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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 30, 2011**

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**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 follow 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))
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## **Item 1.01 Entry into a Material Definitive Agreement.**

### *Placement Agency Agreement*

On March 30, 2011, Amerigon Incorporated (“Amerigon”) entered into a Placement Agency Agreement (the “Placement Agency Agreement”) with Roth Capital Partners, LLC (the “Placement Agent”), pursuant to which the Placement Agent agreed to act as exclusive placement agent on a “reasonable best efforts” basis in connection with the offering (the “Offering”) of (i) up to 7,000 shares of the Company’s Series C 8% Convertible Preferred Stock, without par value but with a stated value of \$10,000 per share (the “Preferred Shares”), convertible into shares of the Company’s Common Stock, without par value (the “Common Stock”, as issued upon conversion of the Preferred Shares, the “Conversion Shares”, and as used to pay dividends on the Preferred Shares, the “Dividend Shares”), (ii) warrants to purchase up to 1,125,000 shares of Common Stock, which warrants are issuable only upon the occurrence of certain conditions (the “Warrants”, with the underlying Common Stock being referred to as the “Warrant Shares”), (iii) the Conversion Shares, (iv) the Dividend Shares, and (v) the Warrant Shares (collectively, with the Preferred Shares, the Warrants, the Conversion Shares and the Dividend Shares, the “Securities”). Proceeds from the Offering are being placed in an escrow account at a third party financial institution (the “Escrow Account”) pending the consummation or termination of the acquisition (the “Acquisition”) which is discussed in Amerigon’s Current Report on Form 8-K filed with the Securities and Exchange Commission on February 28, 2011 (which is incorporated herein by reference). Amerigon has agreed to pay the Placement Agent an aggregate fee equal to 3% of the gross proceeds from the sale of the Securities in the Offering upon the closing of the Offering and an additional 3% of such gross proceeds upon the release of funds from the Escrow Account for use in closing the Acquisition.

The Placement Agency Agreement contains customary representations, warranties, and agreements by Amerigon, and customary conditions to closing, indemnification obligations of Amerigon and the Placement Agent, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties, and termination provisions. The representations, warranties and covenants contained in the Placement Agency Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties. A copy of the Placement Agency Agreement is attached hereto as Exhibit 10.1 to this Current Report on Form 8-K, and the above description of the material terms of the Placement Agency Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

### *Securities Purchase Agreement*

Also on March 30, 2011, Amerigon and certain institutional investors, the largest of which were funds managed by affiliates of Goldman Sachs Asset Management, L.P., entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”), pursuant to which Amerigon agreed to sell to such investors the 7,000 Preferred Shares for gross proceeds of \$70,000,000. Pursuant to the Securities Purchase Agreement, Amerigon will be required to issue the Warrants to the investors in the Preferred Shares granting such investors the right to purchase an aggregate of 1,125,000 shares of Common Stock, at an initial exercise price of \$13.50 per share (subject to adjustment in connection with certain capital events, such as stock splits or consolidations), if the Acquisition is not completed by July 1, 2011 (which date may be extended, subject to certain conditions). The Warrants would have a term of five years and, subject to certain conditions, may be exercised in whole or in part through a cashless exercise. The terms of the Warrants also include limitations on the number of shares of Common Stock that may be acquired by a holder upon any exercise of such warrants. The representations, warranties and covenants contained in the Securities Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties.

The terms and conditions of the Preferred Shares, including the underlying Conversion Shares, Dividend Shares, the Warrants and the Warrant Shares, are governed by the Certified Resolution of the Board of Directors of Amerigon Incorporated Establishing and Designating the Relative Rights and Preferences of Series C 8% Convertible Preferred Stock (the "Certificate of Designations"), as described in Item 5.03 below. The closing of the Offering and the transactions contemplated by the Securities Purchase Agreement is expected to take place no later than April 1, 2011, subject to the satisfaction of customary closing conditions. A copy of the Securities Purchase Agreement and form of Warrant is attached hereto as Exhibit 10.2 and Exhibit 4.1 to this Current Report on Form 8-K, respectively, and the above description of the material terms of the Securities Purchase Agreement and the Warrants is qualified in its entirety by reference to such exhibits, which are incorporated herein by reference.

The Offering is being made pursuant to a prospectus supplement dated March 30, 2011 (the "Prospectus Supplement") and an accompanying prospectus (the "Base Prospectus") under Amerigon's shelf registration statement on Form S-3 (File No. 333-171787) that was filed with the Securities and Exchange Commission (the "SEC") on January 20, 2011, and declared effective by the SEC on January 28, 2011.

The foregoing description of the Offering by Amerigon and the documentation related thereto does not purport to be complete and is qualified in its entirety by reference to the referenced exhibits. The information contained herein is not an offer to sell or the solicitation of an offer to purchase the Securities. Amerigon's offer to sell the Securities is set forth in the Prospectus Supplement to the Base Prospectus.

#### *Lock-up Agreements*

In connection with the transactions contemplated by the Placement Agency Agreement and the Securities Purchase Agreement, Amerigon on the one hand, and the members of Amerigon's Board of Directors and certain of its management, on the other hand, have agreed, subject to certain exceptions, for a period of 90 days after the date that the proceeds of the Offering are released from the Escrow Account to complete the Acquisition, not to offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of, directly or indirectly any shares of Common Stock or any securities convertible into or exchangeable for our Common Stock either owned as of the date hereof or thereafter acquired. A copy of the form of Lock-up Agreement is attached hereto as Exhibit 10.3 to this Current Report on Form 8-K, and the above description of the material terms of the form of Lock-up Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

#### *Credit Facility*

On March 30, 2011 Amerigon, together with its subsidiary Amerigon Europe GmbH ("Amerigon Europe") entered into a Credit Agreement (the "Credit Agreement") with the Lenders party thereto, Bank of America, N.A., as Administrative Agent (the "Agent"), Swing Line Lender and L/C Issuer, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as sole lead arranger and sole book manager.

The Credit Agreement provides for a \$25 million secured revolving credit facility and a \$35 million secured term loan facility for Amerigon and a \$33 million secured term loan facility for Amerigon Europe. Proceeds of the term loans and a portion of the revolving loans will be used to fund a portion of the consideration for the Acquisition. All obligations under the Credit Agreement are unconditionally guaranteed by Amerigon's subsidiary, BSST LLC, and Amerigon's indirect subsidiary, ZT Plus, LLC. Additionally, Amerigon is responsible for all obligations of Amerigon Europe under the Credit Agreement (but Amerigon Europe is not responsible for the obligations of Amerigon).

Loans under the Credit Agreement bear interest at either the Base Rate or the Eurocurrency Rate (each as defined in the Credit Agreement), plus a margin for Base Rate loans ranging from 1.50% to 2.25% or a margin for Eurocurrency Rate loans ranging from 2.50% and 3.25%, increasing as Consolidated Total Leverage Ratio (as defined in the Credit Agreement) of Amerigon and its subsidiaries increases. Amerigon and Amerigon Europe's obligations under the Credit Agreement are secured by a security interest in substantially all of Amerigon, ZT Plus, LLC and BSST LCC's personal property, and including the stock and membership interests of Amerigon's subsidiaries (limited to 66% of the stock in the case of certain non-U.S. subsidiaries).

The Credit Agreement contains customary affirmative and negative covenants that will prohibit or limit the ability of Amerigon to, among other things, incur additional indebtedness, create liens, pay dividends, make certain types of investments, enter into certain types of transactions with affiliates, make certain capital expenditures, sell assets, merge with other companies or enter into certain other transactions outside the ordinary course of business. The Credit Agreement also requires compliance with certain financial covenants. The Credit Agreement additionally contains customary events of default, including, but not limited to: (a) non-payment of amounts due; (b) material breach of representations, warranties or covenants under the Credit Agreement or the documents pertaining thereto; (c) cross-default provisions relating to other indebtedness obligations; (d) judgments or attachments against property; (e) bankruptcy or similar proceedings or insolvency; or (f) certain changes in control. Upon the occurrence of an event of default, the amounts outstanding under the credit facility may be accelerated and may become immediately due and payable.

A copy of the Credit Agreement is attached hereto as Exhibit 10.4 to this Current Report on Form 8-K, and the above description of the material terms of the Credit Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

#### *Security Agreement*

On March 30, 2011, Amerigon, Amerigon Europe, BSST LLC and ZT Plus, LLC entered into a Pledge and Security Agreement (the "Security Agreement") in favor of the Agent for the Secured Parties. Pursuant to the Security Agreement, each of Amerigon, Amerigon Europe, BSST LLC and ZT Plus, LLC granted the Agent a security interest in substantially all of their personal property to secure their respective obligations under the Credit Agreement. The Security Agreement is subject to customary covenants regulating or restricting, among other things, preservation and use of collateral and changes of name or other corporate information, and grants the Agent customary rights and remedies following the occurrence of an Event of Default under the Credit Agreement.

A copy of the Security Agreement is attached hereto as Exhibit 10.5 to this Current Report on Form 8-K, and the above description of the material terms of the Security Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

### *Guaranty Agreement*

On March 30, 2011, Amerigon and Amerigon Europe executed in favor of Banc of America Securities Limited, in its capacity as administrative agent for each of the Lender Parties (the “WET Agent”), a Parent Guaranty (the “Guaranty”). Pursuant to the Parent Guaranty Amerigon and Amerigon Europe guaranteed repayment of amounts owing by W.E.T. Automotive Systems AG, a German stock corporation, and W.E.T. Automotive Systems Ltd., a Canadian corporation (collectively, the “WET Borrowers”) under a Credit Agreement (the “WET Credit Agreement”) dated March 30, 2011 between the Borrowers, the WET Agent, and certain other parties thereto providing for a term loan and revolving loans totaling EUR40 million. Pursuant to the Parent Guaranty, Amerigon and Amerigon Europe unconditionally guaranteed the obligations of the WET Borrowers under the WET Credit Agreement. While the WET Borrowers are not permitted to borrow under the revolver or the term loan until after the Acquisition has closed, the Parent Guaranty is effective immediately and covers fees, costs and other amounts for which the WET Borrowers may be liable under the WET Credit Agreement.

A copy of the Parent Guaranty is attached hereto as Exhibit 10.6 to this Current Report on Form 8-K, and the above description of the material terms of the Parent Guaranty is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

### *Subordination Agreement*

On March 30, 2011 Amerigon, the Agent, Kingsbrook Opportunities Master Fund LP, and the other buyers party thereto entered into a subordination agreement (the “Subordination Agreement”). Pursuant to the terms of the Subordination Agreement and the Credit Agreement, Amerigon is not be permitted to make, and the holders of the Preferred Shares are not be permitted to accept, cash payments on account of the Preferred Shares unless both before and after such payment no “Default” or “Event of Default” exists under the Credit Agreement and Amerigon is in compliance with the Fixed Charge Coverage Ratio (as defined in the Credit Agreement).

The Subordination Agreement additionally limits, among other things, the ability of the investors in the Preferred Shares to participate in commencement of insolvency proceedings against Amerigon or to bring suit or commence other legal action against Amerigon should Amerigon breach its cash payment obligations. Under the terms of the Subordination Agreement, the investors in the Preferred Shares are additionally prohibited from amending various terms of the Preferred Shares even with Amerigon’s consent, including without limitation modifications to increase the cash dividend rate, shorten the maturity or otherwise materially adversely affect the rights of the Agent or the lenders under the Credit Agreement.

A copy of the Subordination Agreement is attached hereto as Exhibit 10.7 to this Current Report on Form 8-K, and the above description of the material terms of the Subordination Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

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

The disclosure set forth in Item 1.01 under the heading “Credit Facility,” “Security Agreement,” “Guaranty Agreement,” “Subordination Agreement” and in Item 5.03 of this Current Report on Form 8-K is incorporated in this Item 2.03 by reference.

### **Item 3.03 Material Modification to Rights of Security Holders.**

On March 30, 2011, Amerigon amended its shareholders rights agreement to provide that the acquisition of beneficial ownership in excess of 15% of its Common Stock pursuant to the transactions contemplated by the Securities Purchase Agreement, the Warrants, and the Certificate of Designations would not create a triggering event as defined in the Shareholders Rights Agreement, dated as of January 26, 2009, between Amerigon and Computershare Trust Company, N.A. A copy of the first amendment to Rights Agreement is attached hereto as Exhibit 4.2 to this Current Report on Form 8-K, which is incorporated herein by reference.

The information set forth under Item 5.03 below is incorporated in this Item 3.03 by reference.

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

On March 30, 2011, Amerigon amended Section 5 of the Amerigon Incorporated 2006 Equity Incentive Plan (the “Plan”) to reduce the maximum number of shares of Common Stock that may be issued pursuant to awards granted under the Plan after March 30, 2011 to 159,751 shares of Common Stock plus the amount of any forfeited shares that become available for reissuance under the Plan after March 30, 2011, whether or not such forfeited shares were issued before, on or after March 30, 2011. As a result of this amendment, the total number of shares issuable under the plan was reduced from 3,600,000 to 2,200,000. The amendment effectively increased the number of shares of common stock available for issuance by Amerigon, such as in connection with the offer described in Item 1.01. The full text of the amendment is attached hereto as Exhibit 10.8 to this Current Report on Form 8-K, and the above description of the terms of the amendment to the Plan is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

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

In connection with the Offering of the Securities, as described in Item 1.01 above, the Company approved the Certificate of Designations to designate up to 7,000 shares of Series C 8% Convertible Preferred Stock, without par value.

The following description is a summary of the material provisions of the Preferred Shares and the Certificate of Designations. It does not purport to be complete. This summary is subject to and is qualified in its entirety by reference to all the provisions of the Certificate of Designations, including the definitions of terms used therein. Wherever particular provisions or defined terms of the Certificate of Designations or form of Preferred Shares are referred to, these provisions or defined terms are incorporated in this Current Report on Form 8-K by reference. We urge you to read the Certificate of Designations because it, and not this description, defines the rights of Holders of Preferred Shares.

Under our Articles of Incorporation, our board of directors is authorized, without further stockholder action, to issue up to 5,000,000 shares of preferred stock, no par value, in one or more series, with such voting powers or without voting powers, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions, as shall be set forth in the resolutions providing therefor; however, of those shares of preferred stock, 9,000 shares were designated as Series A Preferred Stock, were issued and have been redeemed and, pursuant to the terms of our Articles of Incorporation, are no longer available for issuance. Prior to the issuance of the Preferred Shares described in this Current Report on Form 8-K, we did not have outstanding any shares preferred stock.

*Stated Value.* Each Preferred Share will be issued with an initial Stated Value of \$10,000 per share.

*Maturity Date.* The maturity date of the Preferred Shares will be September 1, 2013, unless extended at the option of applicable Holder of the Preferred Shares. For a description of the extension of the maturity date, see “—Mandatory Redemption at Maturity” below.

*Dividends.* Holders of the Preferred Shares are entitled to receive dividends, from funds legally available therefor, payable in cash or Common Stock, as described below, on the outstanding Stated Value of the Preferred Shares, which dividends shall be calculated without giving effect to any reduction for the payment of any Installment Amount (defined below) payable on such date, at the per share rate of eight percent (8%) per annum, which shall be cumulative. Dividends on the Preferred Shares will commence accruing on the date of their issuance and will be computed on the basis of a 365-day year and actual days elapsed. Dividends will be payable in arrears on each dividend date. A “dividend date” is defined in the Certificate of Designations as the first day of the applicable quarter with the first dividend date being September 1, 2011, and the last dividend date being the Maturity Date.

Dividends will be payable on each dividend date to the record holders of the Preferred Shares on the applicable dividend date, in shares of common stock (the “Dividend Shares”) so long as the Equity Conditions described in the

next paragraph have been satisfied and the provisions described below under “—Limitation on Beneficial Ownership” are not violated; provided however, that we may, at our option and to the extent permitted under the Credit Agreement following notice to each Holder, pay dividends on any dividend date in cash (“Cash Dividends”), or in a combination of Cash Dividends and Dividend Shares so long as the Equity Conditions have been met and to the extent permitted under the Credit Agreement. We will deliver a written notice to each holder of the Preferred Shares on the twenty-third (23rd) trading day before the dividend date, which notice either (A) confirms that dividends to be paid on such dividend date shall be paid entirely in Dividend Shares or (B) elects to pay dividends as Cash Dividends or a combination of Cash Dividends and Dividend Shares and specifies the amount of dividends that shall be paid as Cash Dividends and the amount of dividends, if any, that shall be paid in Dividend Shares. If any dividends will be paid as Dividend Shares, the notice will also certify that the Equity Conditions have been met as of such time and that Dividends are permitted to be paid in cash under the Credit Agreement. If any portion of dividends for a particular dividend date shall be paid in Dividend Shares, then contemporaneously with the delivery of our notice of our election to pay all or a portion of the dividends in Dividend Shares, we will deliver to the Holder a number of shares of Common Stock equal to (x) the amount of dividends payable in Dividend Shares on the applicable dividend date divided by (y) lower of (i) the then-applicable Conversion Price and (ii) the arithmetic average of the fifteen (15) lowest daily volume weighted average prices (“VWAPs”) of our Common Stock during the twenty (20) consecutive trading days ending two (2) trading days before the date we were required to give notice of our election (the “Pre-Dividend Shares”). Then, on the related dividend date, we will deliver a notice setting forth the calculation of the Dividend Balance Shares (as defined below) and pay to the Holder a number of shares of Common Stock equal to any Dividend Balance Shares (if such number is greater than zero) or, if permitted under the Credit Agreement, we may deliver an irrevocable notice to all Holders not less than 12 trading days prior to the related dividend date that we elect to pay, on the dividend date, a cash amount equal to each Holder’s Dividend Balance Shares otherwise deliverable to such Holder multiplied by the lower of (i) the then-applicable Conversion Price and (ii) the arithmetic average of the fifteen (15) lowest daily VWAPs of our Common Stock during the twenty (20) consecutive trading days ending two (2) trading days before the date we were required to give notice of our election. “Dividend Balance Shares” means a number of shares of Common Stock (which may be positive or negative, but only positive Dividend Balance Shares shall be delivered, as noted above) equal to (i) the number of shares of Common Stock equal to the applicable cash amount of dividends elected or deemed elected to be paid in Dividend Shares on such dividend date divided by the arithmetic average of the fifteen (15) lowest VWAPs of our Common Stock during the twenty (20) consecutive trading day period ending on the second (2nd) trading day prior to the dividend date (without taking into account the delivery of any Pre-Dividend Shares), rounded up to the nearest whole share of Common Stock (the “Post-Dividend Shares”) minus (ii) the amount of any Pre-Dividend Shares delivered with respect to such date. If the Equity Conditions are not satisfied as of the Dividend Notice Date and such payment is permitted under the Credit Agreement, the dividend notice shall indicate that Dividends shall be paid in cash to the extent such payment is permitted under the Credit Agreement except that, if the delivery of Dividend Shares would not violate the provisions described under “—Limitation on Beneficial Ownership,” the dividend notice shall also indicate that the Holder may waive the Equity Conditions but that unless such conditions are waived, the Dividends shall be paid in cash to the extent such payment is permitted under the Credit Agreement; *provided*, that to the extent that such dividend notice indicates that payment of Dividends in cash is not permitted under the Credit Agreement and the Holder does not waive the Equity Conditions or the delivery of the Dividend Shares would not violate the provisions described under “—Limitations on Beneficial Ownership,” then such Dividends shall begin to accrue additional dividends thereon until such dividends are paid.

