current service agreements of the Members of the Management Board shall be amended, prior to the signing of the Domination and Profit and Loss Transfer Agreement, in such way that each Member of the Management Board has the right to resign from his office and to terminate his service agreement in case the Company and the respective Member of the Management Board have not entered into a new service agreement prior to the DPLTA Effective Date.

4. By the conclusion of this agreement (the “**Agreement**”), the Service Agreement, as amended by the First and Second Amendment, shall be further supplemented and - for clarity reasons - merged into one consolidated version. Hereafter, this Agreement shall be the only binding agreement between the Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

## II.

### § 1

#### Position / Representation

1. By resolution of the supervisory board on 26 January 2010, FO was appointed Member of the Management Board for the time from 1 January 2011 to 31 December 2013.
2. The regular place of office of FO is the registered seat of the Company in Odelzhausen.
3. FO represents the Company in

Maßgabe des Gesetzes, der Vorschriften des Gesellschaftsvertrages (Satzung) und den Beschlüssen des Aufsichtsrats. Der Aufsichtsrat kann entscheiden, ob Einzel- oder Gesamtvertretungsbefugnis erteilt wird. Der Aufsichtsrat ist berechtigt, eine Geschäftsordnung für den Vorstand zu erlassen, in der unter anderem, Geschäftsbereiche, Aufgaben und Verantwortungen der einzelnen Vorstandsmitglieder abgegrenzt werden.

4. Der Vorstand bedarf der Zustimmung zu den Geschäften, die die jeweilige Satzung oder der Aufsichtsrat, sofern aktienrechtlich und satzungsgemäß zulässig, für zustimmungsbedürftig erklären. Bei unterschiedlichen Regelungen in der Satzung oder in Aufsichtsratsbeschlüssen gilt vorrangig die für den Vorstand restriktivere Regelung.
5. Sofern Einzelvertretungsbefugnis erteilt ist, ist sie im Innenverhältnis dahingehend beschränkt, dass eine Zweitunterschrift und damit die Zustimmung eines anderen Vorstandsmitglieds benötigt wird für alle Geschäfte, die nach der Geschäftsordnung des Vorstands der vorherigen Zustimmung des Aufsichtsrats bedürfen.

accordance with the laws, the provisions of the articles of association and the resolutions of the supervisory board. The supervisory board may grant sole power or joint power of representation. The supervisory board is entitled to enact internal rules of procedure for the management board, defining, *inter alia*, the business areas, tasks and responsibilities of each Member of the Management Board.

4. The management board requires the approval for such actions which the respective articles of association or the supervisory board, to the extent permissible under stock corporation law and the articles of association, declare as being subject to approval. In case of contradictory provisions in the articles of association or in resolutions of the supervisory board, such regulation shall apply which is more restrictive for the management board.
5. In case sole power of representation is granted, it is limited internally in such way that a second signature and, therefore, the approval of a further Member of the Management Board is required for all actions which require, pursuant to the internal rules of procedure of the management board, the prior approval of the supervisory board.

§ 2  
**Vergütung**

1. FO erhält ein jährliches Bruttogehalt von EUR 280.000 („**Grundgehalt**“), zahlbar in zwölf gleichen Raten jeweils am Ende eines Monats. Soweit die Tätigkeit von FO in einem Vertragsjahr unterjährig beginnt oder endet, ist das Jahresgrundgehalt zeitanteilig geschuldet. Mit der Vergütung sind sämtliche Überstunden abgegolten.
2. Zusätzlich zum Grundgehalt erhält FO eine jährliche erfolgsabhängige Tantieme, die sich nach Maßgabe der in **Anlage 2.2** vorgesehenen Regelung errechnet.
3. Vorbehaltlich der Regelungen in § 2 Abs. 2 in Verbindung mit **Anlage 2.2** ist die erfolgsabhängige Tantieme in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen und ist dann auch fällig.
4. Erbringt FO während seiner Amtszeit besondere Leistungen, die sich für die Gesellschaft oder ihre Tochtergesellschaften nachhaltig vorteilhaft auswirken und die bei Abschluss dieser Vereinbarung noch nicht absehbar waren, hat FO Anspruch auf eine Sondervergütung. Die Höhe der Sondervergütung richtet sich nach dem für die Gesellschaft oder ihre Tochtergesellschaften erzielten Vorteil und wird vom Aufsichtsrat nach dessen Ermessen unter Berücksichtigung einer nachhaltigen Unternehmensentwicklung und der Angemessenheit der Gesamtbezüge von FO bestimmt.

§ 2  
**Remuneration**

1. FO is entitled to an annual gross salary in the amount of EUR 280,000 (“**Base Salary**”), payable in twelve identical rates at the end of each calendar month. To the extent the functions of FO start or end during a contract year, the Base Salary is owed *pro rata temporis*. The remuneration includes all overtime.
2. In addition to the Base Salary, FO is entitled to an annual performance-based management bonus which is calculated in accordance with the provisions set forth in **Annex 2.2**.
3. Subject to the provisions in Section 2 para. 2 in conjunction with **Annex 2.2**, the performance-based management bonus shall be calculated and is due in the month in which the annual financial statements are approved.
4. In case FO renders, during his term of office, extraordinary services which lead to sustainably beneficial effects for the Company or its subsidiaries and which were not foreseeable at the time of the conclusion of this Agreement, FO is entitled to a special remuneration. The amount of the special remuneration shall be based on the benefits achieved for the Company or its subsidiaries and is determined by the supervisory board in its discretion under consideration of a sustainable development of the Company and the adequateness of the entire remuneration of FO.

**§ 3****Gehaltsfortzahlung bei Krankheit  
oder Tod**

1. Wird FO an der Ausübung seiner Tätigkeit durch Krankheit oder andere durch ihn nicht verschuldete Gründe verhindert, so erhält er für die Dauer von sechs Monaten, längstens jedoch bis zur Beendigung dieses Vertrages, sein zeitanteiliges Grundgehalt gemäß § 2 Abs. 1 sowie die zeitanteilige Tantieme gemäß § 2 Abs. 2 weiter.
2. Im Falle des Todes von FO erhält seine Witwe ein Drittel der Gesamtbezüge gemäß vorstehendem § 2 Abs. 1 und 2 für das zum Zeitpunkt des Todes laufende Geschäftsjahr. Bis zum Todeszeitpunkt gezahlte Leistungen werden dabei nicht angerechnet.

**§ 4****Dienstwagen / Reisekosten**

1. Die Gesellschaft stellt FO einen Dienstwagen der Oberklasse zur Verfügung, der auch privat genutzt werden kann. Die private Nutzung ist von FO gemäß den jeweils gültigen deutschen steuerlichen Vorschriften als geldwerter Vorteil zu versteuern.
2. Die Gesellschaft erstattet FO belegte Reisekosten und Bewirtungsauslagen entsprechend den jeweils gültigen Festlegungen der Gesellschaft und den jeweils gültigen deutschen steuerrechtlichen Richtlinien.

**§ 3****Continued Payment in Case of Sickness  
or Death**

1. In case FO cannot fulfil his duties due to sickness or other reasons for which he is not responsible, he is entitled to a *pro rata temporis* payment of his Base Salary pursuant to Section 2 para. 1 and the performance-based management bonus pursuant to Section 2 para. 2 for a period of six months, at the longest, however, until the termination of this agreement.
2. In case of death of FO, his widow is entitled to the payment of one third of the total salary pursuant to Section 2 paras. 1 and 2 above for the business year in which the death occurred. Payments made prior to the event of death are not taken into account.

**§ 4****Company Car / Travel Expenses**

1. The Company shall make available to FO a company car of the premium segment which may also be used for private purposes. The private use is taxable by FO as financial benefit (*geldwerter Vorteil*) according to applicable German tax law, as amended from time to time.
2. The Company reimburses to FO travel and hospitality expenses upon presentation of receipts in accordance with the rules of the Company and the applicable German taxation guidelines, as amended from time to time.

**§ 5**  
**Urlaub**

FO hat Anspruch auf einen angemessenen Jahresurlaub, dessen Zeitpunkt und Dauer er selbst festlegt. Seinen Urlaub hat er in Abstimmung mit den übrigen Vorstandsmitgliedern so zu disponieren, dass die Interessen des Unternehmens vorrangig gewahrt bleiben.

**§ 6**  
**Sonstige Leistungen**

1. Die Gesellschaft erstattet FO, wenn und soweit er von der Versicherungspflicht befreit ist, jeweils 50 % der Höchstbeiträge zur gesetzlichen Rentenversicherung, Krankenversicherung, Pflegeversicherung und Arbeitslosenversicherung. Bei Inanspruchnahme einer privaten Krankenversicherung und privater Pflegeversicherung erstattet die Gesellschaft die Beiträge bis zu den jeweils gesetzlich vorgeschriebenen Höchstbeiträgen.
2. Die Gesellschaft schließt für FO im Rahmen einer Gruppenunfallversicherung eine Unfall- und Invaliditätsversicherung ab. Der Versicherungsschutz im Rahmen dieser Versicherung umfasst alle beruflichen und außerberuflichen Unfälle. Die Versicherungssumme ist auf EUR 1.000.000 bei Tod und auf EUR 2.000.000 bei Invalidität abgeschlossen. Der Versicherungsschutz erlischt, sobald FO aus dem Dienstverhältnis mit der Gesellschaft ausscheidet. Die Versicherungsprämien trägt die Gesellschaft.

**§ 5**  
**Vacation**

FO is entitled to an appropriate annual vacation, the point of time and the duration of which are determined by himself. He shall determine his vacation in coordination with the other Members of the Management Board in such way that the interests of the Company are predominantly respected.

**§ 6**  
**Additional Services**

1. If and to the extent FO is not subject to the statutory insurance obligation, the Company reimburses to FO 50 % of the maximum contributions to each of the statutory pension, health, long-term care and unemployment insurance. If FO engages in a private health and long-term care insurance, the Company reimburses to FO the contributions up to the maximum contributions as determined by law.
2. The Company shall conclude an accident and invalidity insurance for the benefit of FO as part of a group accident insurance. The insurance protection within this insurance covers all business and non-business related accidents. The insurance sum is EUR 1,000,000 in case of death and EUR 2,000,000 in case of invalidity. The insurance protection ends as soon as the services of FO for the Company are terminated. The insurance premiums shall be borne by the Company.

3. Eine Altersversorgungszusage besteht nicht. Auf Wunsch wird die Möglichkeit einer Versorgungszusage mittels Entgeltumwandlung in folgenden Durchführungsarten, jedoch unter Bedingung der Kostenneutralität für die Gesellschaft, gewährt:
  - Direktversicherung (nach § 40b EStG, pauschal besteuert);
  - Weiterer mittelbarer Durchführungsweg mit steuerlicher Behandlung (gemäß § 3 Nr. 63 EstG);
  - Kongruent rückgedeckte Unterstützungskasse (beitragsorientierte Leistungszusage);
  - Direktzusage mittels Gehaltsverzicht (mit direkter Rückdeckung gegen jeweils einmaligen Betrag) als beitragsorientierte Leistungszusage.
4. Die bestehende D&O Versicherung der Gesellschaft wurde per 30. Juni 2010 an die Erfordernisse des AktG angepasst (Selbstbehalt des Vorstandsmitglieds).
3. There are no pension commitments. If requested, the possibility of a pension commitment by conversion of the remuneration in the following ways will be granted, however, on the condition of cost-neutrality for the Company:
  - Direct insurance (pursuant to Section 40b of the German Income Tax Act (*Einkommenssteuergesetz, EStG*), lump-sum taxed);
  - Further indirect execution with tax treatment (pursuant to Section 3 no. 63 EStG);
  - Congruently reinsured support funds (benefit promise according to contributions);
  - Direct promise by means of salary waiver (with direct reinsurance against one-time payment) as benefit promise according to contributions.
4. The existing D&O insurance of the Company was adapted to the requirements of the AktG as of 30 June 2010 (deductible of the Member of the Management Board).

#### § 7

#### **Nebentätigkeit**

1. FO verpflichtet sich, seine ganze Arbeitskraft in den Dienst der Gesellschaft zu stellen und die Interessen der Gesellschaft nach besten Kräften zu fördern. Soweit das Wohl der Gesellschaft es erfordert, wird FO der Gesellschaft jederzeit auch über die betriebsübliche Arbeitszeit hinaus zur Verfügung stehen.

#### § 7

#### **Secondary Occupations**

1. FO undertakes to devote his entire working capacity to the service of the Company and to make best efforts to promote the interests of the Company. To the extent required for the benefit of the Company, FO will be available for the Company at any time, also in extension of the customary working time.

2. Jede weitere entgeltliche oder unentgeltliche Beschäftigung und / oder unmittelbare oder mittelbare Beteiligung an anderen Unternehmen jeder Art bedarf der vorherigen schriftlichen Zustimmung des Aufsichtsrats. Dies gilt nicht für den üblichen Erwerb von Aktien oder sonstigen Geschäftsanteilen zu Investitionszwecken. Die Mitgliedschaft in Vertretungsgremien oder in Aufsichtsgremien anderer Gesellschaften ist dem Aufsichtsrat schriftlich anzuzeigen.

**§ 8**  
**Diensterfindungen**

1. Für Erfindungen und qualifizierte technische Verbesserungsvorschläge gelten die Regelungen des Gesetzes über Arbeitnehmererfindungen in seiner jeweils gültigen Fassung entsprechend.
2. Die Parteien sind sich darüber einig, dass eine etwaige Vergütung für eine von der Gesellschaft in Anspruch genommene Diensterfindung mit der Zahlung des Grundgehalts gemäß obigem § 2 Abs. 1 vollständig abgegolten ist.

**§ 9**  
**Geheimhaltung /  
Rückgabe von Unterlagen**

1. FO ist verpflichtet, insbesondere auch während der Zeit nach Beendigung dieses Dienstvertrages, alle vertraulichen Informationen über das Geschäft, die Vertragsbeziehungen, Abschlüsse, Geschäfte oder besonderen Angelegenheiten der Gesellschaft oder von verbundenen

2. Any other occupation, against payment or nonpaid, and / or any direct or indirect participation in other companies of any kind require the prior written consent of the supervisory board. This does not apply for the customary acquisition of stock or other shares for investment purposes. The supervisory board has to be informed in writing about memberships in other companies' administrative or supervisory bodies.

**§ 8**  
**Service Inventions**

1. With regard to inventions and qualified technical improvement proposals the provisions of the German Employee Inventions Act (*Gesetz über Arbeitnehmererfindungen*), as amended from time to time, shall apply *mutatis mutandis*.
2. The Parties agree that any possible remuneration for an invention called upon by the Company is fully compensated by the payment of the Base Salary pursuant to Section 2 para. 1 above.

**§ 9**  
**Confidentiality /  
Return of Documents**

1. FO is obliged, in particular also after the termination of this service agreement, to keep confidential all confidential information regarding the business, the contractual relationships, agreements, business affairs or special matters of the Company or of affiliated companies and to use this information not for his own



Unternehmen geheim zu halten und diese Informationen nicht für seinen eigenen oder den Nutzen anderer zu verwenden. „**Vertraulich**“ in diesem Sinne sind insbesondere die in vorstehendem § 8 bezeichneten Erfindungen, Urheberrechte sowie das Know-how.

benefit or for the benefit of third parties. “**Confidential**” in this sense are in particular the inventions as mentioned in Section 8 above, copyrights as well as the know-how.