The term “Equity Conditions” includes such conditions as (A) all shares of Common Stock issuable upon conversion of the Preferred Shares, or issued as Dividend Shares (but only with respect to any Dividend Shares to be issued in connection with the event requiring determination, if any, and not any other event, such as any possible future Dividend Shares) shall be eligible for sale without restriction or limitation and without the need for registration under any applicable federal or state securities laws; (B) the Common Stock is designated for quotation on the NASDAQ Global Select Market or on one of several named alternative exchanges and shall not have been suspended from trading from all such exchanges or markets nor shall proceedings for such delisting or suspension from any applicable exchanges or markets have been commenced, threatened or pending, either in writing by such exchange or market or by our falling below the minimum listing maintenance requirements of such exchange or market; (C) timely delivery of Common Stock upon conversion of the Preferred Shares to the Holders on a timely basis following the receipt by us of a conversion notice; and (D) other conditions. See the Certificate of Designations for a complete definition of “Equity Conditions.”

*Installment Conversion or Redemption by the Company.* Commencing on September 1, 2011 and on the first (1st) business day of each applicable quarter thereafter through the maturity date (each an “Installment Date”), provided that all Equity Conditions have been satisfied as of the applicable notice or payment dates, we will convert from the Holders of the Preferred Shares, pro rata among the Holders based on their initial holdings, an amount equal to the aggregate Stated Value of 778 Preferred Shares (as such amount may be reduced for any Holder or its transferees by conversion, redemption or otherwise, the “Installment Amount”) due on that date by converting the Installment Amount into shares of our Common Stock (a “Company Conversion”); provided, however, that we may instead, at our option following notice to the Holders, pay the Installment Amount by redeeming such Installment Amount for cash (a “Company Redemption”), to the extent that such Company Redemption is permitted under the Credit Agreement, or by any combination of a Company Conversion and a Company Redemption so long as we convert and/or redeem all of the outstanding applicable Installment Amount on the applicable Installment Date.

On or prior to the twenty-third (23rd) trading day prior to each Installment Date, we will deliver written notice (each, a “Company Installment Notice” and the date all of the Holders receive such notice is referred to as the “Company Installment Notice Date”), to each Holder of Preferred Shares either (A) confirming that the applicable Installment Amount of the Preferred Shares will be converted in whole pursuant to a Company Conversion (such amount to be converted, including any accrued Additional Amount related to the applicable Preferred Shares, the “Company Conversion Amount”) or (B) stating that we will redeem for cash, in whole or in part, the applicable Installment Amount pursuant to a Company Redemption (such amount to be redeemed, including any accrued Additional Amount related to the applicable Preferred Shares, the “Company Redemption Amount”) and the portion, if any, that we elect to convert pursuant to a Company Conversion (such amount, including any accrued Dividends, also, a “Company Conversion Amount”) which amounts when added together, must equal the applicable Installment Amount. If any portion of the Installment Amount is to be converted pursuant to a Company Conversion, our notice will certify that the Equity Conditions have been satisfied as of the date of the Company Installment Notice and if the Installment Amount is to be paid, in whole or in part, pursuant to a Company Redemption, certify that the Company Redemption is permitted under the Credit Agreement. Each Company Installment Notice will be irrevocable. If we do not timely deliver a Company Installment Notice, then we will be deemed to have delivered an irrevocable Company Installment Notice confirming a Company Conversion and will be deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied. Except as expressly set forth above, we will convert and/or redeem the applicable Installment Amount of the Preferred Shares pro rata among the Holders.

In the calculations described below relating to a Company Conversion or a Company Redemption, the “Market Price” means the arithmetic average of the fifteen (15) lowest daily volume weighted average prices (or VWAPs) during the twenty (20) consecutive trading days ending two (2) trading days immediately prior to the date of determination.

Any Company Conversion Amount will be converted in a manner similar to that set forth above for purposes of computing the number of shares of common stock issuable in respect of Dividend Shares. Any Company Redemption will be paid in cash to the applicable Holder on the applicable Installment Date. See the Certificate of Designations for a complete description of the terms and conditions concerning Company Conversions and Company Redemptions.

*Optional Conversion by the Holders.* Subject to the provisions described under “—Limitations or Beneficial Ownership,” at any time following the issuance of the Preferred Shares, each holder of the Preferred Shares shall be entitled upon the release of funds from the Escrow Account established pursuant to the Offering (the “Release Date”) to convert any whole number of Preferred Shares, plus accrued but unpaid dividends per Preferred Share then remaining, into fully paid and nonassessable shares of Common Stock. The number of shares of Common Stock issuable upon conversion of each Preferred Share shall be determined according to the following formula (the “Conversion Rate”):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

The “Conversion Amount” means the sum of the Stated Value and the Additional Amount. The “Additional Amount” means, on a per Preferred Share basis, the product of (x) the Stated Value and (y) the result of the

following formula: (Dividend Rate) (N/365), where N is the number of days from and excluding the last dividend date on which dividends have been paid in full by us, or the initial issuance date if no dividends have yet been paid. No fractional shares of Common Stock are to be issued upon the conversion of any Preferred Share, but rather the number of shares of Common Stock to be issued will be rounded up to the nearest whole number.

On or before the third (3rd) trading day following our receipt of the conversion notice, we or our transfer agent will credit the aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system, or (if our transfer agent is not participating in the DTC Fast Automated Securities Transfer Program) issue and deliver to an address the Holder specifies in the conversion notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled and, pay to the Holder in cash the amount of any dividends per applicable Preferred Share that, but for such event, would have accrued with respect to such Preferred Share if the Preferred Share had remained outstanding for the period from such event through the maturity date (the "Make-Whole Additional Amount"); provided, however, that we shall be entitled in certain circumstances as set forth in the Certificate of Designations to pay the Make-Whole Additional Amount in shares of Common Stock or a combination of shares of Common Stock and cash or, if the Principal Market Stockholders Approval and the Authorized Share Stockholder Approval have not been obtained and if a cash payment is not permitted under the Credit Agreement, the Certificate of Designations provides that we may delay such payment until such conditions are met, but in such event it shall be a Triggering Event (discussed below) if we fail make a payment of that portion of a Make-Whole Dividend Payment if such amount would have become due as a Dividend if the Holder had not delivered a related Conversion Notice.

None of the above limits the right that Holders of the Preferred Shares have to require us to repurchase the Preferred Shares. See "—Redemption Option by the Holders Upon a Triggering Event" below.

*Required Redemption; No Acquisition Warrants.* If the Release Date does not occur on or prior to July 1, 2011, or such later date as the Holders may agree, as soon as practicable following such date, but in no event later than two (2) Trading Days thereafter, we will (1) redeem in cash all of the Preferred Shares by paying in cash to each Holder an amount per outstanding Preferred Share of such Holder equal to the sum of (x) 102.5% of the Stated Value of such Preferred Shares plus (y) all accumulated and unpaid Dividends on all such Preferred Shares, and (2) issue to each Holder, in accordance with the terms of the Securities Purchase Agreement described in the "Plan of Distribution," the Warrants representing the right to acquire, in the aggregate, 1,125,000 shares of Common Stock.

*Mandatory Redemption at Maturity.* If any Preferred Shares remain outstanding on the maturity date, we will be required to redeem those Preferred Shares in cash in an amount equal to the outstanding Conversion Amount for each such share.

*No Mandatory Redemption at Company's Option.* Except as explicitly permitted by the Certificate of Designations, we do not have the right to require any Holder to permit the Company to redeem any of such Holder's outstanding Preferred Shares or any unpaid dividends thereon.

*Reservation of Shares Issuable Upon Conversion.* Prior to receipt of the Authorized Share Stockholder Approval (as defined in the Securities Purchase Agreement), we will be required to reserve out of our authorized and unissued Common Stock a number of shares of Common Stock for each of the Preferred Shares equal to 100% of the number of shares of Common Stock necessary to effect the conversion at the Conversion Rate with respect to the Conversion Amount of each such Preferred Share as of the Initial Issuance Date. From and after receipt of the Authorized Share Stockholder Approval, if received, we will reserve out of our authorized and unissued Common Stock 130% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding at the then applicable Conversion Rate with respect to the then applicable Conversion Amount. We will, so long as any of the Preferred Shares are outstanding, take all action necessary to reserve and keep available out of our authorized and unissued Common Stock, solely for the purpose of effecting the conversions of the Preferred Shares, such number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (without regard to any limitations on conversions) (the "Required Reserve Amount"); provided, further, that any Dividend Shares issued by us shall not be issued from any



Common Stock so reserved. The initial number of shares of Common Stock reserved for conversions of the Preferred Shares and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of Preferred Shares held by each Holder at the time of issuance of the Preferred Shares or increase in the number of reserved shares, as the case may be. In the event a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of the number of reserved shares of common stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any person which ceases to hold any Preferred Shares (other than pursuant to a transfer of Preferred Shares in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Preferred Shares pro rata based on the number of Preferred Shares then held by such Holders.

If at any time while any of the Preferred Shares remain outstanding, we do not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy our obligation to reserve for issuance upon conversion of the Preferred Shares then outstanding at least a number of shares of Common Stock equal to the Required Reserve Amount (an "Authorized Share Failure"), then we will immediately take all action necessary to increase our authorized shares of Common Stock to an amount sufficient to allow us to reserve the Required Reserve Amount for the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, we will hold a meeting of stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, we will provide each stockholder with a proxy statement and shall use our best efforts to solicit our stockholders' approval of such increase in authorized shares of Common Stock and to cause our board of directors to recommend to the stockholders that they approve such proposal.

*Redemption Option by the Holders upon a Triggering Event.* In addition to all other rights of the Holders contained in the certificate of designations, after a Triggering Event (as described below) and continuing until such Triggering Event is cured, if curable, each Holder will have the right, at such Holder's option, to require us to redeem all or a portion of such Holder's Preferred Shares at a price per Preferred Share equal to the sum of (i) the greater of (A) 125% of the Conversion Amount and (B) the product of (1) the Conversion Rate in effect at such time as such Holder delivers the Notice of Redemption at Option of Holder described below and (2) the greatest closing sale price of the Common Stock during the period beginning on the date immediately preceding such Triggering Event and ending on the date the Holder delivers the Notice of Redemption at Option of Holder and (ii) the Make-Whole Additional Amount per Preferred Share being redeemed. To the extent that we are not permitted to effect such redemption upon a Triggering Event under the Credit Agreement, we will remain obligated for any and all payments in connection with such redemption and the Holders acknowledge that such payments will be subject to the rights under the Credit Agreement.

A "Triggering Event" shall be deemed to have occurred upon events such as (i) the suspension from trading or failure of the common stock to be listed on The NASDAQ Global Select Market or other eligible market for a period of five (5) consecutive trading days or for more than an aggregate of ten (10) trading days in any 365-day period; (ii) (A) a Conversion Failure occurs or (B) our notice, written or oral, to any Holder of our intention not to comply, as required, with a request for conversion of any Preferred Shares into shares of Common Stock that is tendered; or (iii) our failure to pay to the Holder amounts owed under certain circumstances and after certain notification requirements. See the Certificate of Designations for a complete definition of "Triggering Events."

Holders have a right to require us to redeem all or a portion of such Holder's Preferred Shares upon a Triggering Event, subject to the terms and conditions in the Certificate of Designations. If we are unable to redeem all of the Preferred Shares submitted for redemption, we will (i) redeem a pro rata amount from each Holder based on the number of Preferred Shares submitted for redemption by such Holder relative to the total number of Preferred Shares submitted for redemption by all Holders and (ii) in addition to any remedy such Holder may have under the Certificate of Designations, pay to each Holder interest at the rate of one percent (1.0%) per month of the Stated Value (prorated for partial months) in respect of each unredeemed Preferred Share until paid in full. In the event a holder redeems less than all of its remaining Preferred Stock, the Stated Value redeemed shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Notice of Redemption at Option of Holder or other applicable notice. We and the Holders agree that in the event of our redemption of any Preferred Shares pursuant to a Triggering Event, the Holders'

damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holders. Accordingly, any redemption premium due pursuant hereto is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty.

*Redemption Right by the Holders Upon a Change in Control.* No sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a "fundamental transaction" (see Exhibit 4.1 to this Current on Report Form 8-K) other than a reorganization, recapitalization or reclassification of the Common Stock (a "Change of Control"), but not prior to the public announcement of such Change of Control, we will deliver written notice to the Holders setting forth a description of the transaction in reasonable detail and the anticipated change of control redemption date if then known. Holders may, subject to and in accordance with the terms of the Certificate of Designations, require us to redeem (a "Change of Control Redemption") in cash all or any portion of such Holder's Preferred Shares by delivering written notice thereof ("Change of Control Redemption Notice") to us, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. Any Preferred Shares subject to redemption pursuant to this redemption upon a Change of Control shall be redeemed by the Corporation in cash at a price (the "Change of Control Redemption Price") equal to the sum of (I) the greater of (i) 125% of the Conversion Amount being redeemed and (ii) the product of (A) the Conversion Amount being redeemed and (B) the quotient determined by dividing (1) the greatest closing sale price of the Common Stock during the period commencing as of the trading day immediately prior to the public announcement of such proposed Change of Control and ending as of the trading day immediately prior to the consummation of such Change of Control by (2) the Conversion Price and (II) the applicable Make-Whole Additional Amount for the Preferred Shares being redeemed. We will make payment of the Change of Control Redemption Price concurrently with the consummation of such Change of Control if such a Change of Control Redemption Notice is received prior to the consummation of such Change of Control and within five (5) Trading Days after our receipt of such notice otherwise (the "Change of Control Redemption Date"). To the extent redemptions are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by us, such redemptions shall be deemed to be voluntary prepayments. Until the Change of Control Redemption Price (together with any interest thereon) is paid in full, the Preferred Shares may be converted, in whole or in part, by any Holder for shares of Common Stock, or in the event the Conversion Date is after the consummation of the Change of Control, shares or equity interests of the successor entity substantially equivalent to our Common Stock.

*Limitation on Beneficial Ownership.* We will not effect any conversion of, or make any dividend, distribution or other issuance or grant in respect of, Preferred Shares, and no Holder shall have the right to convert any Preferred Shares, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with its affiliates) would have acquired, through conversion of Preferred Shares or otherwise, beneficial ownership of a number of shares of Common Stock that exceeds 4.99% (or 9.99% if otherwise notified by the Holder on such Holder's signature block in the Securities Purchase Agreement (the "Maximum Percentage") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing, the number of shares of Common Stock beneficially owned by a Holder and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by the Holder or any of its affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other of our securities (including, without limitation, any notes or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained in the Certificate of Designations. Except as set forth in the preceding sentence, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. By written notice to us, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99%; provided that (i) any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to us, and (ii) any such increase or decrease will apply only to the Holder providing such written notice and not to any other Holder.

We will not be obligated to issue any shares of Common Stock as Dividend Shares or upon conversion of Preferred Shares, and the Holders of Preferred Shares shall not have the right to receive upon payment of Dividends or conversion of Preferred Shares any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which we may issue upon conversion or exercise, as applicable, of Preferred Shares without breaching our obligations under the rules or regulations of the NASDAQ

Global Select Market, which aggregate number equals 19.99% of the number of shares outstanding on the Closing Date (the “Exchange Cap”), except that such limitation shall not apply in the event that we (A) obtain the approval of stockholders as required by the applicable rules of the NASDAQ Global Select Market for issuances of Common Stock in excess of such amount or (B) obtain a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holders of 90% of the Stated Value of the Preferred Stock then outstanding. Until such approval or written opinion is obtained, no Holder of Preferred Shares shall be issued in the aggregate, upon conversion, payment or exercise, as applicable, of Preferred Shares, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the purchase agreement) and the denominator of which is the aggregate number of all Preferred Shares issued to the Holders pursuant to the purchase agreement on the Closing Date (with respect to each such Holder, the “Exchange Cap Allocation”). In the event that any Holder shall sell or otherwise transfer any of such Holder’s Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder’s Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee.

*Equal Treatment of Holders.* No consideration shall be offered or paid to any of the Holders to amend or waive or modify any provision of the Preferred Shares, or the Warrants, unless the same consideration is also offered to all of the Holders. This is a separate right granted to each of the Holders by us and shall not in any way be construed as the Holders acting in concert or as a group with respect to the purchase, disposition or voting of securities or otherwise.

*Liquidation Preference.* In the event of either a voluntary or involuntary liquidation, dissolution or winding up of us or our subsidiaries, the assets of which constitute all or substantially all of the assets of our business and that of our subsidiaries taken as a whole, in a single transaction or series of transactions (a “liquidation event”), the Holders shall be entitled to receive in cash out of our assets, whether from capital or from earnings available for distribution to its stockholders (the “liquidation funds”), before any amount shall be paid to the holders of any of our capital stock of any class junior in rank to the Preferred Shares in respect of the preferences as to distributions and payments on our liquidation, dissolution and winding up, an amount per Preferred Share equal to the greater of (i) the sum of the Conversion Amount plus the Make-Whole Additional Amount, and (ii) the amount the Holder of such Preferred Share would have received in such Liquidation Event had such Holder converted such Preferred Share into Common Stock pursuant to this Section E immediately prior to such Liquidation Event; provided that, if the liquidation funds are insufficient to pay the full amount due to the Holders and holders of shares of other classes or series of our preferred stock that are of equal rank with the Preferred Shares as to payments of liquidation funds (the “pari passu shares”), if any, then each Holder and each holder of any such pari passu shares shall receive a percentage of the liquidation funds equal to the full amount of liquidation funds payable to such holder as a liquidation preference, in accordance with their respective certificate of designations, preferences and rights, as a percentage of the full amount of liquidation funds payable to all holders of Preferred Shares and pari passu shares. After the foregoing distributions, the Holders shall be entitled, on a pari passu basis with the holders of Common Stock and treating for the purpose thereof all of the Preferred Shares as having been converted into Common Stock, to participate in the distribution of any of our remaining assets to the holders of the outstanding Common Stock.