2. Während des Dienstverhältnisses wird FO auf Verlangen der Gesellschaft, spätestens aber bei Beendigung des Dienstverhältnisses unaufgefordert, der Gesellschaft alle in seinem Besitz befindlichen oder seinem Zugriff unterliegenden Akten und sonstigen den Geschäftsbetrieb der Gesellschaft oder verbundener Unternehmen betreffende Unterlagen - insbesondere alle Pläne, Kunden, Preislisten, Druckmaterial, Urkunden, Zeichnungen, Notizen, Entwürfe - sowie Kopien davon zurückgeben, ohne Rücksicht darauf, ob er sie von der Gesellschaft selbst oder von verbundenen Unternehmen erhalten hat. Sinngemäß gilt das Gleiche für nicht körperliche Informationen und Materialien, z.B. Computerprogramme oder auf Datenträgern gespeicherte Informationen.

2. FO shall return, during the term of his services, on the Company's request at the latest, however, upon termination of his services without a request by the Company being necessary, all files and further documents related to the Company's business or the business of affiliated companies - in particular all plans, clients, price lists, print material, deeds, drawings, notes, drafts - as well as copies thereof which are in his possession or which he has access to, regardless of whether he has received them from the Company or an affiliated company. The same shall apply *mutatis mutandis* to all non-physical information and materials, e.g. computer software and information saved on storage mediums.

**§ 10**  
**Laufzeit**

**§ 10**  
**Term**

1. Diese Vereinbarung wird mit Wirkung zum 01.01.2008 geschlossen und endet am 31. Dezember 2013, ohne dass es einer Kündigung bedarf. Sie tritt an die Stelle des (bisherigen) Dienstvertrags in der Fassung des Ersten Nachtrags und des Zweiten Nachtrags. Sämtliche bisherigen Vereinbarungen zwischen den Parteien werden hiermit ausdrücklich aufgehoben.
  2. Das Recht zur außerordentlichen Kündigung dieser Vereinbarung aus wichtigem Grund durch beide Seiten bleibt unberührt. Im Fall eines Widerrufs der Bestellung von FO als Vorstandsmitglied / einer Freistellung von FO sind etwaige Zahlungen aus dem bestehenden Vertragsverhältnis auf maximal das Zweifache des Grundgehalts gemäß § 2 Abs. 1 begrenzt, zuzüglich der Weiternutzung für maximal 2 Jahre des Dienstwagens, alternativ des entsprechenden geldwerten Vorteils. Absatz 5 dieses § 10 bleibt unberührt.
  3. Die Gesellschaft ist berechtigt, FO während der Laufzeit dieser Vereinbarung jederzeit von seiner Tätigkeit für die Gesellschaft freizustellen. Dies gilt insbesondere im Fall eines Widerrufs der Bestellung von FO als Vorstandsmitglied.
1. This Agreement is entered into as of 01 January 2008 and ends on 31. December 2013 without a termination declaration being necessary. It shall replace the (hitherto existing) Service Agreement in the version of the First Amendment and of the Second Amendment. All hitherto existing agreements between the Parties are hereby expressly cancelled.
  2. The right of both Parties to terminate this Agreement for good cause remains unaffected. In case of revocation of the appointment of FO as Member of the Management Board / a release of FO, all potential payments according to the existing contractual relationship are limited to twice the Base Salary pursuant to Section 2 para. 1 plus the continued use of the company car for not more than two years, alternatively the respective financial benefit (*geldwerter Vorteil*). Para. 5 of this Section 10 remains unaffected.
  3. The Company is entitled to release FO from his services for the Company at any time during the term of this Agreement. This applies in particular in case of a revocation of the appointment of FO as Member of the Management Board.

**§ 11**  
**Verschiedenes**

1. Änderungen und / oder Ergänzungen dieser Vereinbarung, einschließlich dieses Schriftefordernisses, bedürfen zu ihrer Wirksamkeit der Schriftform. Dies gilt auch für die Aufhebung dieser Klausel.

**§ 11**  
**Miscellaneous**

1. Amendments and / or supplements to this Agreement, including this written form requirement, must be made in writing in order to be effective. This does also apply to the cancellation of this clause.

2. Sollten einzelne Bestimmungen dieser Vereinbarung unwirksam sein oder werden, so berührt dies die Gültigkeit der übrigen Bestimmungen nicht. Anstelle der unwirksamen Bestimmung soll eine angemessene Regelung treten, die dem am nächsten kommt, was die Parteien nach ihrer wirtschaftlichen Zwecksetzung gewollt haben. Das gleiche gilt im Falle einer vertraglichen Lücke.
  3. Diese Vereinbarung unterliegt dem Recht der Bundesrepublik Deutschland. Gerichtsstand für alle sich aus oder in Zusammenhang mit dieser Vereinbarung ergebenden Streitigkeiten ist, soweit gesetzlich zulässig, München.
  4. Die deutsche Fassung dieser Vereinbarung ist maßgeblich.
2. In case individual provisions of this Agreement are or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by an adequate provision which comes closest to the economic intentions of the Parties. The same shall apply in case of a gap in this Agreement.
  3. This Agreement is subject to the laws of the Federal Republic of Germany. Place of jurisdiction for all disputes arising out of or in connection with this Agreement is, as far as legally permissible, Munich.
  4. The German version of this Agreement shall prevail.

Odelzhausen, den 04.07.2011

/s/ Dr. Franz Scherer

---

**W.E.T. Automotive Systems**

**Aktiengesellschaft,**

hier vertreten durch den Aufsichtsrat /

here represented by the supervisory board,

dieser vertreten durch den Aufsichtsratsvorsitzenden /

the latter represented by its chairman,

Dr. Franz Scherer

/s/ Frithjof Oldorff

---

**Frithjof Oldorff**

**Anlage 2.2**

Zusätzlich zum Grundgehalt erhält das Vorstandsmitglied eine jährliche erfolgsabhängige Tantieme (der „**Bonus**“), die an die Entwicklung des Unternehmenswertes (EVA, Stern Stewart) der W.E.T-Gruppe nach Maßgabe der folgenden Regelungen gekoppelt ist:

1. Basis für den Bonus ist das Erreichen von bestimmten EVA-Werten, die sich auf die gesamte W.E.T.-Gruppe beziehen (die „**EVA-Zielwerte**“). Die EVA-Zielwerte werden für einen Zeitraum von jeweils 3 (drei) Jahren einvernehmlich zwischen dem Vorstand und dem Aufsichtsrat festgelegt, erstmals beginnend mit dem Geschäftsjahr 2011 für die Jahre 2011 bis 2013.
2. Die EVA-Zielwerte basieren hierbei auf einem mit dem Vorstand abgestimmten Berechnungsmodell von Stern Stewart und basieren auf den vorläufigen Abschlusszahlen für das Geschäftsjahr 2010 und den Budgetzahlen für die Jahre 2011 bis 2013. Ob die EVA-Zielwerte erreicht werden, richtet sich nach der als Anlage beigefügten Berechnung.
3. Bei Erreichen der EVA-Zielwerte ergibt sich ein Bonus in Höhe von 100 %, der 50 % des Grundgehaltes des Vorstandsmitglieds nach § 2 Abs. 1 des Dienstvertrages entspricht (der „**Basis-Bonus**“). Der Zielerreichungsgrad kann für die Zwecke der Berechnung des Bonuses niedrigstenfalls -100 % und maximal +300 % (der „**Maximal-Bonus**“) betragen. Bei Über- oder Unterschreitungen innerhalb dieser

**Annex 2.2**

In addition to the Base Salary, the Member of the Management Board is entitled to an annual performance-based management bonus (the “**Bonus**”) which is linked to the development of the enterprise value (EVA, Stern Stewart) of the W.E.T. Group in according to the following provisions:

1. The Bonus is based on the achievement of certain EVA values with regard to the entire W.E.T. Group (the “**EVA Target Values**”). The EVA Target Values are consensually determined by the management board and the supervisory board for a period of 3 (three) years, for the first time beginning with the business year 2011 for the years 2011 to 2013.
2. The EVA Target Values are based on a calculation model according to Stern Stewart, as agreed upon with the management board, and are based on the preliminary year-end figures for the business year 2010 and the budget figures for the years 2011 to 2013. Whether or not the EVA Target Values are achieved, depends on the calculation attached hereto as annex.
3. Upon achievement of the EVA Target Values, a Bonus of 100 % arises which equals 50 % of the Base Salary of the Member of the Management Board pursuant to Section 2 para. 1 of the service agreement (the “**Base Bonus**”). The degree of target achievement may be, for calculation purposes, as a minimum -100 % and as a maximum +300 % (the “**Maximum Bonus**”). In case of exceedance or shortfall within

Bandbreite ist der Zielerreichungsgrad linear zu ermitteln.

4. Nach Ablauf des Geschäftsjahres wird auf Grundlage des konsolidierten IFRS Konzernabschlusses der W.E.T.-Gruppe der Zielerreichungsgrad für die EVA-Zielwerte durch den Aufsichtsrat festgestellt und der sich danach zu errechnende Bonus ermittelt. Bei Änderungen des Konsolidierungskreises während des laufenden Geschäftsjahres sind die jeweiligen festgelegten EVA-Zielwerte - soweit erforderlich - anzupassen. Die Anpassung erfolgt *pro rata temporis* einvernehmlich zwischen dem Aufsichtsrat und allen Vorstandsmitgliedern unter Bezugnahme und Berücksichtigung der maßgeblichen Vorjahreszahlen der neu zu konsolidierenden bzw. zu dekonsolidierenden Gesellschaft(en) durch entsprechende Erhöhung bzw. Reduzierung der betroffenen EVA-Zielwerte.
5. Der Bonus berechnet sich als Multiplikation von Basis-Bonus mal Zielerreichungsgrad. Insofern kann der Bonus auch negativ sein. Er kann aber nicht höher als das Dreifache des Basis-Bonus sein.
6. Das Entstehen und die Auszahlung des Bonus unterliegt Restriktionen („**Bonus-Bank**“), um die Nachhaltigkeit der Anreizwirkung durch die erfolgsabhängige Tantieme zu gewährleisten:
  - a. Sofern der Zielerreichungsgrad 0 % bis einschließlich +100 % beträgt,

this range, the degree of target achievement is to be determined straight proportionally.

4. After the end of the business year the degree of target achievement for the EVA Target Values is determined by the supervisory board based on the IFRS consolidated financial statements of the W.E.T. Group, and the Bonus resulting thereafter is to be determined. In case of changes of the consolidated companies during the business year, the respectively determined EVA Target Values are to be adjusted, if necessary. The adjustment shall be made *pro rata temporis* consensually between the supervisory board and all Members of the Management Board with reference to and taking into consideration of the relevant prior-year figures of the company/-ies to be additionally consolidated or to be unconsolidated by increase or decrease of the concerned EVA Target Values, respectively.
5. The Bonus is calculated by multiplying the Base Bonus with the degree of target achievement. Therefore, the Bonus can also be negative. But it may not exceed the amount of three times the Base Bonus.
6. The arising and the payout of the Bonus is subject to certain restrictions (“**Bonus Bank**”), in order to guarantee the sustainability of the incentive by the performance-based management bonus:
  - a. If the degree of target achievement is 0 % up to +100 %, the Bonus to

- ist der hierauf zu zahlende Bonus vollständig in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Der Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Steuern und sonstigen Abgaben (die „**Abgaben**“) auszuzahlen.
- b. Sofern der Zielerreichungsgrad mehr als +100 % beträgt, ist der Bonus
- i. in Höhe des nach Ziffer 6 lit. a errechneten Betrages in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Dieser Teil des Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuzahlen;
- ii. in Höhe des Restbetrages („**Überschießender Bonus**“) in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitglieds einzustellen; die Einstellung in die Bonus-Bank erfolgt 12 Monate nach Feststellung des Überschießenden Bonus.
- c. Sofern der Zielerreichungsgrad zwischen -100 % (einschließlich) und 0 % (ausschließlich) liegt, erfolgt in dem Monat, in dem der Jahresabschluss festgestellt wird, keine Auszahlung eines Basis-Bonus, sondern der negative Bonus wird als Abzugsposten in die bei der Gesellschaft rechnerisch
- be paid thereon is to be fully determined in the month in which the annual financial statements are approved. The Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of taxes and additional levies (the “**Levies**”).
- b. If the degree of target achievement is higher than +100 %, the Bonus is
- i. to be determined in the amount to be calculated pursuant to Section 6 lit. a in the month in which the annual financial statements are approved. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies;
- ii. to the amount remaining (“**Excessive Bonus**”) to be credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form; the Excessive Bonus is to be credited to the Bonus Bank 12 months after its determination.
- c. If the degree of target achievement is between -100 % (inclusive) and 0 % (exclusive), no Base Bonus is paid out in the month in which the annual financial statements are approved, but the negative Bonus is to be accounted for deduction in the Bonus Bank of the Member of the Management Board which is to be

- geführte Bonus-Bank des Vorstandsmitglieds eingestellt („**Negativer Bonus**“).
- d. Die in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitglieds eingestellten Überschießenden Boni sind mit eingestellten Negativen Boni innerhalb der Bonus-Bank zu verrechnen und der so ermittelte Saldo in der Bonus-Bank festzuhalten („**Saldo Bonus**“). Der Saldo Bonus kann negativ, jedoch kann er in Summe nicht niedriger als -100 % sein.
- e. Jedes Jahr, beginnend mit dem Geschäftsjahr 2012, ist ein positiver Saldo Bonus in Höhe eines Betrages, der 33 % des Saldo Bonuses entspricht, in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen, d.h. der positive Saldo Bonus in der Bonus-Bank verringert sich entsprechend. Dieser Teil des Bonuses ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuführen.
7. Bei Beendigung des Dienstvertrages des Vorstandsmitglieds ist die Bonus-Bank 12 Monate nach Beendigung des Dienstvertrages (die „**Nachlaufphase**“) auf Basis des Saldo Bonuses und unter Berücksichtigung des Grundes der Beendigung abzurechnen. Das bedeutet, dass sich der bei der Gesellschaft in der rechnerisch geführten Bonus-Bank des Vorstandsmitglieds ausgewiesene Saldo Bonus in Abhängigkeit vom Zielerreichungsgrad in der Nachlaufphase noch verändern kann.
- run by the Company in virtual form (“**Negative Bonus**”).
- d. The Excessive Bonuses credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form are to be settled with Negative Bonuses credited to the Bonus Bank, and the balance resulting therefrom is to be registered with the Bonus Bank (“**Balance Bonus**”). The Balance Bonus can be negative, but its sum cannot be less than -100 %.
- e. Starting with the business year 2012, each year a positive Balance Bonus is to be settled in the amount of 33 % of the Balance Bonus in the month in which the annual financial statements are approved, *i.e.* the positive Balance Bonus in the Bonus Bank decreases accordingly. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
7. Upon termination of the service agreement of the Member of the Management Board, the Bonus Bank is to be finally settled 12 months after the termination of the service agreement (the “**Follow-Up Period**”), based on the Balance Bonus and under consideration of the reason for the termination. This means that the Balance Bonus shown in the Bonus Bank of the Member of the Management Board, which is to be run by the Company in virtual form, can change depending on the degree of target achievement in the Follow-Up Period.