*Ranking.* All shares of Common Stock shall be of junior rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon our liquidation, dissolution and winding up. The rights of the shares of Common Stock shall be subject to the preferences and relative rights of the Preferred Shares. Without the prior express written consent of the Holders of 66% of the Stated Value of the Preferred Stock then outstanding, we will not hereafter authorize or issue additional or other Capital Stock that is of senior or pari-passu rank to the Preferred Shares in respect of the preferences as to distributions and payments upon a Liquidation Event. We will be permitted to issue preferred stock that is junior in rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon our liquidation, dissolution and winding up, provided, that the maturity date (or any other date requiring redemption, repayment or any other payment, including, without limitation, dividends in respect of any such preferred shares) of any such junior preferred shares is not on or before 91 days after the Maturity Date. In the event of our merger or consolidation with or into another corporation, the Preferred Shares shall maintain their relative powers, designations and preferences provided for herein (except that the Preferred Shares may not be pari passu with, or junior to, any Capital Stock of the successor entity).

**Item 9.01 Financial Statements and Exhibits**

<u>Exhibit Number</u>	<u>Description</u>
4.1*	Form of Warrant
4.2*	Amendment to Rights Agreement, dated as of March 30, 2011, by and between Amerigon Incorporated and Computershare Trust Company, N.A.
4.3*	Certified Resolution of the Board of Directors of Amerigon Incorporated Establishing and Designating the Relative Rights and Preferences of Series C 8% Convertible Preferred Stock
10.1*	Placement Agency Agreement, dated as of March 30, 2011, by and between Amerigon Incorporated and Roth Capital Partners, LLC.
10.2*	Securities Purchase Agreement dated as of March 30, 2011 by and among Amerigon Incorporated and certain institutional investors
10.3*	Form of Lock-up Agreement
10.4*	Credit Agreement, dated as of March 30, 2011, by and among Amerigon, Amerigon Europe GmbH, the financial institutions which are now or which hereafter become a party thereto and Bank of America, N.A., as Swing Line Lender and L/C Issuer, and as administrative agent for the lenders.
10.5*	Pledge and Security Agreement, dated as of March 30, 2011, by and among Amerigon, BSST LLC, ZT Plus, LLC, Amerigon Europe GmbH and Bank of America, N.A.
10.6*	Parent Guaranty, dated as of March 30, 2011, by Amerigon and Amerigon Europe GmbH executed in favor of Banc of America Securities Limited, in its capacity as administrative agent.
10.7*	Subordination Agreement by and among Amerigon, Bank of America, N.A., Kingsbrook Opportunities Master Fund LP, and other buyers parties thereto.
10.8*	Fourth Amendment to the Amerigon Incorporated 2006 Equity Incentive Plan

\* Filed herewith

**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**

Date: March 31, 2011

By: \_\_\_\_\_ /s/ BARRY G. STEELE  
Barry G. Steele,  
Chief Financial Officer

EXHIBIT INDEX

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\* Filed herewith

**FORM OF WARRANT  
AMERIGON INCORPORATED**

**WARRANT TO PURCHASE COMMON STOCK**

Warrant No.: \_\_\_\_\_

Number of Shares of Common Stock: \_\_\_\_\_

Date of Issuance: [\_\_\_\_\_] , 201\_ (“**Issuance Date**”)<sup>1</sup>

Amerigon Incorporated, a Michigan corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [INSERT NAME OF APPLICABLE BUYER], the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the Issuance Date (the “**Initial Exercisability Date**”), but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), \_\_\_\_\_ ( \_\_\_\_\_ )<sup>2</sup> fully paid nonassessable shares of Common Stock, without par value, subject to adjustment as provided herein (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this “**Warrant**”), shall have the meanings set forth in Section 16. This Warrant is one of the Warrants to purchase Common Stock (the “**SPA Warrants**”) issued pursuant to Section 4(o) of the Securities Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to such terms in the Securities Purchase Agreement.

**1. EXERCISE OF WARRANT.**

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any time or times on or after the Initial Exercisability Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) (A) payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash or by wire transfer of immediately available funds or (B) by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder; provided, however, once the Holder has purchased all of the Warrant Shares available hereunder, the Warrant has been exercised in full and the Company has satisfied all of its

<sup>1</sup> This date will be the Escrow Termination Date (as defined in the Escrow Agreement (as defined in the Securities Purchase Agreement)).

<sup>2</sup> Insert the Holder’s pro rata portion of 1,125,000, (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock after the Subscription Date).

obligations under the Warrant, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of the date the final Exercise Notice is delivered to the Company. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as reducing the number of Warrant Shares on the face of this Warrant to the remaining number of Warrant Shares underlying this Warrant. The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof. On or before the first (1<sup>st</sup>) Trading Day following the date on which the Company has received the Exercise Notice, the Company shall transmit by facsimile an acknowledgment of receipt of the Exercise Notice to the Holder and the Company's transfer agent (the "**Transfer Agent**"). On or before the third (3<sup>rd</sup>) Trading Day following the date on which the Exercise Notice has been delivered to the Company (which for purposes of this Section 1(a) and Section 1(c)(ii) shall be upon receipt, of a facsimile or e-mail copy of the Exercise Notice (provided confirmation of transmission is mechanically or electronically generated and kept on file by the Holder) and for purposes of Section 1(c)(i) shall be one Business Day after deposit of the Exercise Notice with an overnight courier service) (the "**Share Delivery Date**") (provided that if the Aggregate Exercise Price (unless notice of Cashless Exercise was given in the Exercise Notice) has not been delivered by such date, the Share Delivery Date shall be one Trading Day after the Aggregate Exercise Price is delivered), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or upon the request of the Holder, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any. Upon proper delivery of the Exercise Notice (provided that payment of the Aggregate Exercise Price or notice of Cashless Exercise is delivered, as applicable,) the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three (3) Trading Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and



delivery of Warrant Shares upon exercise of this Warrant; provided, however, that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by an assignment reasonably satisfactory to the Company and duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$13.50, subject to adjustment as provided herein.

(c) Company’s Failure to Timely Deliver Securities.

(i) If the Company shall fail for any reason or for no reason to issue to the Holder on or before the Share Delivery Date, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant, then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each day after such third (3<sup>rd</sup>) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to 1.0% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a).

(ii) In addition to the foregoing, if on or before the Share Delivery Date, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company’s share register or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a “**Buy-In**”), then the Company shall, within three (3) Trading Days after the Holder’s request and in the Holder’s discretion, either (i) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other reasonable out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Company’s obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Holder’s balance account with DTC shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or

certificates representing such shares of Common Stock or credit such Holder's balance account with DTC and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Bid Price on the date of exercise. Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, if the Registration Statement (as defined in the Securities Purchase Agreement) covering the issuance of the Warrant Shares that are subject to the Exercise Notice (the "**Unavailable Warrant Shares**") is not available for the issuance of such Unavailable Warrant Shares, the Holder may exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{D}$$

For purposes of the foregoing formula:

- A= the total number of shares with respect to which this Warrant is then being exercised.
- B= the Closing Sale Price of the Common Stock for the Trading Day immediately preceding the date of the Exercise Notice.
- C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.
- D= the Closing Sale Price of the Common Stock on the date of the Exercise Notice.

For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the date hereof, it is intended and the Company acknowledges that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Closing Date (as defined in the Securities Purchase Agreement).

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly

issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 12.

(f) Limitations on Exercises.

(iii) Beneficial Ownership. The Company shall not effect the exercise of this Warrant, and the Holder shall not have the right to exercise this Warrant, to the extent that after giving effect to such exercise, such Person (together with such Person's affiliates) would beneficially own in excess of [4.99%] [9.99%]<sup>3</sup>, (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Person and its affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Person and its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**") and the rules, regulations and interpretations promulgated thereunder, including without limitation, Release No. 34-39538. The Holder shall certify in all Exercise Notices delivered pursuant to Section 1(a) hereof the aggregate number of shares of Common Stock beneficially owned by the Holder and the Holder's affiliates other than pursuant to this Warrant (excluding shares of Common Stock which would be issuable upon exercise or conversion of the unexercised or unconverted portion of any securities of the Company beneficially owned by the Holder and its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein). In connection with any exercise of this Warrant, the Company shall be entitled to rely upon such certification by the Holder. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the 1934 Act and the rules, regulations and interpretations promulgated thereunder. For purposes of this Warrant, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding

<sup>3</sup> Insert 4.99% for all Holders other than any Holder electing 9.99% on such Holder's signature block in the Securities Purchase Agreement.

shares of Common Stock as reflected in (1) the Company's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the SPA Warrants, by the Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder and not to any other holder of SPA Warrants. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f)(i) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(iv) **Principal Market Regulation.** The Company shall not be obligated to issue any shares of Common Stock upon exercise of this Warrant and no Buyer shall be entitled to receive any shares of Common Stock if the issuance of such shares of Common Stock would exceed that number of shares of Common Stock which the Company may issue upon exercise of the SPA Warrants and pursuant to the other Transaction Documents or otherwise without breaching the Company's obligations under the rules or regulations of any applicable Eligible Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its shareholders as required by the applicable rules of the Eligible Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. Until such approval is obtained, no Buyer shall be issued in the aggregate, upon exercise, conversion or payment, as applicable, of any SPA Warrants or pursuant to the other Transaction Documents, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the total number of shares of Common Stock underlying the SPA Warrants issued to such Buyer pursuant to the

Securities Purchase Agreement on the Issuance Date and the denominator of which is the aggregate number of shares of Common Stock underlying the SPA Warrants issued to all of the Buyers pursuant to the Securities Purchase Agreement on the Issuance Date (with respect to each Buyer, the “**Exchange Cap Allocation**”). In the event that any Buyer shall sell or otherwise transfer any of such Buyer’s SPA Warrants, the transferee shall be allocated a pro rata portion of such Buyer’s Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder of SPA Warrants shall exercise all of such holder’s SPA Warrants into a number of shares of Common Stock which, in the aggregate, is less than such holder’s Exchange Cap Allocation, then the difference between such holder’s Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders of SPA Warrants on a pro rata basis in proportion to the shares of Common Stock underlying the SPA Warrants then held by each such holder. In the event that the Company is prohibited from issuing any Warrant Shares for which an Exercise Notice has been received as a result of the operation of this Section 1(f)(ii), the Company shall pay cash in exchange for cancellation of such Warrant Shares, at a price per Warrant Share equal to the difference between the Closing Sale Price and the Exercise Price applicable to such Warrant Shares as of the date of the attempted exercise and return the Aggregate Exercise Price to the extent it has been delivered by the Holder.

(g) **Insufficient Authorized Shares.** If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to 100% of the number of shares of Common Stock (the “**Required Reserve Amount**”) as shall from time to time be necessary to effect the exercise of all of this Warrant then outstanding (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Voluntary Adjustment By Company. The Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

(b) Adjustment Upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(b) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(c) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such

Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

#### 4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. During such time as this Warrant is outstanding, in addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (including the Shareholder Rights Plan adopted by the Board of Directors in January 2009 (as amended or otherwise modified, the “**Rights Plan**”)) (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation). Assuming the Holder does not acquire more than 4.99% of the outstanding shares of Common Stock at the time of such acquisition other than pursuant to, and in accordance with, the terms of the Transaction Documents or in accordance with this Section 4(a), notwithstanding anything to the contrary in the Rights Plan, the issuance of the SPA Warrants and the SPA Securities and any shares of Common Stock pursuant to the terms and provisions in this Section 4(a) and the terms and provisions of the SPA Securities shall not cause the applicability in any way or shall not put into effect in any way any of the provisions of the Rights Plan.

#### (b) Fundamental Transactions.

(i) During such time as this Warrant is outstanding, the Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of the SPA Warrants in exchange for such SPA Warrants a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, an adjusted exercise price equal to the value for the shares of Common Stock reflected by the terms of such Fundamental Transaction, and exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any

limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of the publicly traded common stock or common shares (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been converted immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the Corporate Event but prior to the Expiration Date, in lieu of shares of Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of this Warrant prior to such Corporate Event, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Corporate Event had this Warrant been exercised immediately prior to such Corporate Event. Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant.

(ii) Notwithstanding the provisions of Section 4(b), in the event of a Cash Fundamental Transaction, the Company shall have the right to require that the Holder waive the requirements of Section 4(b)(i) (the "**Waiver**") in exchange for a payment of cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Cash Fundamental Transaction, with the Waiver becoming effective, and this Warrant cancelled, concurrently with such payment of such cash amount (the "**Cash Fundamental Transaction Amount**") to the Holder on the date the Cash Fundamental Transaction is consummated (the "**Cash Fundamental Transaction Closing Date**"). The Company shall deliver to the Holder written notice via facsimile and overnight courier of its election of the Waiver (the "**Waiver Notice**") no sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a Cash Fundamental Transaction and on or prior to the delivery of the Waiver Notice the Company shall publicly announce such Cash Fundamental Transaction. Notwithstanding anything to the contrary in this Section 4(b), but subject to Section 1(f), until such time that the Holder receives the Cash Fundamental Transaction Amount (at



which point this Warrant shall be cancelled), this Warrant may be exercised, in whole or in part, by the Holder (x) prior to the Cash Fundamental Transaction Closing Date, into Common Stock pursuant to Section 1, or (y) upon (which may be expressly conditioned upon the closing of the Cash Fundamental Transaction) or after the Cash Fundamental Transaction Closing Date, into any such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights, if applicable) which the Holder would have been entitled to receive upon the happening of such Cash Fundamental Transaction had the Warrant been exercised immediately prior to such Cash Fundamental Transaction Closing Date.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as any of the SPA Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the SPA Warrants, 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the SPA Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company together with a written assignment of this

Warrant in a form reasonably satisfactory to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred with this Warrant being cancelled.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no SPA Warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental

Transaction, dissolution or liquidation; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

10. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by delivering via registered mail a copy thereof to such party at the address it set forth on the signature page hereto and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the

provisions of Section 1(c) shall be tolled and the Company shall, within two (2) Business Days submit via facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. **REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF.** The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

14. **TRANSFER.** This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company so long as such transfer is in accordance with Section 7(a).

15. **SEVERABILITY.** If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. **CERTAIN DEFINITIONS.** For purposes of this Warrant, the following terms shall have the following meanings:

(a) **"Black Scholes Value"** means the value of this Warrant based on the Black and Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day immediately following the public announcement of the applicable Cash Fundamental Transaction for pricing purposes and reflecting (i) a risk-free interest rate

corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to the greater of 60% and the 100 day volatility obtained from the HVT function on Bloomberg as of the day immediately following the public announcement of the applicable Cash Fundamental Transaction, (iii) the underlying price per share used in such calculation shall be the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in the Cash Fundamental Transaction and (iv) a 360 day annualization factor.

(b) “**Bloomberg**” means Bloomberg Financial Markets.

(c) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) “**Capital Stock**” means: (A) in the case of a corporation, corporate stock; (B) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (C) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership or limited liability company interests; and (D) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

(e) “**Cash Fundamental Transaction**” means any Fundamental Transaction of the type specified in clauses (A)(i), (A)(ii), (A)(iii) or (B) of the definition thereof, for which the shareholders of the Company are required to surrender their shares of Common Stock for consideration consisting solely of cash; provided, that in the cases of clause A(i), (A)(iii) or (B) of such definition, only if immediately after the consummation thereof Persons beneficially owning (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, a majority of the Voting Stock of the Company immediately prior to such consummation do not beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, a majority of the Voting Stock of the surviving or transferee Person.

(f) “**Closing Bid Price**” and “**Closing Sale Price**” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot

be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(g) “**Common Stock**” means (i) the Company’s shares of Common Stock, without par value, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(h) “**Convertible Securities**” means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(i) “**Eligible Market**” means the Principal Market, The NASDAQ Global Market, The New York Stock Exchange, Inc., NYSE Amex Equities or The Nasdaq Capital Market.

(j) “**Expiration Date**” means the date sixty months after the Initial Exercisability Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a “**Holiday**”), the next day that is not a Holiday.

(k) “**Fundamental Transaction**” means that (A) the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (iv) reorganize, recapitalize or reclassify its Common Stock, (B) a Person makes a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer) or (C) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of (x) 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (y) 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not beneficially owned by such Person on the Subscription Date or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Person to effect a statutory

short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company.

(l) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(m) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common shares or common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(n) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(o) “**Principal Market**” means The NASDAQ Global Select Market.

(p) “**Required Holders**” means the holders of the SPA Warrants representing at least sixty-six percent (66%) of the shares of Common Stock underlying the SPA Warrants then outstanding.

(q) “**Securities Purchase Agreement**” means that certain Securities Purchase Agreement, dated as of March \_\_, 2011 (the “**Subscription Date**”), by and among the Company and the investors (the “**Buyers**”) referred to therein.

(r) “**SPA Securities**” means the Preferred Shares issued pursuant to the Securities Purchase Agreement.

(s) “**Successor Entity**” means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(t) “**Trading Day**” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that “**Trading Day**” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

(u) “**Voting Stock**” of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees

of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

**[Signature Page Follows]**



IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

**AMERIGON INCORPORATED**

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

**EXERCISE NOTICE**  
**TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS**  
**WARRANT TO PURCHASE COMMON STOCK**

**AMERIGON INCORPORATED**

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the Common Stock ("**Warrant Shares**") of Amerigon Incorporated, a Michigan corporation (the "**Company**"), evidenced by the attached Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

\_\_\_\_\_ a "Cash Exercise" with respect to \_\_\_\_\_ Warrant Shares; or

\_\_\_\_\_ a "Cashless Exercise" with respect to \_\_\_\_\_ Warrant Shares.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$\_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Aggregate number of shares of Common Stock beneficially owned by the Holder and the Holder's affiliates other than pursuant to the Warrant (as calculated in accordance with Section 1(f)(i) of the Warrant): \_\_\_\_\_

4. Delivery of Warrant Shares. The Company shall deliver to the holder \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant.