- a. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren, so kann sich der Saldo Bonus in der Nachlaufphase verringern oder erhöhen.
- b. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Bad Leaver (s.u. lit. g) qualifizieren, so ist der Saldo Bonus nach der Nachlaufphase maximal Null und es erfolgt auf jeden Fall keine Ausschüttung an das Vorstandsmitglied. Der Saldo Bonus kann sich aber in der Nachlaufphase auch verringern und damit negativ werden.
- c. Eine Veränderung greift nur dann ein, wenn der Zielerreichungsgrad innerhalb der Nachlaufphase kleiner als 0 % ist oder größer als +200 %. Bei einem Zielerreichungsgrad innerhalb der Nachlaufphase, der gleich oder größer als 0 %, aber gleich oder kleiner als +200 % ist, erfolgt keine Veränderung. Ist der Zielerreichungsgrad größer als +200 %, so ist für die Veränderung des Saldo Bonus nur ein die Schwelle von +200 % überschießender Zielerreichungsgrad bis maximal +300 % für die Veränderung anzusetzen, so dass eine Veränderung in diesem Fall maximal +100 % betragen kann.
- d. Bei einer unterjährigen Beendigung des Dienstvertrages wird der Aufsichtsrat der Gesellschaft zum Ende der Nachlaufphase die Höhe
- a. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), the Balance Bonus can decrease or increase during the Follow-Up Period.
- b. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver (see lit. g below), the Balance Bonus equals at most zero at the end of the Follow-Up Period, and there is no payout to the Member of the Management Board. However, the Balance Bonus can also decrease in the Follow-Up Period, and thus become negative.
- c. There will only be a change in case the degree of target achievement within the Follow-Up Period is less than 0 % or higher than +200 %. If the degree of target achievement within the Follow-Up Period is higher than or equal to 0 %, but less than or equal to +200 %, there will be no change. If the degree of target achievement is higher than +200 %, only a degree of target achievement exceeding +200 % up to +300 % is applicable for the change of the Balance Bonus, so that in this case a change can be at most +100 %.
- d. If the service agreement is terminated in the course of a year, the supervisory board of the Company will determine the degree of target



des Zielerreichungsgrades nach billigem Ermessen festlegen.

- e. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren und sofern am Ende der Nachlaufzeit ein positiver Saldo Bonus besteht, wird eine Zahlung in Höhe eines Betrages, der dem dann festgestellten positiven Saldo Bonus entspricht, mit einem Abschlag von 10 % auf diesen Betrag fällig. Der so ermittelte Betrag ist auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuführen.
- f. Sofern am Ende der Nachlaufzeit ein negativer Saldo Bonus festgestellt wird, und
- i. die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen erfolgt, die ihn als Good Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe von 50 % des dann festgestellten negativen Saldo Bonus (ohne darauf entfallende Abgaben) an die Gesellschaft zurückzuzahlen; oder
- ii. die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen erfolgt, die ihn als Bad Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe des dann festgestellten negativen Saldo Bonus (ohne

achievement at the end of the Follow-Up Period in its equitable discretion.

- e. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), and if there is, at the end of the Follow-Up Period, a positive Balance Bonus, a payment becomes due in the amount which equals the positive Balance Bonus determined at that time, with a deduction of 10 %. The amount thus determined is to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
- f. If, at the end of the Follow-Up Period, a negative Balance Bonus is determined, and
- i. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver, the Member of the Management Board has to pay back to the Company an amount of 50 % of the negative Balance Bonus then determined (excluding Levies related thereto); or
- ii. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver, the Member of the Management Board has to pay back to the Company the amount of the negative Balance

darauf entfallende Abgaben) an die Gesellschaft zurückzuzahlen.

Eine Rückzahlungsverpflichtung des Vorstandsmitglieds besteht nur soweit und nur in der Höhe wie das Vorstandsmitglied in der Vergangenheit aufgrund der erfolgsabhängigen Tantieme Bonuszahlungen erhalten hat. Das Vorstandsmitglied haftet für die Rückzahlungsverpflichtung nicht mit seinem von der Gesellschaft erhaltenen Grundgehalt.

Der Aufsichtsrat kann nach billigem Ermessen auf eine Rückzahlung eines Bonus nach diesem lit. f ganz oder teilweise verzichten.

Die jeweils so ermittelten Beträge sind von dem Vorstandsmitglied innerhalb von 60 Werktagen nach Mitteilung durch die Gesellschaft auf ein von der Gesellschaft dem Vorstandsmitglied mitgeteiltes Konto einzuzahlen. Hieraus erfolgende Erstattungen für Abgaben auf die ursprünglichen Boni-Zahlungen stehen der Gesellschaft zu.

- g. Als „**Bad Leaver**“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag durch die Gesellschaft aus wichtigem Grund nach § 626 BGB beendet oder dessen Bestellung als Vorstandsmitglied aus wichtigem Grund nach § 84 Abs. 3 AktG widerrufen wird.

Bonus then determined (excluding Levies related thereto).

A payback obligation of the Member of the Management Board exists only to the extent and up to the amount in which the Member of the Management Board has received Bonus payments in the past due to the performance-based management bonus. As regards the payback obligation, the Member of the Management Board is not liable with his Base Salary received by the Company.

The supervisory board may waive a payback of the Bonus pursuant to this lit. f fully or partly in its equitable discretion.

The respective amounts thus determined are to be transferred by the Member of the Management Board to a bank account named by the Company within 60 business days following the notification by the Company. The Company is entitled to reimbursements of Levies arising therefrom which relate to the original Bonus payments.

- g. “**Bad Leaver**” is a Member of the Management Board whose service agreement is terminated by the Company for good cause pursuant to Section 626 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) or whose appointment as Member of the Management Board is revoked for good cause pursuant to Section 84 para. 3 of the German Stock Corporation Act (*Aktiengesetz, AktG*).

- h. Als „**Good Leaver**“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag aus Gründen endet, die ihn nicht als Bad Leaver qualifizieren.
- h. “**Good Leaver**” is a Member of the Management Board whose service agreement ends for reasons which do not qualify him as Bad Leaver.
8. Ein Berechnungsbeispiel ist als Anlage beigefügt. [fehlt bislang]
8. A sample calculation is attached as annex. [hitherto missing]

**Dienstvertrag**

zwischen

der **W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 - vertreten durch den Aufsichtsrat,  
 dieser wiederum vertreten durch  
 den Aufsichtsratsvorsitzenden,  
 Herrn Dr. Franz Scherer -  
 (die „**Gesellschaft**“),

und

Herrn **Thomas Liedl**,  
 An der Schießstätte 13, 86316 Friedberg  
 („**TL**“, gemeinsam mit der Gesellschaft  
 die „**Parteien**“).

**I.**  
**Präambel**

1. Die Parteien haben am 1. August 2008 einen Dienstvertrag geschlossen (der „**Dienstvertrag**“), der durch Nachträge vom 5. März 2010 („**Erster Nachtrag**“) und 4. Juli 2011 („**Zweiter Nachtrag**“) geändert und ergänzt wurde.
2. Die Amerigon Europe GmbH mit Sitz in Augsburg, eingetragen im Handelsregister des Amtsgerichts Augsburg unter HRB 25596 („**Amerigon Europe**“), hat am 11. April 2011 ein freiwilliges öffentliches Übernahmeangebot gemäß §§ 29 ff. des Wertpapiererwerbs- und Übernahmegesetzes (WpÜG) zum Erwerb sämtlicher Aktien der

**Service Agreement**

between

**W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 Germany  
 -represented by the supervisory board,  
 the latter represented by its chairman,  
 Dr. Franz Scherer -  
 (the “**Company**”),

and

Mr. **Thomas Liedl**,  
 An der Schießstätte 13, 86316 Friedberg,  
 Germany  
 (“**TL**”, together with the Company the “**Parties**”).

**I.**  
**Preamble**

1. The Parties have entered into, on 1 August 2008, a service agreement (the “**Service Agreement**”), which was amended and supplemented by amendments dated 5 March 2010 (“**First Amendment**”) and 4 July 2011 (“**Second Amendment**”).
2. Amerigon Europe GmbH with its registered seat in Augsburg, Germany, registered with the commercial register at the local court of Augsburg under HRB 25596 (“**Amerigon Europe**”), has issued, on 11 April 2011, a voluntary public tender offer pursuant to Sections 29 *et seq.* of the German Securities Acquisition and Takeover Act (*WpÜG*) for the acquisition of all shares of the

Gesellschaft abgegeben (das „**Übernahmeangebot**“). Amerigon Europe ist eine 100 %-ige Tochtergesellschaft der Amerigon, Inc. mit Sitz in Northville, Michigan, USA („**Amerigon, Inc.**“).

3. Das Übernahmeangebot erfolgte in Übereinstimmung mit dem am 28. Februar 2011 zwischen der Gesellschaft, Amerigon Europe und Amerigon, Inc. geschlossenen Business Combination Agreement („**BCA**“), das nähere Regelungen zur (aus damaliger Sicht: künftigen) Beteiligung der Amerigon Europe an der Gesellschaft enthält. Unter anderem sieht das BCA in Ziffer III.2. vor, dass Amerigon Europe und die Gesellschaft nach dem Vollzug des Übernahmeangebots, vorbehaltlich der Zustimmung der entsprechenden Gesellschaftsorgane, insbesondere der Hauptversammlung der Gesellschaft, einen Beherrschungs- und Gewinnabführungsvertrag gemäß §§ 291 ff. AktG schließen (der „**Beherrschungs- und Gewinnabführungsvertrag**“). Darüber hinaus sieht das BCA in Ziffer III.4. vor, dass die Gesellschaft, vertreten durch den Aufsichtsrat, und die derzeitigen Mitglieder des Vorstands der Gesellschaft (die „**Vorstandsmitglieder**“, jedes einzelne ein „**Vorstandsmitglied**“) neue Dienstverträge mit Wirkung zum Wirksamwerden des Beherrschungs- und Gewinnabführungsvertrages durch Eintragung im Handelsregister schließen (der Zeitpunkt des Wirksamwerdens des Beherrschungs- und Gewinnabführungsvertrages das „**BGAV-Wirksamkeitsdatum**“).

Company (the „**Tender Offer**“). Amerigon Europe is a 100 % subsidiary of Amerigon, Inc. with its registered seat in Northville, Michigan, USA („**Amerigon, Inc.**“).

3. The Tender Offer was made in accordance with the Business Combination Agreement entered into on 28 February 2011 by the Company, Amerigon Europe and Amerigon, Inc. („**BCA**“), which contains further provisions regarding the (then: future) participation of Amerigon Europe in the Company. *Inter alia*, the BCA provides in Section III.2. that Amerigon Europe and the Company shall enter into, after the consummation of the Tender Offer, subject to the approval of the respective corporate bodies, in particular the shareholders' meeting of the Company, a domination and profit and loss transfer agreement within the meaning of Sections 291 et seq. of the German Stock Corporation Act (*Beherrschungs- und Gewinnabführungsvertrag im Sinne der §§ 291 ff. AktG*) (the „**Domination and Profit and Loss Transfer Agreement**“). Further, the BCA provides in Section III.4. that the Company, represented by the supervisory board, and the current members of the management board of the Company (the „**Members of the Management Board**“, each a „**Member of the Management Board**“) enter into new service agreements as of the Domination and Profit and Loss Transfer Agreement becoming effective by its registration with the commercial register (the effective date of the Domination and Profit and Loss Transfer Agreement the „**DPLTA Effective Date**“). Finally, the BCA provides,

Schließlich sieht das BCA, ebenfalls in Ziffer III.4., vor, dass die derzeitigen Dienstverträge der Vorstandsmitglieder vor Abschluss des Beherrschungs- und Gewinnabführungsvertrages dahingehend ergänzt werden, dass jedes Vorstandsmitglied berechtigt ist, von seinem Amt zurückzutreten und seinen Dienstvertrag zu kündigen, wenn die Gesellschaft und das betreffende Vorstandsmitglied nicht bis zum BGAV-Wirksamkeitsdatum einen neuen Dienstvertrag geschlossen haben.

4. Mit dem Abschluss dieser Vereinbarung (die „**Vereinbarung**“) soll der Dienstvertrag in der Fassung des Ersten und des Zweiten Nachtrags weiter ergänzt und -aus Gründen der Übersichtlichkeit - in eine konsolidierte Fassung zusammengeführt werden. Hiernach soll diese Vereinbarung die einzige bindende Vereinbarung zwischen den Parteien sein.

Dies vorausgeschickt, vereinbaren die Parteien hiermit was folgt:

## II.

### § 1

#### Position / Vertretung

1. TL wurde durch Beschluss des Aufsichtsrates vom 18. Oktober 2010 für die Zeit vom 1. Oktober 2011 bis zum 30. September 2014 zum Vorstandsmitglied bestellt.
2. Dienstsitz von TL ist der Sitz der Gesellschaft in Odelzhausen.
3. TL vertritt die Gesellschaft nach

also in Section III.4., that the current service agreements of the Members of the Management Board shall be amended, prior to the signing of the Domination and Profit and Loss Transfer Agreement, in such way that each Member of the Management Board has the right to resign from his office and to terminate his service agreement in case the Company and the respective Member of the Management Board have not entered into a new service agreement prior to the DPLTA Effective Date.

4. By the conclusion of this agreement (the “**Agreement**”), the Service Agreement, as amended by the First and Second Amendment, shall be further supplemented and - for clarity reasons - merged into one consolidated version. Hereafter, this Agreement shall be the only binding agreement between the Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

## II.

### § 1

#### Position / Representation

1. By resolution of the supervisory board dated 18 October 2010, TL was appointed Member of the Management Board for the time from 1 October 2011 to 30 September 2014.
2. The regular place of office of TL is the registered seat of the Company in Odelzhausen.
3. TL represents the Company in accordance

Maßgabe des Gesetzes, der Vorschriften des Gesellschaftsvertrages (Satzung) und den Beschlüssen des Aufsichtsrats. Der Aufsichtsrat kann entscheiden, ob Einzel- oder Gesamtvertretungsbefugnis erteilt wird. Der Aufsichtsrat ist berechtigt, eine Geschäftsordnung für den Vorstand zu erlassen, in der unter anderem, Geschäftsbereiche, Aufgaben und Verantwortungen der einzelnen Vorstandsmitglieder abgegrenzt werden.

4. Der Vorstand bedarf der Zustimmung zu den Geschäften, die die jeweilige Satzung oder der Aufsichtsrat, sofern aktienrechtlich und satzungsgemäß zulässig, für zustimmungsbedürftig erklären. Bei unterschiedlichen Regelungen in der Satzung oder in Aufsichtsratsbeschlüssen gilt vorrangig die für den Vorstand restriktivere Regelung.
5. Sofern Einzelvertretungsbefugnis erteilt ist, ist sie im Innenverhältnis dahingehend beschränkt, dass eine Zweitunterschrift und damit die Zustimmung eines anderen Vorstandsmitglieds benötigt wird für alle Geschäfte, die nach der Geschäftsordnung des Vorstands der vorherigen Zustimmung des Aufsichtsrats bedürfen.

with the laws, the provisions of the articles of association and the resolutions of the supervisory board. The supervisory board may grant sole power or joint power of representation. The supervisory board is entitled to enact internal rules of procedure for the management board, defining, *inter alia*, the business areas, tasks and responsibilities of each Member of the Management Board.

4. The management board requires the approval for such actions which the respective articles of association or the supervisory board, to the extent permissible under stock corporation law and the articles of association, declare as being subject to approval. In case of contradictory provisions in the articles of association or in resolutions of the supervisory board, such regulation shall apply which is more restrictive for the management board.
5. In case sole power of representation is granted, it is limited internally in such way that a second signature and, therefore, the approval of a further Member of the Management Board is required for all actions which require, pursuant to the internal rules of procedure of the management board, the prior approval of the supervisory board.

**§ 2**  
**Vergütung**

1. TL erhält ein jährliches Bruttogehalt von EUR 280.000 („**Grundgehalt**“), zahlbar in zwölf gleichen Raten jeweils am Ende eines Monats. Soweit die Tätigkeit von TL in einem Vertragsjahr unterjährig beginnt oder endet, ist das Jahresgrundgehalt zeitanteilig geschuldet. Mit der Vergütung sind sämtliche Überstunden abgegolten.
2. Zusätzlich zum Grundgehalt erhält TL eine jährliche erfolgsabhängige Tantieme, die sich nach Maßgabe der in **Anlage 2.2** vorgesehenen Regelung errechnet.
3. Vorbehaltlich der Regelungen in § 2 Abs. 2 in Verbindung mit **Anlage 2.2** ist die erfolgsabhängige Tantieme in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen und ist dann auch fällig.
4. Erbringt TL während seiner Amtszeit besondere Leistungen, die sich für die Gesellschaft oder ihre Tochtergesellschaften nachhaltig vorteilhaft auswirken und die bei Abschluss dieser Vereinbarung noch nicht absehbar waren, hat TL Anspruch auf eine Sondervergütung. Die Höhe der Sondervergütung richtet sich nach dem für die Gesellschaft oder ihre Tochtergesellschaften erzielten Vorteil und wird vom Aufsichtsrat nach dessen Ermessen unter Berücksichtigung einer nachhaltigen Unternehmensentwicklung und der Angemessenheit der Gesamtbezüge von TL bestimmt.