Account Number (if electronic book entry transfer): \_\_\_\_\_

DTC Participant Number (if electronic book entry transfer): \_\_\_\_\_

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

\_\_\_\_\_  
Name of Registered Holder

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

Name:

Title:

**AMENDMENT NO. 1 TO  
RIGHTS AGREEMENT**

This Amendment No. 1 to Rights Agreement (this "Amendment") is entered into as of March 30, 2011, between Amerigon Incorporated, a Michigan corporation (the "Company"), and Computershare Trust Company, N.A., a federally chartered trust company (the "Rights Agent").

**WITNESSETH:**

**WHEREAS**, the Company and the Rights Agent are parties to that certain Rights Agreement, dated as of January 26, 2009 (the "Agreement"); and

**WHEREAS**, the Company desires to issue and sell (A) up to 7,000 shares of the Company's Series C Convertible Preferred Stock, without par value but a stated value of \$10,000 per share (or such higher amount, as stated in the Securities Purchase Agreement), convertible into Common Shares (as defined in the Agreement) of the Company (the Common Shares, as issued upon conversion of the Series C Convertible Preferred Stock, the "Conversion Shares"), and as used to pay dividends on the Series C Convertible Preferred Stock, the "Dividend Shares"), (B) warrants to purchase up to 1,125,000 Common Shares, which warrants are issuable only upon the occurrence of certain conditions (with the underlying Common Shares being referred to as the "Warrant Shares"), (C) the Conversion Shares, (D) the Dividend Shares, and (E) the Warrant Shares, pursuant to the Securities Purchase Agreement, dated as of the date hereof, by and among the Company and the Buyers listed on the Schedule of Buyers attached thereto and the Certified Resolution of the Board of Directors of Amerigon Incorporated Establishing and Designating the Relevant Rights and Preferences of Series C Convertible Preferred Stock; and

**WHEREAS**, pursuant to Section 26 of the Agreement, the Company and the Agent may from time to time supplement or amend the Agreement subject to the terms of the Agreement; and

**WHEREAS**, the Board of Directors of the Company has determined that an amendment to the Agreement as set forth herein is necessary and desirable in connection with the foregoing and the Company and the Rights Agent desire to evidence such amendment in writing.

**NOW, THEREFORE**, in consideration of these premises and mutual agreements set forth herein, the parties agree as follows:

1. Amendment of Section 1. Section 1 of the Agreement, "Certain Definitions" is supplemented to add the following definitions in the appropriate locations:

"Buyers" shall mean Kingsbrook Opportunities Master Fund LP and the other Buyers named in the Securities Purchase Agreement.

"Certificate of Designation" shall mean the Certified Resolution of the Board of Directors of Amerigon Incorporated Establishing and Designating the Relevant Rights and Preferences of Series C Convertible Preferred Stock.

“Securities Purchase Agreement” shall mean the Securities Purchase Agreement, dated as of the date hereof, by and among the Company and the Buyers.

“Series C Convertible Preferred Stock” shall mean the shares of Series C Convertible Preferred Stock, without par value but a stated value of \$10,000 per share (or such higher amount, as stated in the Securities Purchase Agreement), convertible into Common Shares.

“Transactions” shall mean the issuance of (x) the Series C Convertible Preferred Stock, the conversion of the Series C Convertible Preferred Stock into the Conversion Shares and the issuance thereunder of the Dividend Shares, (y) the Warrants (as such term is hereinafter defined), and the exercise of the Warrants in accordance with its terms and (z) the Warrant Shares (as such term is hereinafter defined).

“Warrants” shall mean warrants to purchase up to 1,125,000 Common Shares, which warrants are issuable only upon the occurrence of certain conditions (the “Warrants”, with the underlying Common Shares being referred to as the “Warrant Shares”).

2. Amendment of the definition of “Acquiring Person”. The definition of “Acquiring Person” in Section 1.1 of the Agreement is amended by adding the following sentence at the end thereof:

“Notwithstanding anything in this Agreement to the contrary, neither the Buyers nor any of their Affiliates or Associates shall be deemed to be an Acquiring Person solely as a result of (i) the execution of the Securities Purchase Agreement or the Warrants, (ii) the filing of the Certificate of Designation, or (iii) the consummation of the Transactions or any other transaction contemplated or permitted by the Securities Purchase Agreement, the Warrants or the Certificate of Designation.”

3. Amendment of the definition of a “Trigger Event”. The definition of a “Trigger Event” in Section 1.11 of the Agreement is amended by adding the following sentence at the end thereof:

“Notwithstanding anything in this Agreement to the contrary, a Trigger Event shall not be deemed to have occurred solely as a result of (i) the execution of the Securities Purchase Agreement or the Warrants, (ii) the filing of the Certificate of Designation, or (iii) the consummation of the Transactions or any other transaction contemplated or permitted by the Securities Purchase Agreement, the Warrants or the Certificate of Designation.”

4. Amendment of the definition of “Shares Acquisition Date”. The definition of “Shares Acquisition Date” in Section 1.9 of the Agreement is amended by adding the following sentence at the end thereof:

“Notwithstanding anything in this Agreement to the contrary, a Shares Acquisition Date shall not be deemed to have occurred solely as a result of (i) the execution of the Securities Purchase Agreement or the Warrants, (ii) the filing of the Certificate of Designation, or (iii) the consummation of the Transactions or any other transaction contemplated

or permitted by the Securities Purchase Agreement, the Warrants or the Certificate of Designation.”

5. Amendment to Section 29. Section 29 of the Agreement is amended by adding the following sentence at the end thereof:

“Nothing in this Agreement shall be construed to give any holder of Rights or any other Person any legal or equitable rights, remedies or claims under this Agreement by virtue of (i) the execution of the Securities Purchase Agreement or the Warrants, (ii) the filing of the Certificate of Designation, or (iii) the consummation of the Transactions or any other transaction contemplated or permitted by the Securities Purchase Agreement, the Warrants or the Certificate of Designation.”

6. The Agreement, as supplemented and modified by this Amendment, which such Amendment shall be deemed effective as of the date first written above, as if executed on such date, together with the other writings referred to in the Agreement or delivered pursuant thereto which form a part thereof, contains the entire agreement among the parties with respect to the subject matter thereof and amends, restates and supersedes all prior and contemporaneous arrangements or understandings with respect thereto.

7. Upon the effectiveness of this Amendment, on and after the date hereof, each reference in the Agreement to “this Agreement,” “hereunder,” “hereof,” or words of like import, shall mean and be a reference to the Agreement, as amended hereby. Except as specifically amended above, the Agreement shall remain in full force and effect and is hereby ratified and confirmed.

8. This Amendment shall be governed by the laws of the State of Michigan applicable to contracts to be made and to be performed entirely within the State, except that the rights, duties and obligations of the Rights Agent shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

9. This Amendment may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. A signature to this Amendment transmitted electronically shall have the same authority, effect and enforceability as an original signature.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have duly executed this Amendment, all as of the day and year first above written.

AMERIGON INCORPORATED

By: /s/ Barry Steele  
Name: Barry Steele  
Title: Chief Financial Officer

COMPUTERSHARE TRUST COMPANY, N.A., as Rights  
Agent

By: /s/ Kellie Gwinn  
Name: Kellie Gwinn  
Title: Vice-President

Signature Page to Amendment to Shareholder Rights Agreement

**CERTIFIED RESOLUTION OF THE BOARD OF DIRECTORS OF AMERIGON  
INCORPORATED ESTABLISHING AND DESIGNATING THE RELATIVE RIGHTS  
AND PREFERENCES OF SERIES C 8% CONVERTIBLE PREFERRED STOCK**

Amerigon Incorporated (the "**Corporation**") hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation (the "**Board**") on March 22, 2011:

WHEREAS, the present name of the Corporation is Amerigon Incorporated;

WHEREAS, the identification number assigned to the Corporation by the Bureau is 545-27C;

WHEREAS, the Board has concluded to designate a new series of Preferred Stock, "Series C Convertible Preferred Stock", fix the number of shares of such Series C Convertible Preferred Stock and determine the voting and other rights, preferences, privileges and restrictions granted to or imposed upon such Series C Convertible Preferred Stock;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority granted to and vested in the Board in accordance with the provisions of its Articles of Incorporation, the Board hereby designates 7,000 shares of the Corporation's Preferred Stock as "Series C Convertible Preferred Stock", with the rights, preferences, privileges and restrictions set forth below.

FURTHER RESOLVED, that Article III of the Articles of Incorporation is hereby amended by the addition of Section E, which shall read in its entirety as follows:

"ARTICLE III

E. The Board of Directors hereby designates 7,000 shares of the Corporation's Preferred Stock as "Series C Convertible Preferred Stock", with the rights, preferences, privileges and restrictions set forth below.

(1) Dividends.

(a) The holders of shares of Series C Convertible Preferred Stock (the "**Preferred Shares**", and each holder of Preferred Shares, a "**Holder**" and collectively, the "**Holders**"), shall be entitled to receive dividends ("**Dividends**"), which Dividends shall be paid by the Corporation out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in shares of Common Stock or cash on the Stated Value (as defined below) of such Preferred Share, which Dividends for the avoidance of doubt shall be calculated on such Preferred Shares without giving effect to any reduction for the payment of any Installment Amount payable on such date, at the Dividend Rate (as defined below), which shall be cumulative. Dividends on the Preferred Shares shall commence accumulating on the Initial Issuance Date and shall be computed on the basis of a 365-day year and actual days elapsed. Dividends shall be payable quarterly in arrears on the first day of the applicable quarter (each, a "**Dividend Date**") with the first Dividend Date being September 1, 2011, and the last

Dividend Date being the Maturity Date. If a Dividend Date is not a Business Day (as defined below), then the Dividend shall be due and payable on the Business Day immediately following such Dividend Date.

(b) (i) Dividends shall be payable on each Dividend Date, to the record holders of the Preferred Shares on the applicable Dividend Date, in shares of Common Stock (“**Dividend Shares**”) so long as there has been no Equity Conditions Failure and so long as the delivery of Dividend Shares would not violate the provisions of Section E(8) of this Article III; provided, however, that the Corporation may, at its option and to the extent permitted under the Bank Facility following notice to each Holder, pay Dividends on any Dividend Date in cash (“**Cash Dividends**”) or in a combination of, to the extent permitted under the Bank Facility, Cash Dividends and, so long as there has been no Equity Conditions Failure, Dividend Shares. The Corporation shall deliver a written notice (each, a “**Dividend Election Notice**”) to each Holder on the Dividend Notice Due Date (the date such notice is delivered to all of the Holders, the “**Dividend Notice Date**”) which notice (1) either (A) confirms that Dividends to be paid on such Dividend Date shall be paid entirely in Dividend Shares or (B) elects to pay Dividends as Cash Dividends or a combination of Cash Dividends and Dividend Shares and specifies the amount of Dividends that shall be paid as Cash Dividends and the amount of Dividends, if any, that shall be paid in Dividend Shares and (2) certifies (x) that there has been no Equity Conditions Failure as of such time, if any portion of the Dividends shall be paid in Dividend Shares, and (y) that Dividends are permitted to be paid in cash under the Bank Facility, if any portion of the Dividends shall be paid as Cash Dividends. If any portion of Dividends for a particular Dividend Date shall be paid in Dividend Shares, then (I) contemporaneously with the delivery of the Dividend Election Notice on the applicable Dividend Notice Date, the Corporation shall pay to the Holder, in accordance with Section E(1)(b)(ii) of this Article III, a number of shares of Common Stock equal to (x) the amount of Dividends payable on the applicable Dividend Date in Dividend Shares divided by (y) the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price determined as of the Dividend Notice Date (the “**Pre-Dividend Shares**”) and (II) on the Dividend Date, the Corporation shall deliver a notice setting forth the calculation of the Dividend Balance Shares (and the calculation of the component parts of such calculation) and shall pay to the Holder, in accordance with Section E(1)(b)(ii) of this Article III, a number of shares of Common Stock equal to any Dividend Balance Shares. Notwithstanding the foregoing, the Corporation may, to the extent permitted under the Bank Facility, deliver an irrevocable notice (certifying that the payment of cash pursuant to the election under this notice is permitted under the Bank Facility) to all but not less than all of the Holders not less than 12 Trading Days prior to the Dividend Date electing to pay on the Dividend Date cash in lieu of any Dividend Balance Shares otherwise deliverable on the applicable Dividend Date in an amount to each Holder equal to the product of (z) the number of such Holder’s Dividend Balance Shares otherwise deliverable but for this election on the Dividend Date and (w) the lower of (a) the then applicable Conversion Price and (b) that price computed



as 90% of the Market Price as of the applicable Dividend Date (without taking into account the delivery of any Pre-Dividend Shares). Dividends to be paid on a Dividend Notice Date or on a Dividend Date in Dividend Shares shall be paid in a number of fully paid and nonassessable shares of Common Stock (rounded up to the nearest whole share). If the Equity Conditions are not satisfied as of the Dividend Notice Date or if the delivery of Dividend Shares would violate the provisions of Section E(8) of this Article III, then unless the Corporation has elected to pay such Dividends in cash and such payment is permitted under the Bank Facility, the Dividend Notice shall indicate that the Dividends shall be paid in cash to the extent such payment is permitted under the Bank Facility; provided, however, that if the delivery of the Dividend Shares would not violate the provisions of Section E(8) of this Article III, the Dividend Notice shall also indicate that the Holder may waive the Equity Conditions but that unless such conditions are waived, the Dividends shall be paid in cash to the extent such payment is permitted under the Bank Facility; provided, that to the extent that such Dividend Notice indicates that payment of Dividends in cash is not permitted under the Bank Facility and the Holder does not waive the Equity Conditions or the delivery of the Dividend Shares would violate the provisions of Section E(8) of this Article III, then such Dividends shall be paid in accordance with the provisions set forth below in Section E(1)(c), (d) and (e) with such unpaid Dividends accumulating additional Dividends thereon at the Dividend Rate from the applicable Dividend Date until such Dividends are paid.

(ii) When any Dividend Shares are to be paid on a Dividend Notice Date or a Dividend Date, as applicable, the Corporation shall

(i) (A) provided that the Corporation's transfer agent (the "**Transfer Agent**") is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program and such action is not prohibited by applicable law or regulation or any applicable policy of DTC, credit such aggregate number of Dividend Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("**DWAC**") system, or (B) if the foregoing shall not apply, issue and deliver on the applicable Dividend Notice Date or Dividend Date, as the case may be, to the address set forth in the register maintained by the Corporation for such purpose or to such address as specified by the Holder in writing to the Corporation at least two (2) Business Days prior to the applicable Dividend Notice Date or Dividend Date, a certificate, registered in the name of the Holder or its designee, for the number of Dividend Shares to which the Holder shall be entitled and

(ii) with respect to each Dividend Date, pay to the Holder, in cash by wire transfer of immediately available funds, the amount of any Cash Dividends. Notwithstanding the foregoing, the Corporation shall not be entitled to pay Dividends in Dividend Shares and shall be required to pay all such Dividends in cash as Cash Dividends on the applicable Dividend Notice Date or Dividend Date if, unless consented to in writing by the Holder, there has been an Equity Conditions Failure or if the delivery of the Dividend Shares would violate the provisions of Section E(8) of this Article III. If a Triggering Event or Equity Conditions Failure occurs during the period from the Dividend Notice Date through the Dividend Date, then on the Dividend Date, at the Holder's

option, either (1) the Holder may require the Corporation to pay the Dividend due on the applicable Dividend Date as Cash Dividends (including any Dividends represented by Pre-Dividend Shares) and, in conjunction with receipt of such cash payment, shall return the applicable number of Pre-Dividend Shares or (2) in lieu of the Dividend Balance Shares that would otherwise be deliverable on the Dividend Date under Section E(1)(b)(i) of this Article III, the Holder may require the Corporation to pay an amount to the Holder as Cash Dividends equal to the Dividend Balance Amount and the Holder shall retain the Pre-Dividend Shares. Notwithstanding the foregoing, to the extent that the Corporation is required to pay Cash Dividends pursuant to this Section E(1)(b)(ii) and such Cash Dividends are not permitted under the Bank Facility, then such Dividends shall be paid in accordance with the provisions set forth below in Sections E(1)(c), (d) and (e) with such unpaid Dividends accumulating additional Dividends thereon at the Dividend Rate from the applicable Dividend Date until such Dividends are paid.

(c) If the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment of any portion of Dividends as Cash Dividends on the applicable Dividend Date is not permitted under the Bank Facility, the Corporation shall be required to confirm in the applicable Dividend Election Notice that the Dividends not permitted by the Bank Facility to be paid as Cash Dividends on such Dividend Date will be paid as Dividend Shares.

(d) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of Cash Dividends is permitted under the Bank Facility, the Corporation shall be required to elect in the applicable Dividend Election Notice to satisfy the Dividends as Cash Dividends; provided, however, that if only a portion of the Dividends is permitted to be paid in cash under the Bank Facility, the Corporation shall pay in Cash Dividends the maximum amount so permitted to be paid under the Bank Facility and the Corporation shall pay the remainder of the Dividends in Dividend Shares to the extent that there are authorized and unissued shares of Common Stock, and the Corporation shall pay to the Holder any remaining unpaid portion of the Dividends either in Dividend Shares or in Cash Dividends in accordance with Section E(1) of this Article III upon the earliest of the satisfaction of the conditions in Sections E(1)(b), (c) or (d) of this Article III; provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's right, under Section E(3) of this Article III.

(e) (x) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment of any amount of Cash Dividends is not permitted under the Bank Facility, or (y) if the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment of any amount of Cash Dividends is not permitted under the Bank Facility and there is an Equity Conditions Failure on the Dividend Notice Date

which is not waived by the Holder, the Corporation shall pay to the Holder the Dividends in Dividend Shares to the extent that there are authorized and unissued shares of Common Stock and the Corporation shall pay to the Holder any unpaid Dividends either in Dividend Shares or in Cash Dividends in accordance with Section E(1) of this Article III upon the earliest of the satisfaction of the conditions in Sections E(1)(b), (c) or (d) of this Article III; provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's right, under Section E(3) of this Article III.

(f) Notwithstanding any other provision of Section E of this Article III, Dividends shall be payable on the Preferred Shares only when, as and if declared by the Board. In the event the Board fails to declare any Dividends, then such unpaid Dividends shall accumulate additional Dividends thereon at the Dividend Rate from the applicable Dividend Date until such Dividends are paid.

(g) For purposes of clarification, the obligation of the Corporation to pay Dividends pursuant to this Section E(1) shall be reduced to the extent that such Dividends were included in any Additional Amount otherwise paid pursuant hereto.

(2) Conversion of Preferred Shares. Preferred Shares shall be convertible into shares of the Corporation's Common Stock on the terms and conditions set forth in this Section E(2).

(a) Certain Defined Terms. For purposes of Section E of this Article III the following terms shall have the following meanings:

(i) "**Additional Amount**" means, on a per Preferred Share basis, the product of (A) the result of the following formula:  $(\text{Dividend Rate}) \times (N/365)$  and (B) the Stated Value.

(ii) "**AMEX**" means the NYSE AMEX Equities.

(iii) "**Bank Facility**" means the Credit Agreement, entered into as of March 30, 2011, among the Corporation, Amerigon Europe GmbH, a German limited liability company, each lender from time to time party hereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, as the same may be amended, amended and restated, supplemented, replaced, substituted, refinanced or otherwise modified from time to time; provided (with the following conditions being referred to herein as the "**Bank Facility Conditions**"), that such amendment, amendment and restatement, supplement, replacement, substitution, refinancing and any other modifications are made in good faith and without intent to circumvent any restriction hereunder and do not, individually or in the aggregate, (i) increase the aggregate principal amount of the Indebtedness under the Bank Facility to an amount in excess of

\$150,000,000 (provided that any principal amount outstanding under the Bank Facility that is denominated in a currency other than the U.S. Dollars shall be treated as having been exchanged for U.S. Dollars at the exchange rate stated in the Wall Street Journal on the Initial Issuance Date), (ii) increase the aggregate amount of Capital Leases (as defined in the Bank Facility) permitted under the Bank Facility or alter in any way the definition of Capital Leases as defined in the Bank Facility, (iii) cause or have the effect of restricting, limiting or otherwise preventing any payments or other distributions on the Preferred Shares in accordance with and pursuant to Section E of this Article III, whether in cash, shares of Common Stock, other equity securities, debt securities or other property (in each case, in accordance with the terms and conditions of this Section E of this Article III) beyond any restrictions set forth in the Bank Facility on the Initial Issuance Date, or (iv) amend, amend and restate, supplement, replace, substitute, refinance or otherwise modify from time to time, or assign or otherwise transfer any rights and obligations under, the Bank Facility or other agreements or documents in connection with the Bank Facility which would have the effect of any portion of the Indebtedness under the Bank Facility being held, directly or indirectly, by or for the benefit of any entity other than (I) a commercial bank having total assets in excess of \$5,000,000,000 or any affiliate or subsidiary thereof, so long as such affiliate or subsidiary (a) is not an investment fund, managed account or other similar investment vehicle or an investment adviser (as defined in the Investment Advisers Act of 1940, as amended) to any such investment fund, managed account or other similar investment vehicle or an entity directly or indirectly established by or on behalf of any of the foregoing, and (b) is regularly engaged in the business of providing asset based loans, or (II) a savings and loan association or savings bank organized under the laws of the United States or any State thereof having a net worth, determined in accordance with the United States generally accepted accounting principles, consistently applied, in excess of \$250,000,000.

(iv) “**Bloomberg**” means Bloomberg Financial Markets.

(v) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(vi) “**Capital Stock**” means: (A) in the case of a corporation, corporate stock; (B) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (C) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership or limited liability

company interests; and (D) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

(vii) **“Change of Control”** means any Fundamental Transaction, other than (A) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Corporation’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Corporation.

(viii) **“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Corporation and the Holder. If the Corporation and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section E(2)(d)(iii) of this Article III hereof. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock

combination or other similar transaction during the applicable calculation period.

(ix) “**Company Conversion Measuring Period**” means the twenty (20) consecutive Trading Days ending two (2) Trading Days immediately prior to the applicable Installment Date.

(x) “**Company Conversion Price**” means as of any date of determination, that price which shall be, the lower of (i) the applicable Conversion Price and (ii) that price computed as 90% of the Market Price determined as of the applicable Installment Settlement Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Company Conversion Measuring Period.

(xi) “**Contingent Obligation**” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(xii) “**Conversion Amount**” means the sum of (A) the Additional Amount and (B) the Stated Value.

(xiii) “**Conversion Price**” means \$15.83, subject to adjustment as provided herein.

(xiv) “**Conversion Share Ratio**” means, as to any Installment Date, the quotient of (i) the number of Pre-Installment Conversion Shares delivered in connection with such Installment Date divided by (ii) the number of Post-Installment Conversion Shares relating to such Installment Date.

(xv) “**Convertible Securities**” means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(xvi) “**Dividend Balance Amount**” means for any Dividend Date, an amount equal to (i) the Dividends due on such Dividend Date minus (ii) an amount equal to (A) the Dividends due on such Dividend Date multiplied by (B) the Dividend Share Ratio.

(xvii) “**Dividend Balance Shares**” means, for any Dividend Date, a number of shares of Common Stock equal to (i) the Post-Dividend Shares for such date minus (ii) the amount of any Pre-Dividend Shares delivered with respect to such date; provided, that in the event that the amount of Pre-Dividend Shares exceeds the Post-Dividend Shares for such date, the Dividend Balance Shares shall equal zero (0).

(xviii) “**Dividend Measuring Period**” means the twenty (20) consecutive Trading Day period ending two (2) Trading Days immediately prior to the applicable Dividend Date.

(xix) “**Dividend Notice Due Date**” means the twenty-third (23rd) Trading Day prior to the applicable Dividend Date.

(xx) “**Dividend Rate**” means (A) eight percent (8.0%) per annum and (B) for the period from and after the occurrence of a Triggering Event through such time that such Triggering Event is cured, fifteen percent (15%) per annum.

(xxi) “**Dividend Share Ratio**” means, as to any applicable date of determination, (i) the number of Pre-Dividend Shares delivered in connection with a Dividend Date *divided by* (ii) the number of Post-Dividend Shares relating to such Dividend Date.

(xxii) “**Eligible Market**” means the Principal Market, NYSE, AMEX, The NASDAQ Global Market or The NASDAQ Capital Market.

(xxiii) “**Equity Conditions**” means: (A) on each day during the period beginning thirty (30) days prior to the applicable date of determination and ending on and including the applicable date of determination (the “**Equity Conditions Measuring Period**”), all shares of Common Stock issued and issuable upon conversion of the Preferred Shares, as Dividend Shares (but only with respect to any Dividend Shares to be issued in connection with the event requiring determination, if any, and not any other event), as Additional Conversion Shares (but only with respect to any Additional Conversion Shares to be issued in connection with the event requiring determination, if any, and not any other event) or as otherwise required hereunder shall be eligible for sale without restriction or limitation and without the need for registration under any applicable federal or state securities laws; (B) on each day during the Equity Conditions Measuring Period, the Common Stock is designated for quotation on the Principal Market or an Eligible Market and shall not have been suspended from trading from all such exchanges or markets (other than suspensions of not more than two (2) days and

occurring prior to the applicable date of determination due to business announcements by the Corporation) nor shall proceedings for such delisting or suspension from all such exchanges or markets have been commenced, threatened or pending either (1) in writing by such exchange or market or (2) by falling below the minimum listing maintenance requirements of such exchange or market; (C) on each day during the Equity Conditions Measuring Period, the Corporation shall have delivered Common Stock upon conversion of the Preferred Shares and as otherwise required to the Holders on a timely basis as set forth in Section E(2)(d)(ii) of this Article III hereof; (D) any applicable shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating Section E(8) of this Article III hereof or the rules or regulations of the applicable Principal Market; (E) during the Equity Conditions Measuring Period, the Corporation shall not have failed to timely make any payments within five (5) Business Days of when such payment is due pursuant to any Transaction Document; (F) during the Equity Conditions Measuring Period, there shall not have occurred either (1) the public announcement of a pending, proposed or intended Fundamental Transaction which has not been abandoned, terminated or consummated or (2) a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event; (G) the Corporation shall have no knowledge of any fact that would cause all shares of Common Stock issued and issuable upon conversion of the Preferred Shares, as Dividend Shares (but only with respect to any Dividend Shares to be issued in connection with the event requiring determination, if any, and not any other event), as Additional Conversion Shares (but only with respect to any Additional Conversion Shares to be issued in connection with the event requiring determination, if any, and not any other event) or as otherwise required hereunder not to be eligible for sale without restriction or limitation and without the need for registration under any applicable federal or state securities laws; and (H) the Corporation otherwise shall have been in material compliance with and shall not have materially breached any provision, covenant, representation or warranty of any Transaction Document.

(xxiv) “**Equity Conditions Failure**” means that on each applicable date, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(xxv) “**Escrow Account**” has the meaning set forth in the Escrow Agreement.

(xxvi) “**Escrow Agreement**” has the meaning set forth in the Securities Purchase Agreement.



(xxvii) “**Escrow Balance**” has the meaning set forth in the Escrow Agreement.

(xxviii) “**Fundamental Transaction**” means that (A) the Corporation shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation to another Person, or (iii) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (iv) reorganize, recapitalize or reclassify its Common Stock, or (B) any Person or Persons makes a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the Person or Persons making or party to, or associated or affiliated with the Person or Persons making or party to, such purchase, tender or exchange offer), or (C) after the Initial Issuance Date, any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of either (x) 50% or more of the outstanding shares of Voting Stock, (y) 50% or more of the shares of Voting Stock not beneficially owned by such Person or Persons as of the Initial Issuance Date, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Corporation sufficient to allow such Person to effect a statutory short form merger or other transaction requiring other shareholders of the Corporation to surrender their shares of Common Stock without approval of the shareholders of the Corporation.

(xxix) “**Indebtedness**” of any Person means, without duplication (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including (without limitation) “capital leases” in accordance with generally accepted accounting principles (other than trade payables entered into in the ordinary course of business consistent with past practice), (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes,

bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

(xxx) “**Initial Company Conversion Measuring Period**” means the twenty (20) consecutive Trading Days ending two (2) Trading Days immediately prior to the applicable Company Installment Notice Date.

(xxxii) “**Initial Company Conversion Price**” means, as of any date of determination, that price which shall be the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price determined as of the applicable Company Installment Notice Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such applicable Initial Company Conversion Measuring Period.

(xxxiii) “**Initial Issuance Date**” means the date that the Preferred Shares are initially issued by the Corporation in accordance with the requirements of the Securities Purchase Agreement.

(xxxiiii) “**Initial Make-Whole Conversion Price**” means, as of the date of determination, that price which shall be the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price determined as of the applicable Share Delivery Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification

or similar transaction that proportionately decreases or increases the Common Stock during such applicable Initial Make-Whole Conversion Measuring Period.

(xxxiv) “**Initial Make-Whole Conversion Measuring Period**” means the twenty (20) consecutive Trading Days ending two (2) Trading Days immediately prior to the applicable Share Delivery Date.

(xxxv) “**Installment Amount**” means with respect to each Installment Date, an amount equal to the aggregate Stated Value of the lesser of (A) 778 Preferred Shares and (B) the number of Preferred Shares outstanding on such Installment Date, as any such Installment Amount for each Holder may be reduced pursuant to the terms hereof, whether upon conversion, redemption or otherwise.

(xxxvi) “**Installment Balance Conversion Shares**” means, for any Installment Date, a number of shares of Common Stock equal to (i) the Post-Installment Conversion Shares with respect to such Installment Date minus (ii) the amount of any Pre-Installment Conversion Shares delivered with respect to the related Installment Date; provided, that in the event that the amount of Pre-Installment Conversion Shares exceeds the Post-Installment Conversion Shares for such date, then the Installment Balance Conversion Shares shall equal zero (0).

(xxxvii) “**Installment Date**” means, the first (1st) Business Day of each three (3) calendar month period beginning on September 1, 2011 through the Maturity Date.

(xxxviii) “**Liquidation Event**” means the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

(xxxix) “**Make-Whole Additional Amount**” means, as to the applicable event on any applicable date, the amount of any Dividends per applicable Preferred Share that, but for such event, would have accrued with respect to such Preferred Share if such Preferred Share had remained outstanding for the period from such event through the scheduled Installment Date for such Preferred Share. For clarification purposes, the following example illustrates the calculation of the Make-Whole Additional Amount: in the event that, after the Release Date and prior to the first Installment Date, there is a conversion of 1,000 Preferred Shares pursuant to Section E(2), without any special elections being made, the Make-Whole Additional Amount shall be

the sum of (x) the amount of Dividends for 778 Preferred Shares that, but for such event, would have accumulated with respect to such Preferred Shares if such Preferred Shares had remained outstanding for the period from such conversion through the last Installment Date, plus (y) the Dividends for 222 Preferred Shares that, but for such event, would have accumulated with respect to such Preferred Shares if such Preferred Shares had remained outstanding for the period from such conversion through the second to last Installment Date. For clarity, if there is a conversion that is not made ratably among all Holders, the foregoing example shall be appropriately adjusted to reflect the Pro Rata Portion of Preferred Shares such that, as an example, if there is a conversion by a Holder (that had acquired a total of 700 Preferred Shares on the Issuance Date) of 100 Preferred Shares pursuant to Section E(2) after the Release Date and prior to the first Installment Date, without any special elections being made, the Make-Whole Additional Amount for such Holder shall be the sum of (x) the amount of Dividends for 78 Preferred Shares that, but for such event, would have accumulated with respect to such Preferred Shares if such Preferred Shares had remained outstanding for the period from such conversion through the last Installment Date, plus (y) the Dividends for 22 Preferred Shares that, but for such event, would have accumulated with respect to such Preferred Shares if such Preferred Shares had remained outstanding for the period from such conversion through the second to last Installment Date.

(xl) **“Make-Whole Balance Conversion Shares”** means, for any Make-Whole Conversion Date, a number of shares of Common Stock equal to (i) the Post-Make-Whole Conversion Shares with respect to such Make-Whole Conversion Date minus (ii) the amount of any Pre-Make-Whole Conversion Shares delivered with respect to the related Make-Whole Conversion Date; provided, that in the event that the amount of Pre-Make-Whole Conversion Shares exceeds the Post-Make-Whole Conversion Shares for such date, then the Make-Whole Balance Conversion Shares shall equal zero (0).

(xli) **“Make-Whole Conversion Measuring Period”** means the twenty (20) consecutive Trading Days ending two (2) Trading Days immediately prior to the applicable Make-Whole Conversion Date.

(xlii) **“Make-Whole Conversion Price”** means, as of the date of determination, that price which shall be the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price determined as of the applicable Make-Whole Conversion Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases

or increases the Common Stock during such applicable Make-Whole Conversion Measuring Period.

(xliii) “**Make-Whole Share Ratio**” means, as to any Make-Whole Conversion Date, the quotient of (i) the number of Pre-Make-Whole Conversion Shares delivered in connection with such Make-Whole Conversion Date divided by (ii) the number of Post-Make-Whole Conversion Shares relating to such Make-Whole Conversion Date.

(xliv) “**Market Price**” means the arithmetic average of the fifteen (15) lowest VWAPs during the twenty (20) consecutive Trading Day period ending two (2) Trading Days immediately prior to the applicable date of determination pursuant hereto. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction that proportionately decreases or increases the Common Stock during the applicable period.

(xlv) “**Material Subsidiary**” means any Subsidiary or Subsidiaries that, individually or in the aggregate, is a significant subsidiary as defined in Regulation S-X.

(xlvi) “**Maturity Date**” means, with respect to the Preferred Shares, September 1, 2013, unless extended pursuant to Section E(2)(d) (vii).

(xlvii) “**N**” means the number of days from, but excluding, the last Dividend Date with respect to which dividends have been paid in full by the Corporation on the applicable Preferred Share, or the Initial Issuance Date if no Dividend Date has occurred.

(xlviii) “**NYSE**” means The New York Stock Exchange, Inc.

(xlix) “**Options**” means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(l) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(li) “**Permitted Indebtedness**” means (i) up to a maximum of \$150,000,000 U.S. Dollars aggregate principal amount of Indebtedness under the Bank Facility (provided that any principal amount outstanding under the Bank Facility that is denominated in a

currency other than the U.S. Dollars shall be treated as having been exchanged for U.S. Dollars at the exchange rate stated in the Wall Street Journal on the Initial Issuance Date), and (ii) the aggregate amount of any additional Indebtedness expressly permitted under Section 7.03 of the Bank Facility as in effect on the Initial Issuance Date.

(lii) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(liii) **“Post-Dividend Shares”** means, for any Dividend Date, that number of shares of Common Stock equal to the applicable cash amount of Dividends to be paid in Dividend Shares hereunder on such Dividend Date divided by the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price as of the applicable Dividend Date (without taking into account the delivery of any Pre-Dividend Shares).

(liv) **“Post-Installment Conversion Shares”** means, for any Installment Date, that number of shares of Common Stock equal to the applicable Company Conversion Amount for such Installment Date divided by the Company Conversion Price (without taking into account the delivery of any Pre-Installment Conversion Shares).

(lv) **“Post-Make-Whole Conversion Shares”** means, for any Make-Whole Conversion Date, that number of shares of Common Stock equal to the applicable Additional Conversion Obligations to be paid as Additional Conversion Shares for such Make-Whole Conversion Date divided by the Make-Whole Conversion Price (without taking into account the delivery of any Pre-Make-Whole Conversion Shares).

(lvi) **“Principal Market”** means The NASDAQ Global Select Market.

(lvii) **“Pro Rata Portion”** means, for each Holder at any time of determination, a fraction the numerator of which is the number of Preferred Shares held by such Holder on the Initial Issuance Date and the denominator of which is the total number of Preferred Shares issued on the Initial Issuance Date. In the event that a Holder shall sell or otherwise transfer any of its Preferred Shares, the transferee shall be allocated a pro rata portion of the transferring Holder’s Pro Rata Portion.