**§ 2**  
**Remuneration**

1. TL is entitled to an annual gross salary in the amount of EUR 280,000 (“**Base Salary**”), payable in twelve identical rates at the end of each calendar month. To the extent the functions of TL start or end during a contract year, the Base Salary is owed *pro rata temporis*. The remuneration includes all overtime.
2. In addition to the Base Salary, TL is entitled to an annual performance-based management bonus which is calculated in accordance with the provisions set forth in **Annex 2.2**.
3. Subject to the provisions in Section 2 para. 2 in conjunction with **Annex 2.2**, the performance-based management bonus shall be calculated and is due in the month in which the annual financial statements are approved.
4. In case TL renders, during his term of office, extraordinary services which lead to sustainably beneficial effects for the Company or its subsidiaries and which were not foreseeable at the time of the conclusion of this Agreement, TL is entitled to a special remuneration. The amount of the special remuneration shall be based on the benefits achieved for the Company or its subsidiaries and is determined by the supervisory board in its discretion under consideration of a sustainable development of the Company and the adequateness of the entire remuneration of TL.



**§ 3****Gehaltsfortzahlung bei Krankheit  
oder Tod**

1. Wird TL an der Ausübung seiner Tätigkeit durch Krankheit oder andere durch ihn nicht verschuldete Gründe verhindert, so erhält er für die Dauer von sechs Monaten, längstens jedoch bis zur Beendigung dieses Vertrages, sein zeitanteiliges Grundgehalt gemäß § 2 Abs. 1 sowie die zeitanteilige Tantieme gemäß § 2 Abs. 2 weiter.
2. Im Falle des Todes von TL erhält seine Witwe ein Drittel der Gesamtbezüge gemäß vorstehendem § 2 Abs. 1 und 2 für das zum Zeitpunkt des Todes laufende Geschäftsjahr. Bis zum Zeitpunkt des Todesfalles gezahlte Leistungen werden dabei nicht angerechnet.

**§ 4****Dienstwagen / Reisekosten**

1. Die Gesellschaft stellt TL einen Dienstwagen zur Verfügung, der auch privat genutzt werden kann. Die private Nutzung ist von TL gemäß den jeweils gültigen deutschen steuerlichen Vorschriften als geldwerter Vorteil zu versteuern. Der Anschaffungswert ist auf EUR 70.000 vor MwSt. begrenzt.
2. Die Gesellschaft erstattet TL belegte Reisekosten und Bewirtungsauslagen entsprechend den jeweils gültigen Festlegungen der Gesellschaft und den jeweils gültigen deutschen steuerrechtlichen Richtlinien.

**§ 3****Continued Payment in Case of Sickness  
or Death**

1. In case TL cannot fulfil his duties due to sickness or other reasons for which he is not responsible, he is entitled to a *pro rata temporis* payment of his Base Salary pursuant to Section 2 para. 1 and the performance-based management bonus pursuant to Section 2 para. 2 for a period of six months, at the longest, however, until the termination of this agreement.
2. In case of death of TL, his widow is entitled to the payment of one third of the total salary pursuant to Section 2 paras. 1 and 2 above for the business year in which the death occurred. Payments made prior to the event of death are not taken into account.

**§ 4****Company Car / Travel Expenses**

1. The Company shall make available to TL a company car which may also be used for private purposes. The private use is taxable by TL as financial benefit (*geldwerter Vorteil*) according to applicable German tax law, as amended from time to time. The acquisition value is limited to EUR 70,000 (excluding VAT).
2. The Company reimburses to TL travel and hospitality expenses upon presentation of receipts in accordance with the rules of the Company and the applicable German taxation guidelines, as amended from time to time.

**§ 5**  
**Urlaub**

TL hat Anspruch auf einen angemessenen Jahresurlaub, dessen Zeitpunkt und Dauer er selbst festlegt. Seinen Urlaub hat er in Abstimmung mit den übrigen Vorstandsmitgliedern so zu disponieren, dass die Interessen des Unternehmens vorrangig gewahrt bleiben.

**§ 6**  
**Sonstige Leistungen**

1. Die Gesellschaft erstattet TL, wenn und soweit er von der Versicherungspflicht befreit ist, jeweils 50 % der Höchstbeiträge zur gesetzlichen Rentenversicherung, Krankenversicherung, Pflegeversicherung und Arbeitslosenversicherung. Bei Inanspruchnahme einer privaten Krankenversicherung und privater Pflegeversicherung erstattet die Gesellschaft die Beiträge bis zu den jeweils gesetzlich vorgeschriebenen Höchstbeiträgen.
2. Die Gesellschaft schließt für TL im Rahmen einer Gruppenunfallversicherung eine Unfall- und Invaliditätsversicherung ab. Der Versicherungsschutz im Rahmen dieser Versicherung umfasst alle beruflichen und außerberuflichen Unfälle. Die Versicherungssumme ist auf EUR 1.000.000 bei Tod und auf EUR 2.000.000 bei Invalidität abgeschlossen. Der Versicherungsschutz erlischt, sobald TL aus dem Dienstverhältnis mit der Gesellschaft ausscheidet. Die Versicherungsprämien trägt die Gesellschaft.

**§ 5**  
**Vacation**

TL is entitled to an appropriate annual vacation, the point of time and the duration of which are determined by himself. He shall determine his vacation in coordination with the other Members of the Management Board in such way that the interests of the Company are predominantly respected.

**§ 6**  
**Additional Services**

1. If and to the extent TL is not subject to the statutory insurance obligation, the Company reimburses to TL 50 % of the maximum contributions to each of the statutory pension, health, long-term care and unemployment insurance. If TL engages in a private health and long-term care insurance, the Company reimburses to TL the contributions up to the maximum contributions as determined by law.
2. The Company shall conclude an accident and invalidity insurance for the benefit of TL as part of a group accident insurance. The insurance protection within this insurance covers all business and non-business related accidents. The insurance sum is EUR 1,000,000 in case of death and EUR 2,000,000 in case of invalidity. The insurance protection ends as soon as the services of TL for the Company are terminated. The insurance premiums shall be borne by the Company.

3. Eine Altersversorgungszusage besteht nicht. Auf Wunsch wird die Möglichkeit einer Versorgungszusage mittels Entgeltumwandlung in folgenden Durchführungsarten, jedoch unter Bedingung der Kostenneutralität für die Gesellschaft, gewährt:
  - Direktversicherung (nach § 40b EStG, pauschal besteuert);
  - Weiterer mittelbarer Durchführungsweg mit steuerlicher Behandlung (gemäß § 3 Nr. 63 EstG);
  - Kongruent rückgedeckte Unterstützungskasse (beitragsorientierte Leistungszusage);
  - Direktzusage mittels Gehaltsverzicht (mit direkter Rückdeckung gegen jeweils einmaligen Betrag) als beitragsorientierte Leistungszusage.
4. Die bestehende D&O Versicherung der Gesellschaft wurde per 30. Juni 2010 an die Erfordernisse des AktG angepasst (Selbstbehalt des Vorstandsmitglieds).
3. There are no pension commitments. If requested, the possibility of a pension commitment by conversion of the remuneration in the following ways will be granted, however, on the condition of cost-neutrality for the Company:
  - Direct insurance (pursuant to Section 40b of the German Income Tax Act (*Einkommenssteuergesetz, EStG*), lump-sum taxed);
  - Further indirect execution with tax treatment (pursuant to Section 3 no. 63 EStG);
  - Congruently reinsured support funds (benefit promise according to contributions);
  - Direct promise by means of salary waiver (with direct reinsurance against one-time payment) as benefit promise according to contributions.
4. The existing D&O insurance of the Company was adapted to the requirements of the AktG as of 30 June 2010 (deductible of the Member of the Management Board).

#### § 7

#### **Nebentätigkeit**

1. TL verpflichtet sich, seine ganze Arbeitskraft in den Dienst der Gesellschaft zu stellen und die Interessen der Gesellschaft nach besten Kräften zu fördern. Soweit das Wohl der Gesellschaft es erfordert, wird TL der Gesellschaft jederzeit auch über die betriebsübliche Arbeitszeit hinaus zur Verfügung stehen.

#### § 7

#### **Secondary Occupations**

1. TL undertakes to devote his entire working capacity to the service of the Company and to make best efforts to promote the interests of the Company. To the extent required for the benefit of the Company, TL will be available for the Company at any time, also in extension of the customary working time.

2. Jede weitere entgeltliche oder unentgeltliche Beschäftigung und / oder unmittelbare oder mittelbare Beteiligung an anderen Unternehmen jeder Art bedarf der vorherigen schriftlichen Zustimmung des Aufsichtsrats. Dies gilt nicht für den üblichen Erwerb von Aktien oder sonstigen Geschäftsanteilen zu Investitionszwecken. Die Mitgliedschaft in Vertretungsgremien oder in Aufsichtsgremien anderer Gesellschaften ist dem Aufsichtsrat schriftlich anzuzeigen.

**§ 8**  
**Diensterfindungen**

1. Für Erfindungen und qualifizierte technische Verbesserungsvorschläge gelten die Regelungen des Gesetzes über Arbeitnehmererfindungen in seiner jeweils gültigen Fassung entsprechend.
2. Die Parteien sind sich darüber einig, dass eine etwaige Vergütung für eine von der Gesellschaft in Anspruch genommene Diensterfindung mit der Zahlung des Grundgehalts gemäß obigem § 2 Abs. 1 vollständig abgegolten ist.

**§ 9**  
**Geheimhaltung /  
Rückgabe von Unterlagen**

1. TL ist verpflichtet, insbesondere auch während der Zeit nach Beendigung dieses Dienstvertrages, alle vertraulichen Informationen über das Geschäft, die Vertragsbeziehungen, Abschlüsse, Geschäfte oder besonderen Angelegenheiten der Gesellschaft oder von verbundenen

2. Any other occupation, against payment or nonpaid, and / or any direct or indirect participation in other companies of any kind require the prior written consent of the supervisory board. This does not apply for the customary acquisition of stock or other shares for investment purposes. The supervisory board has to be informed in writing about memberships in other companies' administrative or supervisory bodies.

**§ 8**  
**Service Inventions**

1. With regard to inventions and qualified technical improvement proposals the provisions of the German Employee Inventions Act (*Gesetz über Arbeitnehmererfindungen*), as amended from time to time, shall apply *mutatis mutandis*.
2. The Parties agree that any possible remuneration for an invention called upon by the Company is fully compensated by the payment of the Base Salary pursuant to Section 2 para. 1 above.

**§ 9**  
**Confidentiality /  
Return of Documents**

1. TL is obliged, in particular also after the termination of this service agreement, to keep confidential all confidential information regarding the business, the contractual relationships, agreements, business affairs or special matters of the Company or of affiliated companies and to use this information not for his own

Unternehmen geheim zu halten und diese Informationen nicht für seinen eigenen oder den Nutzen anderer zu verwenden. „**Vertraulich**“ in diesem Sinne sind insbesondere die in vorstehendem § 8 bezeichneten Erfindungen, Urheberrechte sowie das Know-how.

2. Während des Dienstverhältnisses wird TL auf Verlangen der Gesellschaft, spätestens aber bei Beendigung des Dienstverhältnisses unaufgefordert, der Gesellschaft alle in seinem Besitz befindlichen oder seinem Zugriff unterliegenden Akten und sonstigen den Geschäftsbetrieb der Gesellschaft oder verbundener Unternehmen betreffende Unterlagen - insbesondere alle Pläne, Kunden, Preislisten, Druckmaterial, Urkunden, Zeichnungen, Notizen, Entwürfe - sowie Kopien davon zurückgeben, ohne Rücksicht darauf, ob er sie von der Gesellschaft selbst oder von verbundenen Unternehmen erhalten hat. Sinngemäß gilt das Gleiche für nicht körperliche Informationen und Materialien, z.B. Computerprogramme oder auf Datenträgern gespeicherte Informationen.

**§ 10  
Laufzeit**

benefit or for the benefit of third parties. “**Confidential**” in this sense are in particular the inventions as mentioned in Section 8 above, copyrights as well as the know-how.

2. TL shall return, during the term of his services, on the Company's request, at the latest, however, upon termination of his services without request by the Company being necessary, all files and further documents related to the Company's business or the business of affiliated companies - in particular all plans, clients, price lists, print material, deeds, drawings, notes, drafts - as well as copies thereof which are in his possession or which he has access to, regardless of whether he has received them from the Company or an affiliated company. The same shall apply *mutatis mutandis* to all non-physical information and materials, e.g. computer software and information saved on storage mediums.

**§ 10  
Term**

1. Diese Vereinbarung wird mit Wirkung zum 01.10.2008 geschlossen und endet am 30. September 2014, ohne dass es einer Kündigung bedarf. Sie tritt an die Stelle des (bisherigen) Dienstvertrags in der Fassung des Ersten Nachtrags und des Zweiten Nachtrags. Sämtliche bisherigen Vereinbarungen zwischen den Parteien werden hiermit ausdrücklich aufgehoben.
  2. Das Recht zur außerordentlichen Kündigung dieser Vereinbarung aus wichtigem Grund durch beide Seiten bleibt unberührt. Im Fall eines Widerrufs der Bestellung von TL als Vorstandsmitglied / einer Freistellung von TL sind etwaige Zahlungen aus dem bestehenden Vertragsverhältnis auf maximal das Zweifache des Grundgehalts gemäß § 2 Abs. 1 begrenzt, zuzüglich der Weiternutzung für maximal 2 Jahre des Dienstwagens, alternativ des entsprechenden geldwerten Vorteils. Absatz 5 dieses § 10 bleibt unberührt.
  3. Die Gesellschaft ist berechtigt, TL während der Laufzeit dieser Vereinbarung jederzeit von seiner Tätigkeit für die Gesellschaft freizustellen. Dies gilt insbesondere im Fall eines Widerrufs der Bestellung von TL als Vorstandsmitglied.
1. This Agreement is entered into as of 1 October 2008 and ends on 30 September 2014 without a termination declaration being necessary. It shall replace the (hitherto existing) Service Agreement in the version of the First Amendment and of the Second Amendment. All hitherto existing agreements between the Parties are hereby expressly cancelled.
  2. The right of both Parties to terminate this Agreement for good cause remains unaffected. In case of revocation of the appointment of TL as Member of the Management Board / a release of TL, all potential payments according to the existing contractual relationship are limited to twice the Base Salary pursuant to Section 2 para. 1 plus the continued use of the company car for not more than two years, alternatively the respective financial benefit (*geldwerter Vorteil*). Para. 5 of this Section 10 remains unaffected.
  3. The Company is entitled to release TL from his services for the Company at any time during the term of this Agreement. This applies in particular in case of a revocation of the appointment of TL as Member of the Management Board.

**§ 11**  
**Verschiedenes**

1. Änderungen und / oder Ergänzungen dieser Vereinbarung, einschließlich dieses Schrifterfordernisses, bedürfen zu ihrer Wirksamkeit der Schriftform. Dies gilt auch für die Aufhebung dieser Klausel.
2. Sollten einzelne Bestimmungen dieser Vereinbarung unwirksam sein oder werden, so berührt dies die Gültigkeit der übrigen Bestimmungen nicht. Anstelle der unwirksamen Bestimmung soll eine angemessene Regelung treten, die dem am nächsten kommt, was die Parteien nach ihrer wirtschaftlichen Zwecksetzung gewollt haben. Das gleiche gilt im Falle einer vertraglichen Lücke.
3. Diese Vereinbarung unterliegt dem Recht der Bundesrepublik Deutschland. Gerichtsstand für alle sich aus oder in Zusammenhang mit dieser Vereinbarung ergebenden Streitigkeiten ist, soweit gesetzlich zulässig, München.
4. Die deutsche Fassung dieser Vereinbarung ist maßgeblich.

**§ 11**  
**Miscellaneous**

1. Amendments and / or supplements to this Agreement, including this written form requirement, must be made in writing in order to be effective. This does also apply to the cancellation of this clause.
2. In case individual provisions of this Agreement are or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by an adequate provision which comes closest to the economic intentions of the Parties. The same shall apply in case of a gap in this Agreement.
3. This Agreement is subject to the laws of the Federal Republic of Germany. Place of jurisdiction for all disputes arising out of or in connection with this Agreement is, as far as legally permissible, Munich.
4. The German version of this Agreement shall prevail.

Odelzhausen, den 04.07.2011

/s/ Dr. Franz Scherer

/s/ Thomas Liedl

---

**W.E.T. Automotive Systems**

---

**Thomas Liedl**

**Aktiengesellschaft,**

hier vertreten durch den Aufsichtsrat /

here represented by the supervisory board,

dieser vertreten durch den Aufsichtsratsvorsitzenden /

the latter represented by its chairman,

Dr. Franz Scherer



**Anlage 2.2**

Zusätzlich zum Grundgehalt erhält das Vorstandsmitglied eine jährliche erfolgsabhängige Tantieme (der „**Bonus**“), die an die Entwicklung des Unternehmenswertes (EVA, Stern Stewart) der W.E.T-Gruppe nach Maßgabe der folgenden Regelungen gekoppelt ist:

1. Basis für den Bonus ist das Erreichen von bestimmten EVA-Werten, die sich auf die gesamte W.E.T.-Gruppe beziehen (die „**EVA-Zielwerte**“). Die EVA-Zielwerte werden für einen Zeitraum von jeweils 3 (drei) Jahren einvernehmlich zwischen dem Vorstand und dem Aufsichtsrat festgelegt, erstmals beginnend mit dem Geschäftsjahr 2011 für die Jahre 2011 bis 2013.
2. Die EVA-Zielwerte basieren hierbei auf einem mit dem Vorstand abgestimmten Berechnungsmodell von Stern Stewart und basieren auf den vorläufigen Abschlusszahlen für das Geschäftsjahr 2010 und den Budgetzahlen für die Jahre 2011 bis 2013. Ob die EVA-Zielwerte erreicht werden, richtet sich nach der als Anlage beigefügten Berechnung.
3. Bei Erreichen der EVA-Zielwerte ergibt sich ein Bonus in Höhe von 100 %, der 50 % des Grundgehaltes des Vorstandsmitglieds nach § 2 Abs. 1 des Dienstvertrages entspricht (der „**Basis-Bonus**“). Der Zielerreichungsgrad kann für die Zwecke der Berechnung des Bonuses niedrigstenfalls -100% und maximal +300% (der „**Maximal-Bonus**“) betragen. Bei Über- oder Unterschreitungen innerhalb dieser

**Annex 2.2**

In addition to the Base Salary, the Member of the Management Board is entitled to an annual performance-based management bonus (the “**Bonus**”) which is linked to the development of the enterprise value (EVA, Stern Stewart) of the W.E.T. Group in according to the following provisions:

1. The Bonus is based on the achievement of certain EVA values with regard to the entire W.E.T. Group (the “**EVA Target Values**”). The EVA Target Values are consensually determined by the management board and the supervisory board for a period of 3 (three) years, for the first time beginning with the business year 2011 for the years 2011 to 2013.
2. The EVA Target Values are based on a calculation model according to Stern Stewart, as agreed upon with the management board, and are based on the preliminary year-end figures for the business year 2010 and the budget figures for the years 2011 to 2013. Whether or not the EVA Target Values are achieved, depends on the calculation attached hereto as annex.
3. Upon achievement of the EVA Target Values, a Bonus of 100% arises which equals 50% of the Base Salary of the Member of the Management Board pursuant to Section 2 para. 1 of the service agreement (the “**Base Bonus**”). The degree of target achievement may be, for calculation purposes, as a minimum -100% and as a maximum +300% (the “**Maximum Bonus**”). In case of exceedance or shortfall within

Bandbreite ist der Zielerreichungsgrad linear zu ermitteln.

4. Nach Ablauf des Geschäftsjahres wird auf Grundlage des konsolidierten IFRS Konzernabschlusses der W.E.T.-Gruppe der Zielerreichungsgrad für die EVA-Zielwerte durch den Aufsichtsrat festgestellt und der sich danach zu errechnende Bonus ermittelt. Bei Änderungen des Konsolidierungskreises während des laufenden Geschäftsjahres sind die jeweiligen festgelegten EVA-Zielwerte - soweit erforderlich - anzupassen. Die Anpassung erfolgt *pro rata temporis* einvernehmlich zwischen dem Aufsichtsrat und allen Vorstandsmitgliedern unter Bezugnahme und Berücksichtigung der maßgeblichen Vorjahreszahlen der neu zu konsolidierenden bzw. zu dekonsolidierenden Gesellschaft(en) durch entsprechende Erhöhung bzw. Reduzierung der betroffenen EVA-Zielwerte.
5. Der Bonus berechnet sich als Multiplikation von Basis-Bonus mal Zielerreichungsgrad. Insofern kann der Bonus auch negativ sein. Er kann aber nicht höher als das Dreifache des Basis-Bonus sein.
6. Das Entstehen und die Auszahlung des Bonus unterliegt Restriktionen („**Bonus-Bank**“), um die Nachhaltigkeit der Anreizwirkung durch die erfolgsabhängige Tantieme zu gewährleisten:
  - a. Sofern der Zielerreichungsgrad 0% bis einschließlich +100% beträgt,

this range, the degree of target achievement is to be determined straight proportionally.

4. After the end of the business year the degree of target achievement for the EVA Target Values is determined by the supervisory board based on the IFRS consolidated financial statements of the W.E.T. Group, and the Bonus resulting thereafter is to be determined. In case of changes of the consolidated companies during the business year, the respectively determined EVA Target Values are to be adjusted, if necessary. The adjustment shall be made *pro rata temporis* consensually between the supervisory board and all Members of the Management Board with reference to and taking into consideration of the relevant prior-year figures of the company/-ies to be additionally consolidated or to be unconsolidated by increase or decrease of the concerned EVA Target Values, respectively.
5. The Bonus is calculated by multiplying the Base Bonus with the degree of target achievement. Therefore, the Bonus can also be negative. But it may not exceed the amount of three times the Base Bonus.
6. The arising and the payout of the Bonus is subject to certain restrictions (“**Bonus Bank**”), in order to guarantee the sustainability of the incentive by the performance-based management bonus:
  - a. If the degree of target achievement is 0% up to +100%, the Bonus to

- ist der hierauf zu zahlende Bonus vollständig in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Der Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Steuern und sonstigen Abgaben (die „**Abgaben**“) auszuzahlen.
- b. Sofern der Zielerreichungsgrad mehr als +100% beträgt, ist der Bonus
- i. in Höhe des nach Ziffer 6 lit. a errechneten Betrages in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Dieser Teil des Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuzahlen;
- ii. in Höhe des Restbetrages („**Überschießender Bonus**“) in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitglieds einzustellen; die Einstellung in die Bonus-Bank erfolgt 12 Monate nach Feststellung des Überschießenden Bonus.
- c. Sofern der Zielerreichungsgrad zwischen -100% (einschließlich) und 0% (ausschließlich) liegt, erfolgt in dem Monat, in dem der Jahresabschluss festgestellt wird, keine Auszahlung eines Basis-Bonus, sondern der negative Bonus wird als Abzugsposten in die bei der Gesellschaft rechnerisch
- be paid thereon is to be fully determined in the month in which the annual financial statements are approved. The Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of taxes and additional levies (the “**Levies**”).
- b. If the degree of target achievement is higher than +100%, the Bonus is
- i. to be determined in the amount to be calculated pursuant to Section 6 lit. a in the month in which the annual financial statements are approved. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies;
- ii. to the amount remaining (“**Excessive Bonus**”) to be credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form; the Excessive Bonus is to be credited to the Bonus Bank 12 months after its determination.
- c. If the degree of target achievement is between -100% (inclusive) and 0% (exclusive), no Base Bonus is paid out in the month in which the annual financial statements are approved, but the negative Bonus is to be accounted for deduction in the Bonus Bank of the Member of the Management Board which is to be

- geführte Bonus-Bank des Vorstandsmitglieds eingestellt („**Negativer Bonus**“).
- d. Die in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitglieds eingestellten Überschießenden Boni sind mit eingestellten Negativen Boni innerhalb der Bonus-Bank zu verrechnen und der so ermittelte Saldo in der Bonus-Bank festzuhalten („**Saldo Bonus**“). Der Saldo Bonus kann negativ, jedoch kann er in Summe nicht niedriger als -100% sein.
- e. Jedes Jahr, beginnend mit dem Geschäftsjahr 2012, ist ein positiver Saldo Bonus in Höhe eines Betrages, der 33 % des Saldo Bonuses entspricht, in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen, d.h. der positive Saldo Bonus in der Bonus-Bank verringert sich entsprechend. Dieser Teil des Bonuses ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuführen.
7. Bei Beendigung des Dienstvertrages des Vorstandsmitglieds ist die Bonus-Bank 12 Monate nach Beendigung des Dienstvertrages (die „**Nachlaufphase**“) auf Basis des Saldo Bonuses und unter Berücksichtigung des Grundes der Beendigung abzurechnen. Das bedeutet, dass sich der bei der Gesellschaft in der rechnerisch geführten Bonus-Bank des Vorstandsmitglieds ausgewiesene Saldo Bonus in Abhängigkeit vom Zielerreichungsgrad in der Nachlaufphase noch verändern kann.
- run by the Company in virtual form (“**Negative Bonus**”).
- d. The Excessive Bonuses credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form are to be settled with Negative Bonuses credited to the Bonus Bank, and the balance resulting therefrom is to be registered with the Bonus Bank (“**Balance Bonus**”). The Balance Bonus can be negative, but its sum cannot be less than -100%.
- e. Starting with the business year 2012, each year a positive Balance Bonus is to be settled in the amount of 33% of the Balance Bonus in the month in which the annual financial statements are approved, *i.e.* the positive Balance Bonus in the Bonus Bank decreases accordingly. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
7. Upon termination of the service agreement of the Member of the Management Board, the Bonus Bank is to be finally settled 12 months after the termination of the service agreement (the “**Follow-Up Period**”), based on the Balance Bonus and under consideration of the reason for the termination. This means that the Balance Bonus shown in the Bonus Bank of the Member of the Management Board, which is to be run by the Company in virtual form, can change depending on the degree of target achievement in the Follow-Up Period.

- a. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren, so kann sich der Saldo Bonus in der Nachlaufphase verringern oder erhöhen.
  - b. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Bad Leaver (s.u. lit. g) qualifizieren, so ist der Saldo Bonus nach der Nachlaufphase maximal Null und es erfolgt auf jeden Fall keine Ausschüttung an das Vorstandsmitglied. Der Saldo Bonus kann sich aber in der Nachlaufphase auch verringern und damit negativ werden.
  - c. Eine Veränderung greift nur dann ein, wenn der Zielerreichungsgrad innerhalb der Nachlaufphase kleiner als 0% ist oder größer als +200%. Bei einem Zielerreichungsgrad innerhalb der Nachlaufphase, der gleich oder größer als 0%, aber gleich oder kleiner als +200% ist, erfolgt keine Veränderung. Ist der Zielerreichungsgrad größer als +200%, so ist für die Veränderung des Saldo Bonus nur ein die Schwelle von +200% überschießender Zielerreichungsgrad bis maximal +300% für die Veränderung anzusetzen, so dass eine Veränderung in diesem Fall maximal +100% betragen kann.
  - d. Bei einer unterjährigen Beendigung des Dienstvertrages wird der Aufsichtsrat der Gesellschaft zum Ende der Nachlaufphase die Höhe
- a. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), the Balance Bonus can decrease or increase during the Follow-Up Period.
  - b. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver (see lit. g below), the Balance Bonus equals at most zero at the end of the Follow-Up Period, and there is no payout to the Member of the Management Board. However, the Balance Bonus can also decrease in the Follow-Up Period, and thus become negative.
  - c. There will only be a change in case the degree of target achievement within the Follow-Up Period is less than 0% or higher than +200%. If the degree of target achievement within the Follow-Up Period is higher than or equal to 0%, but less than or equal to +200%, there will be no change. If the degree of target achievement is higher than +200%, only a degree of target achievement exceeding +200% up to +300% is applicable for the change of the Balance Bonus, so that in this case a change can be at most +100%.
  - d. If the service agreement is terminated in the course of a year, the supervisory board of the Company will determine the degree of target

des Zielerreichungsgrades nach billigem Ermessen festlegen.

- e. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren und sofern am Ende der Nachlaufzeit ein positiver Saldo Bonus besteht, wird eine Zahlung in Höhe eines Betrages, der dem dann festgestellten positiven Saldo Bonus entspricht, mit einem Abschlag von 10 % auf diesen Betrag fällig. Der so ermittelte Betrag ist auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszuführen.
- f. Sofern am Ende der Nachlaufzeit ein negativer Saldo Bonus festgestellt wird, und
- i. die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen erfolgt, die ihn als Good Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe von 50 % des dann festgestellten negativen Saldo Bonus (ohne darauf entfallende Abgaben) an die Gesellschaft zurückzuführen; oder
- ii. die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen erfolgt, die ihn als Bad Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe des dann festgestellten negativen Saldo Bonus (ohne

achievement at the end of the Follow-Up Period in its equitable discretion.

- e. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), and if there is, at the end of the Follow-Up Period, a positive Balance Bonus, a payment becomes due in the amount which equals the positive Balance Bonus determined at that time, with a deduction of 10 %. The amount thus determined is to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
- f. If, at the end of the Follow-Up Period, a negative Balance Bonus is determined, and
- i. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver, the Member of the Management Board has to pay back to the Company an amount of 50 % of the negative Balance Bonus then determined (excluding Levies related thereto); or
- ii. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver, the Member of the Management Board has to pay back to the Company the amount of the negative Balance

darauf entfallende Abgaben) an die Gesellschaft zurückzuzahlen.

Eine Rückzahlungsverpflichtung des Vorstandsmitglieds besteht nur soweit und nur in der Höhe wie das Vorstandsmitglied in der Vergangenheit aufgrund der erfolgsabhängigen Tantieme Bonuszahlungen erhalten hat. Das Vorstandsmitglied haftet für die Rückzahlungsverpflichtung nicht mit seinem von der Gesellschaft erhaltenen Grundgehalt.

Der Aufsichtsrat kann nach billigem Ermessen auf eine Rückzahlung eines Bonus nach diesem lit. f ganz oder teilweise verzichten.

Die jeweils so ermittelten Beträge sind von dem Vorstandsmitglied innerhalb von 60 Werktagen nach Mitteilung durch die Gesellschaft auf ein von der Gesellschaft dem Vorstandsmitglied mitgeteiltes Konto einzuzahlen. Hieraus erfolgende Erstattungen für Abgaben auf die ursprünglichen Boni-Zahlungen stehen der Gesellschaft zu.