(lviii) “**Redemption Prices**” means, collectively, the Triggering Event Redemption Price, the Maturity Date Redemption Price, the Change of Control Redemption Price, any Installment Amount and any other redemption price set forth herein (including in each case any interest, damages and Make-Whole Additional Amount thereon), each of the foregoing, individually, a Redemption Price.

(lix) “**Registration Statement**” means the Corporation’s Registration Statement on Form S-3 (File number 333-171787).

(lx) “**Release Date**” means the date of the release to the entities set forth in the Purchase Release Instruction (as defined in the Escrow Agreement) of the Escrow Balance from the Escrow Account in accordance with the Securities Purchase Agreement and the Escrow Agreement.

(lxi) “**Required Holders**” means the Holders of Preferred Shares that are not subsidiaries or affiliates of the Corporation representing at least sixty-six percent (66%) of the aggregate Preferred Shares then outstanding held by Holders that are not affiliates of the Corporation.

(lxii) “**Securities Purchase Agreement**” means the Securities Purchase Agreement, dated on or about the date the Certified Resolution of the Board of Directors of Amerigon Incorporated Establishing and Designating the Relative Rights and Preferences of Series C 8% Convertible Preferred Stock was first filed with the Michigan Department of Energy, Labor and Economic Growth, by and between the Corporation and the investors listed on the Schedule of Buyers attached thereto.

(lxiii) “**Stated Value**” means \$10,000.

(lxiv) “**Subsidiaries**” means any joint venture or entity in which the Corporation, directly or indirectly, owns capital stock or an equity or similar interest, including any subsidiaries formed or acquired after the Initial Issuance Date.

(lxv) “**Successor Entity**” means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person’s Parent Entity.

(lxvi) “**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

(lxvii) “**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under this Section E.

(lxviii) “**Trading Day**” means any day on which the shares of Common Stock are traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided, that “Trading Day” shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(lxix) “**Transaction Documents**” has the meaning set forth in the Securities Purchase Agreement.

(lxx) “**Voting Stock**” of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(lxxi) “**VWAP**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on such Eligible Market on which the Common Stock is then listed or quoted for trading as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)); (b) if the Common Stock is not then listed or quoted on an Eligible Market, and if the Common Stock is listed or quoted on the OTC Bulletin Board, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting



prices), the most recent bid price per share of the Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation. If the Corporation and the Required Holders are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section E(2)(d)(iii) of this Article III below. All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during such period.

(lxxii) “**W.E.T. Date**” has the meaning set forth in the Securities Purchase Agreement.

(b) Holder’s Conversion Right. Subject to the provisions of Section E(8) of this Article III, at any time or times on or after the Release Date, any Holder shall be entitled to convert any whole number of Preferred Shares, plus the amount of any accumulated but unpaid Dividends per Preferred Share then remaining and any other applicable amounts, into fully paid and nonassessable shares of Common Stock in accordance with Section E(2)(d) of this Article III at the Conversion Rate (as defined below).

(c) Conversion. The number of shares of Common Stock issuable upon conversion of each Preferred Share and related amounts pursuant to Section 2(b) shall be determined according to the following formula (the “**Conversion Rate**”):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Preferred Share, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number.

(d) Mechanics of Conversion. The conversion of Preferred Shares shall be conducted in the following manner:

(i) Holder’s Delivery Requirements. To convert Preferred Shares into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall (A) transmit by (x) facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York City Time, on such date, and (y) depositing with a nationally recognized overnight express courier, a copy of a properly completed notice of conversion executed by the registered Holder of the Preferred Shares subject to such conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Corporation and the Transfer Agent and (B) if required by Section E(2)(d)(viii) of this

Article III, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the Preferred Shares being converted (or comply with the procedures set forth in Section E(13) of this Article III) (the “**Preferred Stock Certificates**”).

(ii) Corporation’s Response. (A) Upon receipt by the Corporation of copy of a Conversion Notice, the Corporation shall (I) as soon as practicable, but in any event within one (1) Trading Day (the “**Confirmation Date**”), send via facsimile or electronic mail a confirmation of receipt of such Conversion Notice (the “**Confirmation**”) to such Holder and the Transfer Agent, which Confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, (II) on or before the third (3<sup>rd</sup>) Trading Day following the date on which the Conversion Notice has been delivered to the Corporation (which for purposes of this Section E(2)(d)(ii) and Sections E(2)(d)(v)(A)(2), E(2)(d)(v)(B) and E(2)(d)(v)(C) and the defined terms “Initial Make-Whole Conversion Price” and “Initial Make-Whole Conversion Measuring Period” shall be upon receipt of a facsimile or electronic mail copy of the Conversion Notice and for purposes of Section E(2)(d)(v)(A)(1) shall be one Business Day after deposit of the Conversion Notice with a nationally recognized overnight express courier) (the “**Share Delivery Date**”), (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder’s or its designee’s balance account with DTC through its DWAC system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled, and (III) pay to the Holder the Make-Whole Additional Amount per Preferred Share converted in accordance with the provisions of Section E(2)(d)(ii)(B) of this Article III. In the event that a Holder converts, or the Corporation causes the conversion of, less than all of the Holder’s remaining Preferred Shares, the Stated Value converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice. If the number of Preferred Shares represented by the Preferred Stock Certificate(s) submitted for conversion, as may be required pursuant to Section E(2)(d)(viii) of this Article III, is greater than the number of Preferred Shares being converted, then the Corporation shall, as soon as

practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) (the “**Preferred Stock Delivery Date**”) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of Preferred Shares not converted.

(B) The Corporation shall pay the Make-Whole Additional Amount per Preferred Share converted as set forth in Section E(2)(d)(ii)(A) (the “**Additional Conversion Obligations**”) in accordance with the following:

(1) Subject to Section 23, if the Corporation has obtained both the Principal Market Stockholder Approval (as defined in the Securities Purchase Agreement) and the Authorized Share Stockholder Approval (as defined in the Securities Purchase Agreement) and if the payment in cash of such Additional Conversion Obligations is permitted under the Bank Facility, the Corporation shall pay to the Holder the Additional Conversion Obligations in shares of Common Stock (“**Additional Conversion Shares**”) so long as there has been no Equity Conditions Failure; provided, however, that the Corporation may, at its option, indicate in the Confirmation that it shall pay such Additional Conversion Obligations on the Share Delivery Date in cash (“**Cash Additional Conversion Payment**”) or in a combination of a Cash Additional Conversion Payment (to be paid on the Share Delivery Date) and Additional Conversion Shares (to be delivered as set forth below in this Section E(2)(d)(ii)(B)(1)). The Confirmation shall either (a) confirm that the Additional Conversion Obligations shall be paid in Additional Conversion Shares or (b) specify the amount of the Additional Conversion Obligations that shall be paid as a Cash Additional Conversion Payment and the amount of Additional Conversion Obligations, if any, that shall be paid in Additional Conversion Shares. If any Additional Conversion Shares are to be issued in accordance with the Confirmation, the Corporation shall certify in the Confirmation that the Equity Conditions have been satisfied as of the Confirmation Date. If any portion of the Additional Conversion Obligations are paid as a Cash Additional Conversion Payment in accordance with the Confirmation, the Corporation shall certify in the Confirmation that the Cash Additional Conversion Payment is permitted under the Bank Facility. If the Equity Conditions are not satisfied as of the Confirmation Date, then unless the Corporation has elected to pay such Additional Conversion Obligations as a Cash Additional Conversion Payment, the Confirmation shall indicate that unless the Holder waives the

Equity Conditions, the Additional Conversion Obligations shall be paid as a Cash Additional Conversion Payment (if permitted under the Bank Facility). If the Equity Conditions were satisfied as of the Confirmation Date but the Equity Conditions are no longer satisfied at any time prior to the Make-Whole Conversion Date, the Corporation shall provide the Holder a subsequent notice to that effect indicating that unless the Holder waives the Equity Conditions, the Additional Conversion Obligations shall be paid as a Cash Additional Conversion Payment (if permitted under the Bank Facility) within two (2) Business Days of such notice. If the Corporation does not timely deliver a Confirmation or if it does not specify in the Confirmation whether it selects to pay any portion of the Additional Conversion Obligations as a Cash Additional Conversion Payment, then the Corporation shall be deemed to have delivered an irrevocable Confirmation confirming a payment of the whole amount of the Additional Conversion Obligations in Additional Conversion Shares.

(i) If the Corporation delivers a Confirmation and confirms, or is deemed to have confirmed, a payment of the Additional Conversion Obligations, in whole or in part, as Additional Conversion Shares in accordance with Section E(2)(d)(ii)(B)(1) of this Article III, then on the Share Delivery Date, the Corporation shall, or shall direct the Transfer Agent to, deliver to the Holder's account with DTC, or issue the Holder a certificate for, a number of shares of Common Stock equal to the quotient of (A) such amount of Additional Conversion Obligations divided by (B) the Initial Make-Whole Conversion Price (the "**Pre-Make-Whole Conversion Shares**"). On the twenty-third (23d) Trading Day immediately after the Share Delivery Date (the "**Make-Whole Conversion Date**"), the Corporation shall deliver a notice setting forth the calculation of the Make-Whole Balance Conversion Shares (and the calculation of the component parts of such calculation) to the Holders and shall, or shall direct the Transfer Agent to, deliver to the Holder's account with DTC, or issue to the Holder a certificate for, a number of additional shares of Common Stock, if any, equal to the Holder's Make-Whole Balance Conversion Shares. Notwithstanding the foregoing, the Corporation may, to the extent permitted under the Bank Facility, deliver an irrevocable notice (certifying that the payment of cash pursuant to the election under this notice is permitted under the Bank Facility) to all but not less than all Holders not less than 12 Trading Days prior to the Make-Whole Conversion Date electing to pay on the Make-Whole Conversion Date cash in lieu of any Make-Whole Balance

Conversion Shares otherwise deliverable on the applicable Make-Whole Conversion Date in an amount to each Holder equal to the product of (z) the number of such Holder's Make-Whole Balance Conversion Shares otherwise deliverable but for this election on the Make-Whole Conversion Date and (w) the otherwise applicable Make-Whole Conversion Price. If a Triggering Event occurs during the period from any Confirmation Date through the Make-Whole Conversion Date and a Holder elects a Triggering Event Redemption in accordance with Section E(3)(b) of this Article III, then, at the Holder's option, either (1) the Holder, upon receipt of the Triggering Event Redemption Price (which Redemption Price shall include redemption of any portion of Additional Conversion Obligations represented by Pre-Make-Whole Conversion Shares that the Holder returns to the Corporation), shall return any Pre-Make-Whole Conversion Shares delivered in connection with the applicable Make-Whole Conversion Date, which the Holder has not otherwise sold, transferred or disposed of and which are included in the Triggering Event Redemption Price, to the Corporation or (2) the Conversion Amount used to calculate the Triggering Event Redemption Price shall be reduced by the product of (x) the Holder's Additional Conversion Obligations represented by Pre-Make-Whole Conversion Shares applicable to such Make-Whole Conversion Date multiplied by (y) the Make-Whole Share Ratio of such Holder.

(ii) If there is an Equity Conditions Failure at any time after the Confirmation Date and prior to the Make-Whole Conversion Date, then at the option of the Holder designated in writing to the Corporation (the "**First Make-Whole Redemption Notice**"), the Holder may require the Corporation to (A) redeem all or any part designated by the Holder of the applicable Additional Conversion Obligations paid as Additional Conversion Shares (such designated amount is referred to as the "**First Make-Whole Redemption Amount**") on the third (3rd) Trading Day after the date of delivery of the applicable First Make-Whole Redemption Notice, and the Corporation shall pay to the Holder on such Trading Day, by wire transfer of immediately available funds, an amount in cash equal to 125% of such First Make-Whole Redemption Amount, and/or (B) the conversion pursuant to this Section E(2) shall be null and void with respect to all or any part designated by the Holder of the applicable Preferred Shares and the Holder shall be entitled to all the rights of a holder of Preferred Shares with respect to such number of the Preferred Shares; provided, however, that the Conversion Price for such applicable

Preferred Shares shall thereafter be adjusted to equal the lowest of (1) the then applicable Conversion Price, (2) the Make-Whole Conversion Price as in effect on the date on which the Holder voided such conversion, and (3) the Make-Whole Conversion Price as if determined on the date on which the Holder delivers a Conversion Notice relating thereto. In the event the Holder elects to require payment of the First Make-Whole Redemption Amount upon an Equity Conditions Failure following the Confirmation Date, at the Holder's option, either (x) the Holder shall, upon receipt of a First Make-Whole Redemption Amount (which amount shall include redemption of any portion of Additional Conversion Obligations represented by Pre-Make-Whole Conversion Shares that the Holder returns to the Corporation), return any Pre-Make-Whole Conversion Shares delivered in connection with the applicable Make-Whole Conversion Date, which the Holder has not otherwise sold, transferred or disposed of and which are included in the First Make-Whole Redemption Amount, to the Corporation or (y) any related First Make-Whole Redemption Amount shall be reduced by the product of (I) the Company Conversion Amount of such Holder applicable to such Make-Whole Conversion Date multiplied by (II) the Make-Whole Conversion Share Ratio of such Holder. All shares of Common Stock issued pursuant to Section E(2)(d)(ii)(B) of this Article III shall be paid in a number of fully paid and nonassessable shares of Common Stock (rounded up the nearest whole share).

(2) If the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment of any portion of Additional Conversion Obligations in cash on the applicable Share Delivery Date is not permitted under the Bank Facility, the Corporation shall be required to confirm in the applicable Confirmation that the Additional Conversion Obligations not permitted by the Bank Facility to be paid in cash on such Share Delivery Date will be paid as Additional Conversion Shares.

(3) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of the Additional Conversion Obligations is permitted under the Bank Facility, the Corporation shall be required to elect in the applicable Confirmation to satisfy the Additional Conversion Obligations as a Cash Additional Conversion Payment; provided, however, that if only a portion of the Additional Conversion Obligations is permitted to be paid in cash under

the Bank Facility, the Corporation shall pay in cash the maximum amount so permitted to be paid under the Bank Facility and the Corporation shall pay the remainder of the Additional Conversion Obligations in Additional Conversion Shares to the extent that there are authorized and unissued shares of Common Stock, and the Corporation shall pay to the Holder any remaining unpaid portion of the Additional Conversion Obligations either in Additional Conversion Shares or in cash in accordance with E(2)(d)(ii)(B) of this Article III upon the earliest of the satisfaction of the conditions in clauses (1), (2) or (3) of such Section E(2)(d)(ii)(B); provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's right, under Section E(3) of this Article III.

(4) (x) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of any amount of the Additional Conversion Obligations is not permitted under the Bank Facility, or (y) if the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of any amount of the Additional Conversion Obligations is not permitted under the Bank Facility and there is an Equity Conditions Failure on the Confirmation Date which is not waived by the Holder, the Corporation shall pay to the Holder the Additional Conversion Obligations in Additional Conversion Shares to the extent that there are authorized and unissued shares of Common Stock and the Corporation shall pay to the Holder any unpaid Additional Conversion Obligations either in Additional Conversion Shares or in Cash Additional Conversion Payment in accordance with Section E(2)(d)(ii)(B) of this Article III upon the earliest of the satisfaction of the conditions in clauses (1), (2) or (3) of such Section E(2)(d)(ii)(B); provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's rights, under Section E(3) of this Article III, with such rights with respect to clause (x) of this Section E(2)(d)(ii)(B)(4) being limited to the applicable portions of the Additional Conversion Obligations which are not paid by the Corporation on the applicable Dividend Notice Dates or Dividend Dates on which the Corporation would have been required to pay such portion of the Additional Conversion Obligations as a Dividend if the Holder had not delivered a related Conversion Notice (each a "**Missed Dividend Payment**") and such applicable portions of the Additional

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Closing Sale Price, Closing Bid Price, VWAP or the arithmetic calculation of the Conversion Rate, the Corporation shall instruct the Transfer Agent to issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder’s Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the Closing Sale Price, Closing Bid Price or VWAP or arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day after approval of the investment bank or outside accountant by the Required Holders submit via facsimile (A) the disputed determination of the Closing Sale Price, Closing Bid Price or VWAP, as applicable, to an independent, reputable investment bank selected by the Corporation and approved by the Required Holders or (B) the disputed arithmetic calculation of the Conversion Rate to the Corporation’s independent, outside accountant. The Corporation shall cause, at the Corporation’s expense, the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than two (2) Business Days from the time it receives the disputed determinations or calculations. Such investment bank’s or accountant’s determination or calculation, as the case may be, shall be binding upon all parties absent manifest error.

(iv) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(v) Corporation’s Failure to Timely Convert.

(A) Cash Damages. (1) If (x) on or prior to the Share Delivery Date, the Corporation shall fail to credit a Holder’s balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder’s conversion of Preferred Shares or (y) within three (3) Trading Days of the Corporation’s receipt of a Preferred Stock Certificate the Corporation shall fail to issue and deliver a new Preferred Stock Certificate representing the



number of Preferred Shares to which such Holder is entitled pursuant to Section E(2)(d)(ii) of this Article III, then in addition to all other available remedies which such holder may pursue hereunder, the Corporation shall pay additional damages to such Holder for each day after the Share Delivery Date that such conversion is not timely effected and/or each day after the Preferred Stock Delivery Date that such Preferred Stock Certificate is not delivered in an amount equal to one percent (1.0%) of the product of (I) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which such Holder is entitled as set forth in the applicable Conversion Notice and, in the event the Corporation has failed to deliver a Preferred Stock Certificate to the Holder on or prior to the Preferred Stock Delivery Date, the number of shares of Common Stock issuable upon conversion of the Preferred Shares represented by such Preferred Stock Certificate as of the Preferred Stock Delivery Date and (II) the Closing Sale Price of the Common Stock on the Share Delivery Date, in the case of the failure to deliver Common Stock, or the Preferred Stock Delivery Date, in the case of failure to deliver a Preferred Stock Certificate. If the Corporation fails to pay the additional damages set forth in this Section E(2)(d)(v)(A)(1) within five (5) Trading Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Corporation continues to fail to make such payments, to require the Corporation, upon written notice, to immediately issue, in lieu of such cash damages, the number of shares of Common Stock equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price in effect on such Conversion Date as specified by the Holder in the Conversion Notice.