- g. Als „**Bad Leaver**“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag durch die Gesellschaft aus wichtigem Grund nach § 626 BGB beendet oder dessen Bestellung als Vorstandsmitglied aus wichtigem Grund nach § 84 Abs. 3 AktG widerrufen wird.

Bonus then determined (excluding Levies related thereto).

A payback obligation of the Member of the Management Board exists only to the extent and up to the amount in which the Member of the Management Board has received Bonus payments in the past due to the performance-based management bonus. As regards the payback obligation, the Member of the Management Board is not liable with his Base Salary received by the Company.

The supervisory board may waive a payback of the Bonus pursuant to this lit. f fully or partly in its equitable discretion.

The respective amounts thus determined are to be transferred by the Member of the Management Board to a bank account named by the Company within 60 business days following the notification by the Company. The Company is entitled to reimbursements of Levies arising therefrom which relate to the original Bonus payments.

- g. “**Bad Leaver**” is a Member of the Management Board whose service agreement is terminated by the Company for good cause pursuant to Section 626 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) or whose appointment as Member of the Management Board is revoked for good cause pursuant to Section 84 para. 3 of the German Stock Corporation Act (*Aktiengesetz, AktG*).

- |  |   |
|--|---|
| <p>h. Als „<b>Good Leaver</b>“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag aus Gründen endet, die ihn nicht als Bad Leaver qualifizieren.</p> | <p>h. “<b>Good Leaver</b>” is a Member of the Management Board whose service agreement ends for reasons which do not qualify him as Bad Leaver.</p> |
| <p>8. Ein Berechnungsbeispiel ist als Anlage beigefügt. [fehlt bislang]</p>  | <p>8. A sample calculation is attached as annex. [hitherto missing]</p>   |



**Dienstvertrag**

zwischen

der **W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 -vertreten durch den Aufsichtsrat,  
 dieser wiederum vertreten durch  
 den Aufsichtsratsvorsitzenden,  
 Herrn Dr. Franz Scherer -  
 (die „**Gesellschaft**“),

und

Herrn **Caspar Baumhauer**,  
 Finsterwalder Str. 28, 80997 München  
 („**CB**“, gemeinsam mit der Gesellschaft  
 die „**Parteien**“).

**I.**  
**Präambel**

1. Die Parteien haben am 15. März 2005 einen Dienstvertrag geschlossen (der „**Dienstvertrag**“), der durch Nachträge vom 12. März 2010 („**Erster Nachtrag**“) und 4. Juli 2011 („**Zweiter Nachtrag**“) geändert und ergänzt wurde.
2. Die Amerigon Europe GmbH mit Sitz in Augsburg, eingetragen im Handelsregister des Amtsgerichts Augsburg unter HRB 25596 („**Amerigon Europe**“), hat am 11. April 2011 ein freiwilliges öffentliches Übernahmeangebot gemäß §§ 29 ff. des Wertpapiererwerbs- und Übernahmegesetzes (WpÜG) zum Erwerb sämtlicher Aktien der

**Service Agreement**

between

**W.E.T. Automotive Systems Aktiengesellschaft**,  
 Rudolf-Diesel-Str. 12, 85235 Odelzhausen,  
 Germany  
 -represented by the supervisory board,  
 the latter represented by its chairman,  
 Dr. Franz Scherer -  
 (the „**Company**“),

and

Mr. **Caspar Baumhauer**,  
 Finsterwalder Str. 28, 80997 Munich,  
 Germany  
 („**CB**“, together with the Company  
 the „**Parties**“).

**I.**  
**Preamble**

1. The Parties have entered into, on 15 March 2005, a service agreement (the „**Service Agreement**“), which was amended and supplemented by amendments dated 12 March 2010 („**First Amendment**“) and 4 July 2011 („**Second Amendment**“).
2. Amerigon Europe GmbH with its registered seat in Augsburg, Germany, registered with the commercial register at the local court of Augsburg under HRB 25596 („**Amerigon Europe**“), has issued, on 11 April 2011, a voluntary public tender offer pursuant to Sections 29 *et seq.* of the German Securities Acquisition and Takeover Act (*WpÜG*) for the acquisition of all shares of the

Gesellschaft abgegeben (das „**Übernahmeangebot**“). Amerigon Europe ist eine 100%-ige Tochtergesellschaft der Amerigon, Inc. mit Sitz in Northville, Michigan, USA („**Amerigon, Inc.**“).

3. Das Übernahmeangebot erfolgte in Übereinstimmung mit dem am 28. Februar 2011 zwischen der Gesellschaft, Amerigon Europe und Amerigon, Inc. geschlossenen Business Combination Agreement („**BCA**“), das nähere Regelungen zur (aus damaliger Sicht: künftigen) Beteiligung der Amerigon Europe an der Gesellschaft enthält. Unter anderem sieht das BCA in Ziffer III.2. vor, dass Amerigon Europe und die Gesellschaft nach dem Vollzug des Übernahmeangebots, vorbehaltlich der Zustimmung der entsprechenden Gesellschaftsorgane, insbesondere der Hauptversammlung der Gesellschaft, einen Beherrschungs- und Gewinnabführungsvertrag gemäß §§ 291 ff. AktG schließen (der „**Beherrschungs- und Gewinnabführungsvertrag**“). Darüber hinaus sieht das BCA in Ziffer III.4. vor, dass die Gesellschaft, vertreten durch den Aufsichtsrat, und die derzeitigen Mitglieder des Vorstands der Gesellschaft (die „**Vorstandsmitglieder**“, jedes einzelne ein „**Vorstandsmitglied**“) neue Dienstverträge mit Wirkung zum Wirksamwerden des Beherrschungs- und Gewinnabführungsvertrages durch Eintragung im Handelsregister schließen (der Zeitpunkt des Wirksamwerdens des Beherrschungs- und Gewinnabführungsvertrages das „**BGAV-Wirksamkeitsdatum**“).

Schließlich sieht das BCA, ebenfalls in

Company (the „**Tender Offer**“). Amerigon Europe is a 100% subsidiary of Amerigon, Inc. with its registered seat in Northville, Michigan, USA („**Amerigon, Inc.**“).

3. The Tender Offer was made in accordance with the Business Combination Agreement entered into on 28 February 2011 by the Company, Amerigon Europe and Amerigon, Inc. („**BCA**“), which contains further provisions regarding the (then: future) participation of Amerigon Europe in the Company. *Inter alia*, the BCA provides in Section III.2. that Amerigon Europe and the Company shall enter into, after the consummation of the Tender Offer, subject to the approval of the respective corporate bodies, in particular the shareholders' meeting of the Company, a domination and profit and loss transfer agreement within the meaning of Sections 291 *et seq.* of the German Stock Corporation Act (*Beherrschungs- und Gewinnabführungsvertrag im Sinne der §§ 291 ff. AktG*) (the „**Domination and Profit and Loss Transfer Agreement**“). Further, the BCA provides in Section III.4. that the Company, represented by the supervisory board, and the current members of the management board of the Company (the „**Members of the Management Board**“, each a „**Member of the Management Board**“) enter into new service agreements as of the Domination and Profit and Loss Transfer Agreement becoming effective by its registration with the commercial register (the effective date of the Domination and Profit and Loss Transfer Agreement the „**DPLTA Effective Date**“). Finally, the BCA provides, also in Section III.4., that the

Ziffer III.4., vor, dass die derzeitigen Dienstverträge der Vorstandsmitglieder vor Abschluss des Beherrschungs- und Gewinnabführungsvertrages dahingehend ergänzt werden, dass jedes Vorstandsmitglied berechtigt ist, von seinem Amt zurückzutreten und seinen Dienstvertrag zu kündigen, wenn die Gesellschaft und das betreffende Vorstandsmitglied nicht bis zum BGAV-Wirksamkeitsdatum einen neuen Dienstvertrag geschlossen haben.

4. Mit dem Abschluss dieser Vereinbarung (die „**Vereinbarung**“) soll der Dienstvertrag in der Fassung des Ersten und des Zweiten Nachtrags weiter ergänzt und -aus Gründen der Übersichtlichkeit - in eine konsolidierte Fassung zusammengeführt werden. Hiernach soll diese Vereinbarung die einzige bindende Vereinbarung zwischen den Parteien sein.

Dies vorausgeschickt, vereinbaren die Parteien hiermit was folgt:

## II.

### § 1

#### Position / Vertretung

1. CB wurde durch Beschluss des Aufsichtsrates vom 9. Juli 2010 für die Zeit vom 1. Juni 2011 bis zum 31. Mai 2014 zum Vorstandsmitglied bestellt.
2. Dienstsitz von CB ist der Sitz der Gesellschaft in Odelzhausen.
3. CB vertritt die Gesellschaft nach Maßgabe des Gesetzes, der

current service agreements of the Members of the Management Board shall be amended, prior to the signing of the Domination and Profit and Loss Transfer Agreement, in such way that each Member of the Management Board has the right to resign from his office and to terminate his service agreement in case the Company and the respective Member of the Management Board have not entered into a new service agreement prior to the DPLTA Effective Date.

4. By the conclusion of this agreement (the “**Agreement**”), the Service Agreement, as amended by the First and Second Amendment, shall be further supplemented and -for clarity reasons - merged into one consolidated version. Hereafter, this Agreement shall be the only binding agreement between the Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

## II.

### § 1

#### Position / Representation

1. By resolution of the supervisory board dated 9 July 2010, CB was appointed Member of the Management Board for the time from 1 June 2011 to 31 May 2014.
2. The regular place of office of CB is the registered seat of the Company in Odelzhausen.
3. CB represents the Company in accordance with the laws, the provisions of

Vorschriften des Gesellschaftsvertrages (Satzung) und den Beschlüssen des Aufsichtsrats. Der Aufsichtsrat kann entscheiden, ob Einzel- oder Gesamtvertretungsbefugnis erteilt wird. Der Aufsichtsrat ist berechtigt, eine Geschäftsordnung für den Vorstand zu erlassen, in der unter anderem Geschäftsbereiche, Aufgaben und Verantwortungen der einzelnen Vorstandsmitglieder abgegrenzt werden. CB wird zum Vorstandsvorsitzenden bestimmt.

4. Der Vorstand bedarf der Zustimmung zu den Geschäften, die die jeweilige Satzung oder der Aufsichtsrat, sofern aktienrechtlich und satzungsgemäß zulässig, für zustimmungsbedürftig erklären. Bei unterschiedlichen Regelungen in der Satzung oder in Aufsichtsratsbeschlüssen gilt vorrangig die für den Vorstand restriktivere Regelung.
5. Sofern Einzelvertretungsbefugnis erteilt ist, ist sie im Innenverhältnis dahingehend beschränkt, dass eine Zweitunterschrift und damit die Zustimmung eines anderen Vorstandsmitglieds benötigt wird für alle Geschäfte, die nach der Geschäftsordnung des Vorstands der vorherigen Zustimmung des Aufsichtsrats bedürfen.

the articles of association and the resolutions of the supervisory board. The supervisory board may grant sole power or joint power of representation. The supervisory board is entitled to enact internal rules of procedure for the management board, defining, *inter alia*, the business areas, tasks and responsibilities of each Member of the Management Board. CB will be appointed chairman of the management board.

4. The management board requires the approval for such actions which the respective articles of association or the supervisory board, to the extent permissible under stock corporation law and the articles of association, declare as being subject to approval. In case of contradictory provisions in the articles of association or in resolutions of the supervisory board, such regulation shall apply which is more restrictive for the management board.
5. In case sole power of representation is granted, it is limited internally in such way that a second signature and, therefore, the approval of a further Member of the Management Board is required for all actions which require, pursuant to the internal rules of procedure of the management board, the prior approval of the supervisory board.

**§ 2**  
**Vergütung**

1. CB erhält ein jährliches Bruttogehalt von EUR 450.000 („**Grundgehalt**“), zahlbar in zwölf gleichen Raten jeweils am Ende eines Monats. Soweit die Tätigkeit von CB in einem Vertragsjahr unterjährig beginnt oder endet, ist das Jahresgrundgehalt zeitanteilig geschuldet. Mit der Vergütung sind sämtliche Überstunden abgegolten.
2. Zusätzlich zum Grundgehalt erhält CB eine jährliche erfolgsabhängige Tantieme, die sich nach Maßgabe der in **Anlage 2.2** vorgesehenen Regelung errechnet.
3. Vorbehaltlich der Regelungen in § 2 Abs. 2 in Verbindung mit **Anlage 2.2** ist die erfolgsabhängige Tantieme in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen und ist dann auch fällig.
4. Erbringt CB während seiner Amtszeit besondere Leistungen, die sich für die Gesellschaft oder ihre Tochtergesellschaften nachhaltig vorteilhaft auswirken und die bei Abschluss dieser Vereinbarung noch nicht absehbar waren, hat CB Anspruch auf eine Sondervergütung. Die Höhe der Sondervergütung richtet sich nach dem für die Gesellschaft oder ihre Tochtergesellschaften erzielten Vorteil und wird vom Aufsichtsrat nach dessen Ermessen unter Berücksichtigung einer nachhaltigen Unternehmensentwicklung und der Angemessenheit der Gesamtbezüge von CB bestimmt.

**§ 2**  
**Remuneration**

1. CB is entitled to an annual gross salary in the amount of EUR 450,000 (“**Base Salary**”), payable in twelve identical rates at the end of each calendar month. To the extent the functions of CB start or end during a contract year, the Base Salary is owed *pro rata temporis*. The remuneration includes all overtime.
2. In addition to the Base Salary, CB is entitled to an annual performance-based management bonus which is calculated in accordance with the provisions set forth in **Annex 2.2**.
3. Subject to the provisions in Section 2 para. 2 in conjunction with **Annex 2.2**, the performance-based management bonus shall be calculated and is due in the month in which the annual financial statements are approved.
4. In case CB renders, during his term of office, extraordinary services which lead to sustainably beneficial effects for the Company or its subsidiaries and which were not foreseeable at the time of the conclusion of this Agreement, CB is entitled to a special remuneration. The amount of the special remuneration shall be based on the benefits achieved for the Company or its subsidiaries and is determined by the supervisory board in its discretion under consideration of a sustainable development of the Company and the adequateness of the entire remuneration of CB.

**§ 3****Gehaltsfortzahlung bei Krankheit  
oder Tod**

1. Wird CB an der Ausübung seiner Tätigkeit durch Krankheit oder andere durch ihn nicht verschuldete Gründe verhindert, so erhält er für die Dauer von sechs Monaten, längstens jedoch bis zur Beendigung dieses Vertrages, sein zeitanteiliges Grundgehalt gemäß § 2 Abs. 1 sowie die zeitanteilige Tantieme gemäß § 2 Abs. 2 weiter.
2. Im Falle des Todes von CB erhält seine Witwe ein Drittel der Gesamtbezüge gemäß vorstehendem § 2 Abs. 1 und 2 für das zum Zeitpunkt des Todes laufende Geschäftsjahr.

**§ 4****Dienstwagen / Reisekosten**

1. Die Gesellschaft stellt CB einen Dienstwagen der Oberklasse zur Verfügung, der auch privat genutzt werden kann. Die private Nutzung ist von CB gemäß den jeweils gültigen deutschen steuerlichen Vorschriften als geldwerter Vorteil zu versteuern. Der Anschaffungswert ist auf EUR 80.000 vor MwSt. begrenzt.
2. Die Gesellschaft erstattet CB belegte Reisekosten und Bewirtungsauslagen entsprechend den jeweils gültigen Festlegungen der Gesellschaft und den jeweils gültigen deutschen steuerrechtlichen Richtlinien.

**§ 3****Continued Payment in Case of Sickness  
or Death**

1. In case CB cannot fulfil his duties due to sickness or other reasons for which he is not responsible, he is entitled to a *pro rata temporis* payment of his Base Salary pursuant to Section 2 para. 1 and the performance-based management bonus pursuant to Section 2 para. 2 for a period of six months, at the longest, however, until the termination of this agreement.
2. In case of death of CB, his widow is entitled to the payment of one third of the total salary pursuant to Section 2 paras. 1 and 2 above for the business year in which the death occurred.

**§ 4****Company Car / Travel Expenses**

1. The Company shall make available to CB a company car of the premium segment which may also be used for private purposes. The private use is taxable by CB as financial benefit (*geldwerter Vorteil*) according to applicable German tax law, as amended from time to time. The acquisition value is limited to EUR 80,000 (excluding VAT).
2. The Company reimburses to CB travel and hospitality expenses upon presentation of receipts in accordance with the rules of the Company and the applicable German taxation guidelines, as amended from time to time.

**§ 5**  
**Urlaub**

CB hat Anspruch auf einen angemessenen Jahresurlaub, dessen Zeitpunkt und Dauer er selbst festlegt. Seinen Urlaub hat er in Abstimmung mit den übrigen Vorstandsmitgliedern so zu disponieren, dass die Interessen des Unternehmens vorrangig gewahrt bleiben.

**§ 6**  
**Sonstige Leistungen**

1. Die Gesellschaft erstattet CB, wenn und soweit er von der Versicherungspflicht befreit ist, jeweils 50% der Höchstbeiträge zur gesetzlichen Rentenversicherung, Krankenversicherung, Pflegeversicherung und Arbeitslosenversicherung. Bei Inanspruchnahme einer privaten Krankenversicherung und privater Pflegeversicherung erstattet die Gesellschaft die Beiträge bis zu den jeweils gesetzlich vorgeschriebenen Höchstbeiträgen.
2. Die Gesellschaft schließt für CB im Rahmen einer Gruppenunfallversicherung eine Unfall- und Invaliditätsversicherung ab. Der Versicherungsschutz im Rahmen dieser Versicherung umfasst alle beruflichen und außerberuflichen Unfälle. Die Versicherungssumme ist auf EUR 1.000.000 bei Tod und auf EUR 2.000.000 bei Invalidität abgeschlossen. Der Versicherungsschutz erlischt, sobald CB aus dem Dienstverhältnis mit der Gesellschaft ausscheidet. Die Versicherungsprämien trägt die Gesellschaft.

**§ 5**  
**Vacation**

CB is entitled to an appropriate annual vacation, the point of time and the duration of which are determined by himself. He shall determine his vacation in coordination with the other Members of the Management Board in such way that the interests of the Company are predominantly respected.

**§ 6**  
**Additional Services**

1. If and to the extent CB is not subject to the statutory insurance obligation, the Company reimburses to CB 50% of the maximum contributions to each of the statutory pension, health, long-term care and unemployment insurance. If CB engages in a private health and long-term care insurance, the Company reimburses to CB the contributions up to the maximum contributions as determined by law.
2. The Company shall conclude an accident and invalidity insurance for the benefit of CB as part of a group accident insurance. The insurance protection within this insurance covers all business and non-business related accidents. The insurance sum is EUR 1,000,000 in case of death and EUR 2,000,000 in case of invalidity. The insurance protection ends as soon as the services of CB for the Company are terminated. The insurance premiums shall be borne by the Company.

3. Für den Erwerb eines Anrechts von CB auf Sonderzahlungen in seine betriebliche Altersversorgung gilt § 10 Abs. 4 dieser Vereinbarung.
4. Die bestehende D&O Versicherung der Gesellschaft wurde per 30. Juni 2010 an die Erfordernisse des AktG angepasst (Selbstbehalt des Vorstandsmitglieds).

#### § 7

##### **Nebentätigkeit**

1. CB verpflichtet sich, seine ganze Arbeitskraft in den Dienst der Gesellschaft zu stellen und die Interessen der Gesellschaft nach besten Kräften zu fördern. Soweit das Wohl der Gesellschaft es erfordert, wird CB der Gesellschaft jederzeit auch über die betriebsübliche Arbeitszeit hinaus zur Verfügung stehen.
2. Jede weitere entgeltliche oder unentgeltliche Beschäftigung und / oder unmittelbare oder mittelbare Beteiligung an anderen Unternehmen jeder Art bedarf der vorherigen schriftlichen Zustimmung des Aufsichtsrats. Dies gilt nicht für den üblichen Erwerb von Aktien oder sonstigen Geschäftsanteilen zu Investitionszwecken. Die Mitgliedschaft in Vertretungsgremien oder in Aufsichtsgremien anderer Gesellschaften ist dem Aufsichtsrat schriftlich anzuzeigen.

3. For the acquisition of a right by CB to special payments into his company pension scheme Section 10 para. 4 of this Agreement shall apply.
4. The existing D&O insurance of the Company was adapted to the requirements of the AktG as of 30 June 2010 (deductible of the Member of the Management Board).

#### § 7

##### **Secondary Occupations**

1. CB undertakes to devote his entire working capacity to the service of the Company and to make best efforts to promote the interests of the Company. To the extent required for the benefit of the Company, CB will be available for the Company at any time, also in extension of the customary working time.
2. Any other occupation, against payment or nonpaid, and / or any direct or indirect participation in other companies of any kind require the prior written consent of the supervisory board. This does not apply for the customary acquisition of stock or other shares for investment purposes. The supervisory board has to be informed in writing about memberships in other companies' administrative or supervisory bodies.



**§ 8****Diensterfindungen**

1. Für Erfindungen und qualifizierte technische Verbesserungsvorschläge gelten die Regelungen des Gesetzes über Arbeitnehmererfindungen in seiner jeweils gültigen Fassung entsprechend.
2. Die Parteien sind sich darüber einig, dass eine etwaige Vergütung für eine von der Gesellschaft in Anspruch genommene Diensterfindung mit der Zahlung des Grundgehalts gemäß obigem § 2 Abs. 1 vollständig abgegolten ist.

**§ 9****Geheimhaltung /  
Rückgabe von Unterlagen**

1. CB ist verpflichtet, insbesondere auch während der Zeit nach Beendigung dieses Dienstvertrages, alle vertraulichen Informationen über das Geschäft, die Vertragsbeziehungen, Abschlüsse, Geschäfte oder besonderen Angelegenheiten der Gesellschaft oder von verbundenen Unternehmen geheim zu halten und diese Informationen nicht für seinen eigenen oder den Nutzen anderer zu verwenden. „**Vertraulich**“ in diesem Sinne sind insbesondere die in vorstehendem § 8 bezeichneten Erfindungen, Urheberrechte sowie das Know-how.
2. Während des Dienstverhältnisses wird CB auf Verlangen der Gesellschaft, spätestens aber bei Beendigung des Dienstverhältnisses unaufgefordert, der Gesellschaft alle in seinem Besitz

**§ 8****Service Inventions**

1. With regard to inventions and qualified technical improvement proposals the provisions of the German Employee Inventions Act (*Gesetz über Arbeitnehmererfindungen*), as amended from time to time, shall apply *mutatis mutandis*.
2. The Parties agree that any possible remuneration for an invention called upon by the Company is fully compensated by the payment of the Base Salary pursuant to Section 2 para. 1 above.

**§ 9****Confidentiality /  
Return of Documents**

1. CB is obliged, in particular also after the termination of this service agreement, to keep confidential all confidential information regarding the business, the contractual relationships, agreements, business affairs or special matters of the Company or of affiliated companies and to use this information not for his own benefit or for the benefit of third parties. “**Confidential**” in this sense are in particular the inventions as mentioned in Section 8 above, copyrights as well as the know-how.
2. CB shall return, during the term of his services, on the Company’s request, at the latest, however, upon termination of his services without request by the Company being necessary, all files and

befindlichen oder seinem Zugriff unterliegenden Akten und sonstigen den Geschäftsbetrieb der Gesellschaft oder verbundener Unternehmen betreffende Unterlagen - insbesondere alle Pläne, Kunden, Preislisten, Druckmaterial, Urkunden, Zeichnungen, Notizen, Entwürfe - sowie Kopien davon zurückgeben, ohne Rücksicht darauf, ob er sie von der Gesellschaft selbst oder von verbundenen Unternehmen erhalten hat. Sinngemäß gilt das Gleiche für nicht körperliche Informationen und Materialien, z.B. Computerprogramme oder auf Datenträgern gespeicherte Informationen.

**§ 10  
Laufzeit**

1. Diese Vereinbarung wird mit Wirkung zum 01.06.2005 geschlossen und endet am 31. Mai 2014, ohne dass es einer Kündigung bedarf. Sie tritt an die Stelle des (bisherigen) Dienstvertrags in der Fassung des Ersten Nachtrags und des Zweiten Nachtrags. Sämtliche bisherigen Vereinbarungen zwischen den Parteien werden hiermit ausdrücklich aufgehoben.
2. Das Recht zur außerordentlichen Kündigung dieser Vereinbarung aus wichtigem Grund durch beide Seiten bleibt unberührt. Im Fall eines Widerrufs der Bestellung von CB als Vorstandsmitglied / einer Freistellung von CB sind etwaige Zahlungen aus dem bestehenden Vertragsverhältnis auf maximal das Zweifache des Grundgehalts gemäß § 2 Abs. 1 begrenzt, zuzüglich der Weiternutzung für maximal 2 Jahre des Dienstwagens, alternativ des entsprechenden

further documents related to the Company's business or the business of affiliated companies - in particular all plans, clients, price lists, print material, deeds, drawings, notes, drafts - as well as copies thereof which are in his possession or which he has access to, regardless of whether he has received them from the Company or an affiliated company. The same shall apply *mutatis mutandis* to all non-physical information and materials, e.g. computer software and information saved on storage mediums.

**§ 10  
Term**

1. This Agreement is entered into as of 1 June 2005 and ends on 31 May 2014 without a termination declaration being necessary. It shall replace the (hitherto existing) Service Agreement in the version of the First Amendment and of the Second Amendment. All hitherto existing agreements between the Parties are hereby expressly cancelled.
2. The right of both Parties to terminate this Agreement for good cause remains unaffected. In case of revocation of the appointment of CB as Member of the Management Board / a release of CB, all potential payments according to the existing contractual relationship are limited to twice the Base Salary pursuant to Section 2 para. 1 plus the continued use of the company car for not more than two years, alternatively the respective financial benefit (*geldwerter Vorteil*). Para. 5 of this Section 10 remains

geldwerten Vorteils. Absatz 5 dieses § 10 bleibt unberührt.

3. Die Gesellschaft ist berechtigt, CB während der Laufzeit dieser Vereinbarung jederzeit von seiner Tätigkeit für die Gesellschaft freizustellen. Dies gilt insbesondere im Fall eines Widerrufs der Bestellung von CB als Vorstandsmitglied.
4. Für den Fall, dass das Vertragsverhältnis ordnungsgemäß ausläuft und auf Wunsch nicht verlängert wird, spätestens bei Erreichen des gesetzlichen Rentenalters, erwirbt CB Anrecht auf eine Sonderzahlung in seine betriebliche Altersversorgung. Der Betrag errechnet sich auf Basis von EUR 60.000 für jedes volle Jahr als Vorstandsmitglied, beginnend mit und einschließlich des am 1. Juni 2011 beginnenden Vertragsjahres. Diese Sonderzahlung wird fällig zu Beginn des dem einvernehmlichen Vertragsauslauf folgenden Kalenderjahres. Eine weitere einmalige Sonderzahlung in die betriebliche Altersversorgung von EUR 120.000 wird fällig nach dem einvernehmlichen Auslaufen der Beststellungsperiode 1. Juni 2014 bis 31. Mai 2017.

#### **§ 11 Verschiedenes**

1. Änderungen und / oder Ergänzungen dieser Vereinbarung, einschließlich dieses Schriffterfordernisses, bedürfen zu ihrer Wirksamkeit der Schriftform. Dies gilt auch für die Aufhebung dieser Klausel.

unaffected.

3. The Company is entitled to release CB from his services for the Company at any time during the term of this Agreement. This applies in particular in case of a revocation of the appointment of CB as Member of the Management Board.
4. In case the contractual relationship expires orderly and is, upon request, not extended, at the latest when the statutory retirement age is reached, CB acquires the right to a special payment into his company pension scheme. The amount is calculated on a base of EUR 60,000 for each complete year as Member of the Management Board, starting with and including the contractual year beginning on 1 June 2011. This special payment becomes due at the beginning of the calendar year following the consensual expiry of the contractual relationship. A further one-time special payment into the company pension scheme of EUR 120,000 becomes due after the appointment period from 1 June 2014 to 31 March 2017 has expired consensually.

#### **§ 11 Miscellaneous**

1. Amendments and / or supplements to this Agreement, including this written form requirement, must be made in writing in order to be effective. This does also apply to the cancellation of this clause.

2. Sollten einzelne Bestimmungen dieser Vereinbarung unwirksam sein oder werden, so berührt dies die Gültigkeit der übrigen Bestimmungen nicht. Anstelle der unwirksamen Bestimmung soll eine angemessene Regelung treten, die dem am nächsten kommt, was die Parteien nach ihrer wirtschaftlichen Zwecksetzung gewollt haben. Das gleiche gilt im Falle einer vertraglichen Lücke.
  3. Diese Vereinbarung unterliegt dem Recht der Bundesrepublik Deutschland. Gerichtsstand für alle sich aus oder in Zusammenhang mit dieser Vereinbarung ergebenden Streitigkeiten ist, soweit gesetzlich zulässig, München.
  4. Die deutsche Fassung dieser Vereinbarung ist maßgeblich.
2. In case individual provisions of this Agreement are or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by an adequate provision which comes closest to the economic intentions of the Parties. The same shall apply in case of a gap in this Agreement.
  3. This Agreement is subject to the laws of the Federal Republic of Germany. Place of jurisdiction for all disputes arising out of or in connection with this Agreement is, as far as legally permissible, Munich.
  4. The German version of this Agreement shall prevail.

Odelzhausen, den 05.07.2011

/s/ Dr. Franz Scherer \_

**W.E.T. Automotive Systems**

**Aktiengesellschaft,**

hier vertreten durch den Aufsichtsrat /

here represented by the supervisory board,

dieser vertreten durch den Aufsichtsratsvorsitzenden /

the latter represented by its chairman,

Dr. Franz Scherer

/s/ Caspar Baumhauer

**Caspar Baumhauer**

**Anlage 2.2**

Zusätzlich zum Grundgehalt erhält das Vorstandsmitglied eine jährliche erfolgsabhängige Tantieme (der „**Bonus**“), die an die Entwicklung des Unternehmenswertes (EVA, Stern Stewart) der W.E.T-Gruppe nach Maßgabe der folgenden Regelungen gekoppelt ist:

1. Basis für den Bonus ist das Erreichen von bestimmten EVA-Werten, die sich auf die gesamte W.E.T.-Gruppe beziehen (die „**EVA-Zielwerte**“). Die EVA-Zielwerte werden für einen Zeitraum von jeweils 3 (drei) Jahren einvernehmlich zwischen dem Vorstand und dem Aufsichtsrat festgelegt, erstmals beginnend mit dem Geschäftsjahr 2011 für die Jahre 2011 bis 2013.
2. Die EVA-Zielwerte basieren hierbei auf einem mit dem Vorstand abgestimmten Berechnungsmodell von Stern Stewart und basieren auf den vorläufigen Abschlusszahlen für das Geschäftsjahr 2010 und den Budgetzahlen für die Jahre 2011 bis 2013. Ob die EVA-Zielwerte erreicht werden, richtet sich nach der als **Anlage** beigefügten Berechnung.
3. Bei Erreichen der EVA-Zielwerte ergibt sich ein Bonus in Höhe von 100 %, der 50 % des Grundgehaltes des Vorstandsmitglieds nach § 2 Abs. 1 des Dienstvertrages entspricht (der „**Basis-Bonus**“). Der Zielerreichungsgrad kann für die Zwecke der Berechnung des Bonuses niedrigstenfalls -100 % und maximal +300 % (der „**Maximal-Bonus**“) betragen. Bei Über- oder Unterschreitungen innerhalb dieser

**Annex 2.2**

In addition to the Base Salary, the Member of the Management Board is entitled to an annual performance-based management bonus (the “**Bonus**”) which is linked to the development of the enterprise value (EVA, Stern Stewart) of the W.E.T. Group in according to the following provisions:

1. The Bonus is based on the achievement of certain EVA values with regard to the entire W.E.T. Group (the “**EVA Target Values**”). The EVA Target Values are consensually determined by the management board and the supervisory board for a period of 3 (three) years, for the first time beginning with the business year 2011 for the years 2011 to 2013.
2. The EVA Target Values are based on a calculation model according to Stern Stewart, as agreed upon with the management board, and are based on the preliminary year-end figures for the business year 2010 and the budget figures for the years 2011 to 2013. Whether or not the EVA Target Values are achieved, depends on the calculation attached hereto as **annex**.
3. Upon achievement of the EVA Target Values, a Bonus of 100 % arises which equals 50 % of the Base Salary of the Member of the Management Board pursuant to Section 2 para. 1 of the service agreement (the “**Base Bonus**”). The degree of target achievement may be, for calculation purposes, as a minimum -100 % and as a maximum +300 % (the “**Maximum Bonus**”). In case of exceedance or shortfall within

Bandbreite ist der Zielerreichungsgrad linear zu ermitteln.