(2) In addition to the foregoing, if on or prior to the Share Delivery Date, the Corporation shall fail to issue and deliver a certificate to a Holder or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion or a Company Conversion, as applicable, of Preferred Shares, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "**Buy-In**"), then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including

brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Corporation’s obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation’s failure to timely deliver certificates representing shares of Common Stock upon conversion of the Preferred Shares as required pursuant to the terms hereof.

(B) Void Conversion Notice; Adjustment of Conversion Price. If for any reason a Holder has not received all of the shares of Common Stock to which such Holder is entitled prior to the fifth (5<sup>th</sup>) Trading Day after the Share Delivery Date with respect to a conversion of Preferred Shares, then the Holder, upon written notice to the Corporation, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any Preferred Shares that have not been converted pursuant to such Holder’s Conversion Notice; provided, that the voiding of a Holder’s Conversion Notice shall not effect the Corporation’s obligations to make any payments which have accumulated prior to the date of such notice pursuant to Section E(2)(d)(v)(A) of this Article III or otherwise. Thereafter, the Conversion Price of any Preferred Shares returned or retained by the Holder for failure to timely convert shall be adjusted to the lesser of (I) the Conversion Price relating to the voided Conversion Notice and (II) the lowest VWAP of the Common Stock during the period beginning on the Conversion Date and ending on the date such Holder voided the Conversion Notice, subject to further adjustment as provided in this Section E.

(C) Conversion Failure. If for any reason (i) a Holder has not received all of the shares of Common Stock to which such Holder is entitled prior to the tenth (10<sup>th</sup>) Trading Day after the Share Delivery Date with respect to a conversion of Preferred Shares and (ii) such Holder has delivered a written notice of such non-receipt to the Corporation not less than three Trading Days prior to the date such Holder may elect to give notice pursuant to

this Section E(2)(d)(v)(C) and the Holder has not received all of the shares of Common Stock to which such Holder is entitled on or prior to such third Trading Day after such notice of non-receipts is delivered pursuant to this clause (ii) (a “**Conversion Failure**”), then the Holder, upon written notice to the Corporation, may require that the Corporation redeem all Preferred Shares held by such Holder, including the Preferred Shares previously submitted for conversion and with respect to which the Corporation has not delivered shares of Common Stock, in accordance with Section E(3) of this Article III.

(vi) Pro Rata Conversion; Disputes. In the event the Corporation receives a Conversion Notice from more than one Holder for the same Conversion Date and the Corporation can convert some, but not all, of such Preferred Shares, the Corporation shall convert from each Holder electing to have Preferred Shares converted at such time a pro rata amount of such Holder’s Preferred Shares submitted for conversion based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Preferred Shares, the Corporation shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section E(2)(d)(iii) of this Article III.

(vii) Mandatory Redemption at Maturity. If any Preferred Shares remain outstanding on the Maturity Date after giving effect to any Company Conversions and Company Redemptions occurring on such date, the Corporation shall redeem such Preferred Shares in cash in an amount equal to the outstanding Conversion Amount for each such Preferred Share (the “**Maturity Date Redemption Price**”). The Corporation shall pay the Maturity Date Redemption Price on the Maturity Date by wire transfer of immediately available funds to an account designated in writing by such Holder. If the Corporation fails to redeem all of the Preferred Shares outstanding on the Maturity Date by payment of the Maturity Date Redemption Price for each such Preferred Share, then in addition to any remedy such Holder may have under any Transaction Document, (I) the applicable Maturity Date Redemption Price payable in respect of such unredeemed Preferred Shares shall bear interest at the rate of one percent (1.0%) per month, prorated for partial months, until paid in full, and (II) any Holder shall have the option to require the Corporation to convert any or all of such Holder’s Preferred Shares for which the Maturity Date Redemption Price (together with any interest thereon) has not been paid into (on a per Preferred Share basis) shares of Common Stock equal to the number which results

from dividing the Maturity Date Redemption Price (together with any interest thereon) by the lower of (x) the applicable Conversion Price and (y) that price computed as 90% of the Market Price determined as of the date of such conversion election. If the Corporation has failed to pay the Maturity Date Redemption Price in a timely manner as described above, then the Maturity Date may be extended at the option of any applicable Holder for any Preferred Shares held by such Holder until the date the Holders receive such shares of Common Stock or Maturity Date Redemption Price. The Maturity Date also may be extended at the option of any applicable Holder for any Preferred Shares held by such Holder for as long as (A) the conversion of such Preferred Shares would violate the provisions of Section E(8) of this Article III or (B) a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event shall have occurred and be continuing or (C) the Equity Conditions have not been satisfied (as indicated in a notice from the Corporation to the Holders delivered thirty (30) Trading Days prior to the Maturity Date) or waived by the applicable Holder prior to and as of the Maturity Date. All redemptions shall be made on a pro-rata basis to all holders of outstanding Preferred Shares. Except as explicitly permitted herein, the Corporation does not have the right to require any Holder to redeem any of its outstanding Preferred Shares or any unpaid Dividends thereon.

(viii) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Preferred Shares in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the certificate representing the Preferred Shares to the Corporation unless (A) the full or remaining number of Preferred Shares represented by the certificate are being converted or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of any Preferred Shares. The Holder and the Corporation shall maintain records showing the number of Preferred Shares so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Preferred Shares upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Preferred Shares represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Preferred Shares unless such Holder first physically surrenders the certificate representing the Preferred Shares to the Corporation, whereupon the Corporation will forthwith issue

and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of Preferred Shares represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each certificate for Preferred Shares shall bear the following legend:

ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S ARTICLES OF INCORPORATION RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION E(2)(d)(viii) THEREOF, THE PREFERRED EQUITY SUBORDINATION AGREEMENT REFERRED TO IN THE BANK FACILITY (AS DEFINED IN THE CORPORATION'S ARTICLES OF INCORPORATION), AND SECTION 9(P) OF THE SECURITIES PURCHASE AGREEMENT (AS DEFINED IN THE CORPORATION'S ARTICLES OF INCORPORATION). THE TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE PROVISIONS OF THE PREFERRED EQUITY SUBORDINATION AGREEMENT AND ALL TRANSFEREES ARE SUBJECT TO SECTION 9(P) OF THE SECURITIES PURCHASE AGREEMENT. THE NUMBER OF PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF PREFERRED SHARES STATED ON THE FACE HEREOF PURSUANT TO SECTION E(2)(d)(viii) OF THE ARTICLES OF INCORPORATION RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE AND ANY REMAINING INSTALLMENT AMOUNTS MAY HAVE BEEN REDUCED IN CONNECTION WITH CERTAIN PAYMENTS.

(e) Taxes.

(i) Any and all payments made by the Corporation hereunder, including any amounts received on a conversion or redemption of the Preferred Shares and any amounts on account of dividends or deemed

dividends, will be made after any Tax Deduction required by law. If the Corporation becomes aware that it must make a Tax Deduction with respect to any particular payment coming due, it must notify the affected Holders promptly.

As soon as practicable after making a Tax Deduction or a payment required in connection with a Tax Deduction, the Corporation must deliver to the Holder any official receipt or form, if any, provided by or required by the taxing authority to whom the Tax Deduction was paid.

(ii) The Corporation agrees to pay in accordance with applicable law, and to indemnify and hold each Holder harmless from and against, any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration or performance of, or otherwise with respect to, the Preferred Shares (“**Other Taxes**”). As soon as practicable after making a payment of Other Taxes, the Corporation must deliver to such Holder any official receipt or form, if any, provided by or required by the taxing authority to whom the Tax Deduction was paid.

(iii) The obligations of the Corporation under this Section E(2)(e) shall survive the Maturity Date of the Preferred Shares and the payment for the Preferred Shares and all other amounts payable hereunder.

(f) Adjustments to Conversion Price. The Conversion Price will be subject to adjustment from time to time as provided in this Section E(2)(f).

(i) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(ii) Other Events. If any event occurs of the type contemplated by the provisions of this Section E(2)(f) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features as dividends or grants of

rights to existing holders of Common Stock), then the Corporation's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the Holders; provided, that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section E(2)(f).

(iii) Voluntary Adjustment By The Corporation. The Corporation may at any time reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Corporation.

(g) Notices.

(i) Immediately upon any adjustment of the Conversion Price pursuant to Section E(2)(f) of this Article III, the Corporation shall give written notice thereof to each Holder, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section E(2)(d)(iii) of this Article III.

(ii) The Corporation shall give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Fundamental Transaction or Liquidation Event, provided, that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(iii) The Corporation shall also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Fundamental Transaction or Liquidation Event will take place, provided, that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(3) Redemption at Option of Holders.

(a) Triggering Event. A "**Triggering Event**" shall be deemed to have occurred at such time as any of the following events:

(i) the suspension from trading or failure of the Common Stock to be listed on the Principal Market or another Eligible Market for a period of five (5) consecutive Trading Days or for more than an aggregate of ten (10) Trading Days in any 365-day period;

(ii) (A) a Conversion Failure occurs or (B) notice, written or oral, to any Holder, including by way of public announcement, or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Preferred Shares into shares of Common Stock that is tendered in accordance with the provisions of this Section E;

(iii) at any time following the tenth (10<sup>th</sup>) consecutive Business Day that a Holder's Authorized Share Allocation is less than the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion of the full Conversion Amount of the Preferred Shares (without regard to any limitations on conversion set forth in Section E(8) of this Article III or otherwise);

(iv) the Corporation's failure to pay to the Holder, whether in cash, shares of Common Stock, other equity securities, debt securities or other property (in each case, in accordance with the terms and conditions of this Section E of this Article III), and whether or not such payment is permitted under the Bank Facility, (x) any amount due, including any amount that would be due if not prohibited by the Bank Facility, on any Dividend Notice Date, Dividend Date, Installment Notice Date, Installment Date or the Maturity Date or as a Make Whole Amount (or instead, if applicable, the Missed Dividend Payment Amounts) or Redemption Price or otherwise; or (y) within five (5) Business Days following written notice delivered to the Corporation of any other amounts when and as due pursuant to Section E of this Article III or any other Transaction Document;

(v) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Corporation or any Material Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Corporation or any Material Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Corporation or any Material Subsidiary under any applicable Federal or State law or (iii) a decree or order appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Material Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(vi) the commencement by the Corporation or any Material Subsidiary of a voluntary case or proceeding under any applicable



Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Corporation or any Material Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Material Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Corporation or any Material Subsidiary in furtherance of any such action;

(vii) the Corporation breaches any representation, warranty, covenant or other term or condition of any Transaction Document and such breach results in a Material Adverse Effect (as defined in the Securities Purchase Agreement substituting “any Holder” for the term “Company” and adding to such definition “and the ability of any Holder to receive the benefits under any Transaction Documents”), except so long as the Corporation has provided a notice of Triggering Event within the required time, then in the case of a breach of a covenant which is curable, only if such breach remains uncured for a period of at least five (5) Business Days after written notice of such breach is received by the Corporation; or

(viii) a breach of any Bank Facility Condition.

(b) Redemption Option Upon Triggering Event. In addition to all other rights of the Holders contained herein, after a Triggering Event, each Holder shall have the right, at such Holder’s option, to require the Corporation to redeem (a “**Triggering Event Redemption**”) all or a portion of such Holder’s Preferred Shares, or, in connection with Triggering Events caused solely by Missed Dividend Payments, all or a portion of such Holder’s Preferred Shares with a Stated Value equal to the aggregate Missed Dividend Payment Amounts, at a price per Preferred Share equal to the sum of (i) the greater of (A) 125% of the Conversion Amount and (B) the product of (1) the Conversion Rate in effect at such time as such Holder delivers a Notice of Redemption at Option of Holder (as defined below) and (2) the greatest Closing Sale Price of the Common Stock during the period beginning on the date immediately preceding such Triggering Event and ending on the date the Holder delivers the Notice of Redemption at Option of Holder and (ii) the Make-Whole Additional Amount per Preferred

Share being redeemed (the sum of the foregoing clauses (i) and (ii), the “**Triggering Event Redemption Price**”). To the extent that the Corporation is not permitted to effect such Triggering Event Redemption under the Bank Facility, the Corporation shall remain obligated for any and all payments in connection with such Triggering Event Redemption and the Holder acknowledges that such payments will be subject to the rights under the Bank Facility; provided, however, but subject to the applicable terms of the Preferred Equity Subordination Agreement (as defined in the Bank Facility), that nothing in these Articles of Incorporation shall prevent or limit any Holder from pursuing any remedies at law or in equity available to such Holder in connection with the terms and provisions of the Preferred Shares as set forth in these Articles of Incorporation notwithstanding the terms and provisions of the Bank Facility.

(c) Mechanics of Redemption at Option of Holders. Within one (1) Business Day after the occurrence of a qualifying Triggering Event, the Corporation shall deliver written notice thereof via facsimile and overnight courier (“**Notice of Triggering Event**”) to each Holder. At any time after the earlier of a Holder’s receipt of a Notice of Triggering Event and such Holder becoming aware of a Triggering Event, any Holder of Preferred Shares then outstanding may require the Corporation to redeem up to all of such Holder’s Preferred Shares by delivering written notice thereof via facsimile and overnight courier (“**Notice of Redemption at Option of Holder**”) to the Corporation, which Notice of Redemption at Option of Holder shall indicate the number of Preferred Shares that such Holder is electing to redeem.

(d) Payment of Redemption Price. Upon the Corporation’s receipt of a Notice(s) of Redemption at Option of Holder from any Holder, the Corporation shall within one (1) Business Day of such receipt notify each other Holder by facsimile of the Corporation’s receipt of such notice(s). The Corporation shall deliver on the fifth (5<sup>th</sup>) Business Day after the Corporation’s receipt of the first Notice of Redemption at Option of Holder (the “**Triggering Event Redemption Date**”) by wire transfer of immediately available funds, an amount in cash equal to the applicable Triggering Event Redemption Price to all Holders that deliver a Notice of Redemption at Option of Holder prior to the fifth (5<sup>th</sup>) Business Day after the Corporation’s receipt of the first Notice of Redemption at Option of Holder. To the extent redemptions required by this Section E(3) are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Corporation, such redemptions shall be deemed to be voluntary prepayments. If the Corporation is unable to redeem all of the Preferred Shares submitted for redemption, the Corporation shall (i) redeem a pro rata amount from each Holder based on the number of Preferred Shares submitted for redemption by such Holder relative to the total number of Preferred Shares submitted for redemption by all Holders and (ii) in addition to any remedy such Holder may have under this Section E, pay to each Holder interest at the rate of one percent (1.0%) per month (prorated for partial months) of the amount owed by the Corporation to such Holder in respect of each unredeemed Preferred Share until paid in full. In the event less than all of a Holder’s remaining Preferred

Shares are redeemed pursuant hereto, the Stated Value redeemed shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Notice of Redemption at Option of Holder or other applicable notice. The Holders and Corporation agree that in the event of the Corporation's redemption of any Preferred Shares under this Section E(3), the Holders' damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holders. Accordingly, any redemption premium due under this Section E(3) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty.

(e) Void Redemption. In the event that the Corporation does not pay a Redemption Price within the applicable time period, at any time thereafter and until the Corporation pays such unpaid applicable Redemption Price in full, a Holder shall have the option to, in lieu of redemption, require the Corporation to promptly return to such Holder any or all of the Preferred Shares that were submitted for redemption by such Holder and for which the applicable Redemption Price has not been paid, by sending written notice thereof to the Corporation via facsimile or electronic mail (the "**Void Optional Redemption Notice**"). Upon the Corporation's receipt of such Void Optional Redemption Notice, (i) the Redemption Notice of Holder shall be null and void with respect to those Preferred Shares subject to the Void Optional Redemption Notice, (ii) the Corporation shall immediately return any Preferred Shares subject to the Void Optional Redemption Notice, and (iii) the Conversion Price of such returned Preferred Shares shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Optional Redemption Notice is delivered to the Corporation and (B) the lowest VWAP of the Common Stock during the period beginning on the date on which the Redemption Notice is delivered to the Corporation and ending on the date on which the Void Optional Redemption Notice is delivered to the Corporation.

(f) Disputes; Miscellaneous. In the event of a dispute as to the determination of the arithmetic calculation of any Redemption Price, such dispute shall be resolved pursuant to Section E(2)(d)(iii) of this Article III above with the term "Redemption Price" being substituted for the term "Conversion Rate". A Holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not effect the Corporation's obligations to make any payments which have accumulated prior to the date of such notice. In the event of a redemption pursuant to this Section E of less than all of the Preferred Shares represented by a particular Preferred Stock Certificate, the Corporation shall promptly cause to be issued and delivered to the Holder of such Preferred Shares a Preferred Stock Certificate representing the remaining Preferred Shares which have not been redeemed, if necessary.

(4) Redemption by the Corporation.

(a) Company Installment Conversion or Redemption.

(i) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure as of the applicable notice or payment dates, the Corporation shall convert from each Holder of the Preferred Shares its Pro Rata Portion of the Installment Amount due on such date by converting such Installment Amount, in accordance with this Section E(4)(a) (a “**Company Conversion**”); provided, however, that the Corporation may, at its option following notice to the Holders, pay the Installment Amount by redeeming such Installment Amount (a “**Company Redemption**”), to the extent that such Company Redemption is permitted under the Bank Facility, or by any combination of a Company Conversion and a Company Redemption so long as all of the outstanding applicable Installment Amount shall be converted and/or redeemed by the Corporation on the applicable Installment Date, subject to the provisions of this Section E(4). On or prior to the date which is the twenty-third (23rd) Trading Day prior to each Installment Date (each, an “**Installment Notice Due Date**”), the Corporation shall deliver written notice (each, a “**Company Installment Notice**” and the date all of the Holders receive such notice is referred to as the “**Company Installment Notice Date**”), to each Holder of Preferred Shares which Company Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of the Preferred Shares shall be converted in whole pursuant to a Company Conversion (such amount to be converted, including any accumulated Additional Amount related to all outstanding Preferred Shares, the “**Company Conversion Amount**”) or (B) state that the Corporation shall redeem for cash, in whole or in part, the applicable Installment Amount pursuant to a Company Redemption (such amount to be redeemed, including any accumulated Additional Amount related to all outstanding Preferred Shares, the “**Company Redemption Amount**”) and the portion, if any, that the Corporation elects to convert pursuant to a Company Conversion (such amount, including any accumulated Divided, also, a “**Company Conversion Amount**”) which amounts when added together, must equal the applicable Installment Amount and (ii) (x) if the Installment Amount is to be paid, in whole or in part, pursuant to a Company Conversion, certify that the Equity Conditions have been satisfied as of the date of the Company Installment Notice and (y) if the Installment Amount is to be paid, in whole or in part, pursuant to a Company Redemption, certify that the Company Redemption is permitted under the Bank Facility. Each Company Installment Notice shall be irrevocable. If the Corporation does not timely deliver a Company Installment Notice in accordance with this Section E(4)(a)(i), then the Corporation shall be deemed to have delivered an

irrevocable Company Installment Notice confirming a Company Conversion and shall be deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied. Except as expressly provided in this Section E(4)(a)(i), the Corporation shall convert and/or redeem the applicable Installment Amount of the Preferred Shares pursuant to this Section E(4)(a) pro rata among all the Holders. The Company Conversion Amount (whether set forth in the Company Installment Notice or by operation of this Section E(4)(a)) shall be converted in accordance with Section E(4)(a)(ii) of this Article III and the Company Redemption Amount shall be redeemed in accordance with Section E(4)(a)(iii) of Article III.