4. Nach Ablauf des Geschäftsjahres wird auf Grundlage des konsolidierten IFRS Konzernabschlusses der W.E.T.-Gruppe der Zielerreichungsgrad für die EVA-Zielwerte durch den Aufsichtsrat festgestellt und der sich danach zu errechnende Bonus ermittelt. Bei Änderungen des Konsolidierungskreises während des laufenden Geschäftsjahres sind die jeweiligen festgelegten EVA-Zielwerte -soweit erforderlich - anzupassen. Die Anpassung erfolgt *pro rata temporis* einvernehmlich zwischen dem Aufsichtsrat und allen Vorstandsmitgliedern unter Bezugnahme und Berücksichtigung der maßgeblichen Vorjahreszahlen der neu zu konsolidierenden bzw. zu dekonsolidierenden Gesellschaft(en) durch entsprechende Erhöhung bzw. Reduzierung der betroffenen EVA-Zielwerte.
5. Der Bonus berechnet sich als Multiplikation von Basis-Bonus mal Zielerreichungsgrad. Insofern kann der Bonus auch negativ sein. Er kann aber nicht höher als das Dreifache des Basis-Bonus sein.
6. Das Entstehen und die Auszahlung des Bonus unterliegt Restriktionen („**Bonus-Bank**“), um die Nachhaltigkeit der Anreizwirkung durch die erfolgsabhängige Tantieme zu gewährleisten:
  - a. Sofern der Zielerreichungsgrad 0 % bis einschließlich +100 % beträgt,

this range, the degree of target achievement is to be determined straight proportionally.

4. After the end of the business year the degree of target achievement for the EVA Target Values is determined by the supervisory board based on the IFRS consolidated financial statements of the W.E.T. Group, and the Bonus resulting thereafter is to be determined. In case of changes of the consolidated companies during the business year, the respectively determined EVA Target Values are to be adjusted, if necessary. The adjustment shall be made *pro rata temporis* consensually between the supervisory board and all Members of the Management Board with reference to and taking into consideration of the relevant prior-year figures of the company/-ies to be additionally consolidated or to be unconsolidated by increase or decrease of the concerned EVA Target Values, respectively.
5. The Bonus is calculated by multiplying the Base Bonus with the degree of target achievement. Therefore, the Bonus can also be negative. But it may not exceed the amount of three times the Base Bonus.
6. The arising and the payout of the Bonus is subject to certain restrictions (“**Bonus Bank**”), in order to guarantee the sustainability of the incentive by the performance-based management bonus:
  - a. If the degree of target achievement is 0 % up to +100 %, the Bonus to

ist der hierauf zu zahlende Bonus vollständig in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Der Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Steuern und sonstigen Abgaben (die „**Abgaben**“) auszus zahlen.

- b. Sofern der Zielerreichungsgrad mehr als +100 % beträgt, ist der Bonus
  - i. in Höhe des nach Ziffer 6 lit. a errechneten Betrages in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen. Dieser Teil des Bonus ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitglieds nach Abzug von Abgaben auszus zahlen;
  - ii. in Höhe des Restbetrages („**Überschießender Bonus**“) in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitglieds einzustellen; die Einstellung in die Bonus-Bank erfolgt 12 Monate nach Feststellung des Überschießenden Bonus.
- c. Sofern der Zielerreichungsgrad zwischen -100 % (einschließlich) und 0 % (ausschließlich) liegt, erfolgt in dem Monat, in dem der Jahresabschluss festgestellt wird, keine Auszahlung eines Basis-Bonus, sondern der negative Bonus wird als Abzugsposten in die bei der Gesellschaft rechnerisch

be paid thereon is to be fully determined in the month in which the annual financial statements are approved. The Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of taxes and additional levies (the “**Levies**”).

- b. If the degree of target achievement is higher than +100 %, the Bonus is
  - i. to be determined in the amount to be calculated pursuant to Section 6 lit. a in the month in which the annual financial statements are approved. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies;
  - ii. to the amount remaining (“**Excessive Bonus**”) to be credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form; the Excessive Bonus is to be credited to the Bonus Bank 12 months after its determination.
- c. If the degree of target achievement is between -100 % (inclusive) and 0 % (exclusive), no Base Bonus is paid out in the month in which the annual financial statements are approved, but the negative Bonus is to be accounted for deduction in the Bonus Bank of the Member of the Management Board which is to be

- geführte Bonus-Bank des Vorstandsmitgliedes eingestellt („**Negativer Bonus**“).
- d. Die in die bei der Gesellschaft rechnerisch geführte Bonus-Bank des Vorstandsmitgliedes eingestellten Überschießenden Boni sind mit eingestellten Negativen Boni innerhalb der Bonus-Bank zu verrechnen und der so ermittelte Saldo in der Bonus-Bank festzuhalten („**Saldo Bonus**“). Der Saldo Bonus kann negativ, jedoch kann er in Summe nicht niedriger als -100 % sein.
- e. Jedes Jahr, beginnend mit dem Geschäftsjahr 2012, ist ein positiver Saldo Bonus in Höhe eines Betrages, der 33 % des Saldo Bonuses entspricht, in dem Monat, in dem der Jahresabschluss festgestellt wird, abzurechnen, d.h. der positive Saldo Bonus in der Bonus-Bank verringert sich entsprechend. Dieser Teil des Bonuses ist dann auch fällig und auf das der Gesellschaft bekannte Konto des Vorstandsmitgliedes nach Abzug von Abgaben auszuführen.
7. Bei Beendigung des Dienstvertrages des Vorstandsmitgliedes ist die Bonus-Bank 12 Monate nach Beendigung des Dienstvertrages (die „**Nachlaufphase**“) auf Basis des Saldo Bonuses und unter Berücksichtigung des Grundes der Beendigung abzurechnen. Das bedeutet, dass sich der bei der Gesellschaft in der rechnerisch geführten Bonus-Bank des Vorstandsmitgliedes ausgewiesene Saldo Bonus in Abhängigkeit vom Zielerreichungsgrad in der
- run by the Company in virtual form (“**Negative Bonus**”).
- d. The Excessive Bonuses credited to the Bonus Bank of the Member of the Management Board which is to be run by the Company in virtual form are to be settled with Negative Bonuses credited to the Bonus Bank, and the balance resulting therefrom is to be registered with the Bonus Bank (“**Balance Bonus**”). The Balance Bonus can be negative, but its sum cannot be less than -100 %.
- e. Starting with the business year 2012, each year a positive Balance Bonus is to be settled in the amount of 33 % of the Balance Bonus in the month in which the annual financial statements are approved, *i.e.* the positive Balance Bonus in the Bonus Bank decreases accordingly. This part of the Bonus is then also due and to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
7. Upon termination of the service agreement of the Member of the Management Board, the Bonus Bank is to be finally settled 12 months after the termination of the service agreement (the “**Follow-Up Period**”), based on the Balance Bonus and under consideration of the reason for the termination. This means that the Balance Bonus shown in the Bonus Bank of the Member of the Management Board, which is to be run by the Company in virtual form, can change depending on the degree of target



Nachlaufphase noch verändern kann.

- a. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren, so kann sich der Saldo Bonus in der Nachlaufphase verringern oder erhöhen.
- b. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitglieds aus Gründen, die ihn als Bad Leaver (s.u. lit. g) qualifizieren, so ist der Saldo Bonus nach der Nachlaufphase maximal Null und es erfolgt auf jeden Fall keine Ausschüttung an das Vorstandsmitglied. Der Saldo Bonus kann sich aber in der Nachlaufphase auch verringern und damit negativ werden.
- c. Eine Veränderung greift nur dann ein, wenn der Zielerreichungsgrad innerhalb der Nachlaufphase kleiner als 0 % ist oder größer als +200 %. Bei einem Zielerreichungsgrad innerhalb der Nachlaufphase, der gleich oder größer als 0 %, aber gleich oder kleiner als +200 % ist, erfolgt keine Veränderung. Ist der Zielerreichungsgrad größer als +200 %, so ist für die Veränderung des Saldo Bonus nur ein die Schwelle von +200 % überschreitender Zielerreichungsgrad bis maximal +300 % für die Veränderung anzusetzen, so dass eine Veränderung in diesem Fall maximal +100 % betragen kann.
- d. Bei einer unterjährigen Beendigung des Dienstvertrages wird der Aufsichtsrat der Gesellschaft zum

achievement in the Follow-Up Period.

- a. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), the Balance Bonus can decrease or increase during the Follow-Up Period.
- b. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver (see lit. g below), the Balance Bonus equals at most zero at the end of the Follow-Up Period, and there is no payout to the Member of the Management Board. However, the Balance Bonus can also decrease in the Follow-Up Period, and thus become negative.
- c. There will only be a change in case the degree of target achievement within the Follow-Up Period is less than 0 % or higher than +200 %. If the degree of target achievement within the Follow-Up Period is higher than or equal to 0 %, but less than or equal to +200 %, there will be no change. If the degree of target achievement is higher than +200 %, only a degree of target achievement exceeding +200 % up to +300 % is applicable for the change of the Balance Bonus, so that in this case a change can be at most +100 %.
- d. If the service agreement is terminated in the course of a year, the supervisory board of the Company

Ende der Nachlaufphase die Höhe des Zielerreichungsgrades nach billigem Ermessen festlegen.

- e. Erfolgt die Beendigung des Dienstvertrages des Vorstandsmitgliedes aus Gründen, die ihn als Good Leaver (s.u. lit. h) qualifizieren und sofern am Ende der Nachlaufzeit ein positiver Saldo Bonus besteht, wird eine Zahlung in Höhe eines Betrages, der dem dann festgestellten positiven Saldo Bonus entspricht, mit einem Abschlag von 10 % auf diesen Betrag fällig. Der so ermittelte Betrag ist auf das der Gesellschaft bekannte Konto des Vorstandsmitgliedes nach Abzug von Abgaben auszuführen.
- f. Sofern am Ende der Nachlaufzeit ein negativer Saldo Bonus festgestellt wird, und
- i. die Beendigung des Dienstvertrages des Vorstandsmitgliedes aus Gründen erfolgt, die ihn als Good Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe von 50 % des dann festgestellten negativen Saldo Bonus (ohne darauf entfallende Abgaben) an die Gesellschaft zurückzuzahlen; oder
- ii. die Beendigung des Dienstvertrages des Vorstandsmitgliedes aus Gründen erfolgt, die ihn als Bad Leaver qualifizieren, so hat das Vorstandsmitglied einen Betrag in Höhe des dann festgestellten

will determine the degree of target achievement at the end of the Follow-Up Period in its equitable discretion.

- e. In case the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver (see lit. h below), and if there is, at the end of the Follow-Up Period, a positive Balance Bonus, a payment becomes due in the amount which equals the positive Balance Bonus determined at that time, with a deduction of 10 %. The amount thus determined is to be transferred to the bank account of the Member of the Management Board which is known to the Company after deduction of Levies.
- f. If, at the end of the Follow-Up Period, a negative Balance Bonus is determined, and
- i. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Good Leaver, the Member of the Management Board has to pay back to the Company an amount of 50 % of the negative Balance Bonus then determined (excluding Levies related thereto); or
- ii. the termination of the service agreement of the Member of the Management Board occurs for reasons qualifying him as Bad Leaver, the Member of the Management Board has to pay back to the Company the

negativen Saldo Bonus (ohne darauf entfallende Abgaben) an die Gesellschaft zurückzuzahlen.

Eine Rückzahlungsverpflichtung des Vorstandsmitglieds besteht nur soweit und nur in der Höhe wie das Vorstandsmitglied in der Vergangenheit aufgrund der erfolgsabhängigen Tantieme Bonuszahlungen erhalten hat. Das Vorstandsmitglied haftet für die Rückzahlungsverpflichtung nicht mit seinem von der Gesellschaft erhaltenen Grundgehalt.

Der Aufsichtsrat kann nach billigem Ermessen auf eine Rückzahlung eines Bonus nach diesem lit. f ganz oder teilweise verzichten.

Die jeweils so ermittelten Beträge sind von dem Vorstandsmitglied innerhalb von 60 Werktagen nach Mitteilung durch die Gesellschaft auf ein von der Gesellschaft dem Vorstandsmitglied mitgeteiltes Konto einzuzahlen. Hieraus erfolgende Erstattungen für Abgaben auf die ursprünglichen Boni-Zahlungen stehen der Gesellschaft zu.

- g. Als „**Bad Leaver**“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag durch die Gesellschaft aus wichtigem Grund nach § 626 BGB beendet oder dessen Bestellung als Vorstandsmitglied aus wichtigem Grund nach § 84 Abs. 3 AktG widerrufen wird.

amount of the negative Balance Bonus then determined (excluding Levies related thereto).

A payback obligation of the Member of the Management Board exists only to the extent and up to the amount in which the Member of the Management Board has received Bonus payments in the past due to the performance-based management bonus. As regards the payback obligation, the Member of the Management Board is not liable with his Base Salary received by the Company.

The supervisory board may waive a payback of the Bonus pursuant to this lit. f fully or partly in its equitable discretion.

The respective amounts thus determined are to be transferred by the Member of the Management Board to a bank account named by the Company within 60 business days following the notification by the Company. The Company is entitled to reimbursements of Levies arising therefrom which relate to the original Bonus payments.

- g. “**Bad Leaver**” is a Member of the Management Board whose service agreement is terminated by the Company for good cause pursuant to Section 626 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) or whose appointment as Member of the Management Board is revoked for good cause pursuant to Section 84 para. 3 of the German Stock Corporation Act

(Aktiengesetz, AktG).

h. Als „**Good Leaver**“ qualifiziert ein Vorstandsmitglied, dessen Dienstvertrag aus Gründen endet, die ihn nicht als Bad Leaver qualifizieren.

h. “**Good Leaver**” is a Member of the Management Board whose service agreement ends for reasons which do not qualify him as Bad Leaver.

8. Ein Berechnungsbeispiel ist als **Anlage** beigefügt. [fehlt bislang]

8. A sample calculation is attached as annex. [hitherto missing]

\* \* \*