(ii) Mechanics of Company Conversion. (1) If the Corporation delivers a Company Installment Notice and confirms, or is deemed to have confirmed, in whole or in part, a Company Conversion in accordance with Section E(4)(a) of this Article III, then on the Company Installment Notice Date, the Corporation shall, or shall direct the Transfer Agent to, deliver to each Holder's account with DTC, or issue each Holder a certificate for, a number of shares of Common Stock equal to each Holder's Pro Rata Portion of the quotient of (A) such Company Conversion Amount divided by (B) the Initial Company Conversion Price (the "**Pre-Installment Conversion Shares**"). On the second (2nd) Trading Day immediately after the end of the Company Conversion Measuring Period (the "**Installment Settlement Date**"), the Corporation shall deliver a notice setting forth the calculation of the Installment Balance Conversion Shares (and the calculation of the component parts of such calculation) to the Holders and shall, or shall direct the Transfer Agent to, deliver to each Holder's account with DTC, or issue to each Holder a certificate for, a number of additional shares of Common Stock, if any, equal to each Holder's Installment Balance Conversion Shares. Notwithstanding the foregoing, the Corporation may, to the extent permitted under the Bank Facility, deliver an irrevocable notice (certifying that the payment of cash pursuant to the election under this notice is permitted under the Bank Facility) to all but not less than all Holders not less than 12 Trading Days prior to the Installment Settlement Date electing to pay on the Installment Settlement Date cash in lieu of any Installment Balance Conversion Shares otherwise deliverable on the applicable Installment Settlement Date in an amount to each Holder equal to the product of (z) the number of such Holder's Installment Balance Conversion Shares otherwise deliverable but for this election on the Installment Settlement Date and (w) the otherwise applicable Company Conversion Price. If a Triggering Event occurs during the period from any Company Installment Notice Date through the Installment Settlement Date and a Holder elects a Triggering Event Redemption

in accordance with Section E(3)(b) of this Article III, then, at the Holder's option, either (1) the Holder, upon receipt of the Triggering Event Redemption Price (which Redemption Price shall include redemption of any portion of a Company Conversion Amount represented by Pre-Installment Conversion Shares that the Holder returns to the Corporation), shall return any Pre-Installment Conversion Shares delivered in connection with the applicable Installment Date, which the Holder has not otherwise sold, transferred or disposed of and which are included in the Triggering Event Redemption Price, to the Corporation or (2) the Conversion Amount used to calculate the Triggering Event Redemption Price shall be reduced by the product of (x) the Holder's Company Conversion Amount applicable to such Installment Date multiplied by (y) the Conversion Share Ratio of such Holder.

(2) If there is an Equity Conditions Failure at any time after the Company Installment Notice Date and prior to the Installment Settlement Date, then at the option of any Holder designated in writing to the Corporation (the "**First Redemption Notice**"), the Holder may require the Corporation to do either one or both of the following: (A) the Corporation shall redeem all or any part designated by the Holder of the applicable Company Conversion Amount (such designated amount is referred to as the "**First Redemption Amount**") on the third (3rd) Trading Day after the date of delivery of the applicable First Redemption Notice, and the Corporation shall pay to the Holder on such Trading Day, by wire transfer of immediately available funds, an amount in cash equal to 125% of such First Redemption Amount, and/or (B) the Company Conversion shall be null and void with respect to all or any part designated by the Holder of the applicable Company Conversion Amount and the Holder shall be entitled to all the rights of a holder of Preferred Shares with respect to such amount of the Company Conversion Amount; provided, however, that the Conversion Price for such applicable Company Conversion Amount shall thereafter be adjusted to equal the lowest of (1) the then applicable Conversion Price, (2) the Company Conversion Price as in effect on the date on which the Holder voided the Company Conversion and (3) the Company Conversion Price as in effect on the date on which the Holder delivers a Conversion Notice relating thereto. In the event the Holder elects to require payment of the First Redemption Amount upon an Equity Conditions Failure following the Company Installment Notice Date, at the Holder's option, either (x) the Holder shall, upon receipt of a First Redemption Amount (which amount shall include redemption of any portion of a Company Conversion Amount represented by Pre-Installment Conversion Shares that the Holder returns to the Corporation), return any Pre-Installment Conversion Shares delivered in connection with the applicable Installment Date, which the Holder has not otherwise sold, transferred or disposed of and which are included in the First Redemption Amount, to the Corporation or (y) any related First Redemption Amount

shall be reduced by the product of (I) the Company Conversion Amount of such Holder applicable to such Installment Date multiplied by (II) the Conversion Share Ratio of such Holder. If the Corporation fails to redeem any First Redemption Amount on or before the applicable payment date, by payment of such amount on the applicable payment date, then the Holder shall have the rights set forth in Section E(3)(e) of this Article III as if the Corporation failed to pay the applicable Company Redemption Price and all other rights as a Holder of Preferred Shares (including, without limitation, such failure constituting a Triggering Event described in Section E(3)(a)(iv) of this Article III). Notwithstanding anything to the contrary in this Section E(4)(a)(ii), but subject to Section E(8) of this Article III, until the Corporation delivers Common Stock representing the Company Conversion Amount to the Holder, the Company Conversion Amount may be converted by the Holder into Common Stock pursuant to Section E(2) of this Article III. In the event that the Holder elects to convert the Company Conversion Amount prior to the applicable Company Installment Notice Date as set forth in the immediately preceding sentence, the Company Conversion Amount so converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice. Notwithstanding anything to the contrary herein, to the extent that the Corporation informs the Holder that redemption by the Corporation of the Preferred Shares as contemplated pursuant to this Section E(4)(a)(ii) is not permitted under the Bank Facility, the Holder shall deliver a notice to the Corporation indicating the portion or portions of the Installment Amount not so redeemable that the Holder elects to have added to the Installment Dates set forth in such notice.

(iii) Mechanics of Company Redemption. If the Corporation elects, or is deemed to have confirmed, a Company Redemption in accordance with Section 4(a)(i), then the Company Redemption Amount which is to be paid to the Holder on the applicable Installment Date shall be redeemed by the Corporation, and the Corporation shall pay to the Holder on such Installment Date, by wire transfer of immediately available funds, an amount in cash (the “**Company Installment Redemption Price**”) equal to 100% of the Company Redemption Amount. If the Corporation fails to redeem the Company Redemption Amount on the applicable Installment Date by payment of the Company Installment Redemption Price on such date, then at the option of the Holder designated in writing to the Corporation (any such designation shall be deemed a “**Conversion Notice**” pursuant to Section E(2)(d) of this Article III), the Holder may require the Corporation to convert all or any part of the Company Redemption Amount at 75% of the Company Conversion

Price as of the Installment Date. Conversions required by this Section 4(a)(iii) shall be made in accordance with the provisions of Section E(2) of this Article III. Notwithstanding anything to the contrary in this Section E(4)(a)(iii), but subject to Section E(8) of this Article III, until the Company Installment Redemption Price (together with any interest thereon) is paid in full, the Company Redemption Amount (together with any interest thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section E(2) of this Article III. In the event a Holder elects to convert all or any portion of the Company Redemption Amount applicable to such Holder prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Company Redemption Amount so converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice.

(iv) If the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment of any portion of the Installment Amount in cash on the applicable Installment Date is not permitted under the Bank Facility, the Corporation shall be required to confirm in the applicable Company Installment Notice that the Installment Amount not permitted by the Bank Facility to be paid in cash on such Installment Date will be paid in shares of Common Stock.

(v) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of the Installment Amount is permitted under the Bank Facility, the Corporation shall be required to elect in the applicable Confirmation to satisfy the Installment Amount as a Company Redemption; provided, however, that if only a portion of the Installment Amount is permitted to be paid in cash under the Bank Facility, the Corporation shall pay in cash the maximum amount so permitted to be paid under the Bank Facility and the Corporation shall pay the remainder of the Installment Amount in Company Conversion to the extent that there are authorized and unissued shares of Common Stock, and the Corporation shall pay to the Holder any remaining unpaid portion of the Installment Amount either in Company Conversion or in cash in accordance with Section E(4)(a) of this Article III upon the earliest of the satisfaction of the conditions in clauses (i), (iv) or (v) of such Section E(4)(a); provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's right, under Section E(3) of this Article III.



(vi) (x) If the Corporation has not obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of any amount of the Installment Amount is not permitted under the Bank Facility, or (y) if the Corporation has obtained both the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval and if the payment in cash of any amount of the Installment Amount is not permitted under the Bank Facility and there is an Equity Conditions Failure on the Company Installment Notice Date which is not waived by the Holder, the Corporation shall pay to the Holder the Installment Amount in Company Conversion to the extent that there are authorized and unissued shares of Common Stock and the Corporation shall pay to the Holder any unpaid portion of the Installment Amount either in Company Redemption or in Company Conversion in accordance with Section E(4)(a) of this Article III upon the earliest of the satisfaction of the conditions in clauses (i), (iv) or (v) of such Section E(4)(a); provided, however, that nothing herein shall prevent the Holder from exercising its rights, or limit the Holder's right, under Section E(3) of this Article III.

(b) In the event that the Release Date does not occur on or prior to the W.E.T. Date, as soon as practicable following the W.E.T. Date but in no event later than two (2) Trading Days thereafter, the Corporation shall redeem all of the Preferred Shares by (1) paying in cash to each Holder an amount per outstanding Preferred Share of such Holder equal to the sum of (x) 102.5% of the Stated Value of such Preferred Shares plus (y) all accumulated and unpaid Dividends on all such Preferred Shares, and (2) issuing to each Holder, in accordance with the terms of the Securities Purchase Agreement, Series A Warrants (as defined in the Securities Purchase Agreement) representing the right to acquire their Pro Rata Portion of 1,125,000 shares of Common Stock (as appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock after the Initial Issuance Date). For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the date hereof, the Corporation acknowledges that any shares of Common Stock issued in a Cashless Exercise (as defined in the Series A Warrants) of any or all of the Series A Warrants shall be deemed to have been acquired by the Holder, and the holding period for such shares of Common Stock shall be deemed to have commenced, on the Initial Issuance Date.

(c) Other than as specifically permitted by this Section E, the Corporation may not redeem any of the outstanding Preferred Shares and any unpaid Dividends thereon.

(5) Other Rights of Holders.

(a) Assumption. The Corporation shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Corporation under this Section E and the other Transaction

Documents in accordance with the provisions of this Section E(5)(a) pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Section E including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by such Holder and having similar ranking to the Preferred Shares, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Section E referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Section E with the same effect as if such Successor Entity had been named as the Corporation herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such shares of publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity), as adjusted to reflect the value of such Fundamental Transaction, in accordance with the provisions of this Section E. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Preferred Shares.

(b) Purchase Rights. In addition to any adjustments pursuant to Section E(2) of this Article III above, if at any time the Corporation grants, issues or sells or has granted, issued or sold any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (including the Shareholder Rights Plan adopted by the Board of Directors in January 2009 (as amended or otherwise modified, the "**Rights Plan**") (the "**Purchase Rights**"), then the Holders will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage,

then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation). Assuming no Holder acquires more than 4.99% of the outstanding shares of Common Stock at the time of such acquisition other than pursuant to, and in accordance with, the terms of the Transaction Documents or in accordance with this Section E, notwithstanding anything to the contrary in the Rights Plan, the issuance of the Preferred Shares, the Series A Warrants and any shares of Common Stock pursuant to the terms and provisions in this Section E and the terms and provisions of the Series A Warrants shall not cause the applicability in any way or shall not put into effect in any way any of the provisions of the Rights Plan.

(6) Reservation of Shares.

(a) Prior to receipt of the Authorized Share Stockholder Approval, the Corporation shall reserve out of its authorized and unissued Common Stock a number of shares of Common Stock for each of the Preferred Shares equal to 100% of the number of shares of Common Stock necessary to effect the conversion at the Conversion Rate with respect to the Conversion Amount of each such Preferred Share as of the Initial Issuance Date. From and after receipt of the Authorized Share Stockholder Approval, if received, the Corporation shall reserve out of its authorized and unissued Common Stock 130% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding at the then applicable Conversion Rate with respect to the then applicable Conversion Amount. The Corporation shall, so long as any of the Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversions of the Preferred Shares, such number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (without regard to any limitations on conversions) (the “**Required Reserve Amount**”); provided, further, that any Dividend Shares and Additional Conversion Shares issued by the Corporation shall not be issued from any Common Stock so reserved. The initial number of shares of Common Stock reserved for conversions of the Preferred Shares and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of Preferred Shares held by each Holder at the time of issuance of the Preferred Shares or increase in the number of reserved shares, as the case may be (the “**Authorized Share Allocation**”). In the event a Holder shall sell or otherwise transfer any of such Holder’s Preferred Shares, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares (other than pursuant to a transfer of Preferred Shares in accordance with the immediately preceding sentence)

shall be allocated to the remaining Holders of Preferred Shares pro rata based on the number of Preferred Shares then held by such Holders.

(b) Insufficient Authorized Shares. If at any time while any of the Preferred Shares remain outstanding the Corporation does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares then outstanding at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Corporation shall immediately take all action necessary to increase the Corporation’s authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(7) Voting Rights. The Preferred Shares shall confer no voting rights upon the holders thereof, except those matters required by law or by the terms hereof to be submitted to a class vote of the Holders of Preferred Shares, in which case the Holders of Preferred Shares only shall vote as a separate class.

(8) Limitations on Beneficial Ownership.

(a) The Corporation shall not effect any conversion of Preferred Shares, and no Holder shall have the right to convert any Preferred Shares, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with such Person’s affiliates) would have acquired, through conversion of Preferred Shares or otherwise, beneficial ownership of a number of shares of Common Stock that exceeds 4.99% (or 9.99% if otherwise notified by the Holder on such Holder’s signature block in the Securities Purchase Agreement, which such notice shall be immediately effective on the Initial Issuance Date) (the “**Maximum Percentage**”) of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing, the number of shares of Common Stock beneficially owned by a Person and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Person or any of its affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, any notes or warrants) subject to a limitation on conversion or exercise

analogous to the limitation contained in this Section beneficially owned by such Person or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section E(8), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and the rules, regulations and interpretations promulgated thereunder, including without limitation, Release No. 34-39538. The Holder shall certify in all Conversion Notices delivered pursuant to Section E(2)(d) hereof the aggregate number of shares of Common Stock beneficially owned by the Holder and the Holder’s affiliates other than pursuant to the Preferred Shares (excluding shares of Common Stock which would be issuable upon exercise or conversion of the unexercised or unconverted portion of any securities of the Corporation beneficially owned by the Holder and its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules, regulations and interpretations promulgated thereunder. In connection with any conversion of any Preferred Share, the Corporation shall be entitled to rely upon such certification by the Holder. For purposes of this Section E(8), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation’s most recent Form 10-K, Form 10-Q, or Form 8-K, as the case may be, (2) a more recent public announcement by the Corporation, or (3) any other notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of any Holder, the Corporation shall within two (2) Business Days following the receipt of such notice, confirm orally and in writing to any such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Shares, by such Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Corporation, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Corporation, and (ii) any such increase or decrease will apply only to the Holder providing such written notice and not to any other Holder.

(b) The Corporation shall not be obligated to issue any shares of Common Stock as Dividend Shares or upon conversion of Preferred Shares, and the Holders of Preferred Shares shall not have the right to receive any Dividend Shares or upon conversion of Preferred Shares any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Corporation may issue as Dividend Shares and upon conversion or exercise, as applicable, of Preferred Shares or otherwise without breaching the Corporation’s obligations under the rules or

regulations of the Principal Market (such limitation, as of the Closing Date, being 19.99% of the number of shares of Common Stock outstanding on the Closing Date) (the “**Exchange Cap**”), except that such limitation shall not apply in the event that the Corporation (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Corporation that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. Until such approval or written opinion is obtained, no Holder of Preferred Shares shall be issued in the aggregate, upon conversion or payment, as applicable, of Preferred Shares, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) and the denominator of which is the aggregate number of all Preferred Shares issued to the Holders pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each such Holder, the “**Exchange Cap Allocation**”). In the event that any Holder shall sell or otherwise transfer any of such Holder’s Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder’s Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee.

(9) Change of Control Redemption Right; Dissolution, Winding-Up.

(a) **Change of Control.** No sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a Change of Control, but not prior to the public announcement of such Change of Control, the Corporation shall deliver written notice thereof via overnight courier to the Holders (a “**Change of Control Notice**”) setting forth a description of such transaction in reasonable detail and the anticipated Change of Control Redemption Date if then known. At any time during the period (the “**Change of Control Period**”) beginning at the earlier of (x) the Holder becoming aware of the Change of Control (regardless of how the Holder becomes aware of such transaction and the status of such transaction), (y) the public announcement of such Change of Control, and (z) the Holder’s receipt of a Change of Control Notice, and ending on the date that is twenty (20) Trading Days after the consummation of such Change of Control, such Holder may require the Corporation to redeem (a “**Change of Control Redemption**”) in cash all or any portion of such Holder’s Preferred Shares by delivering written notice thereof (“**Change of Control Redemption Notice**”) to the Corporation, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. Any Preferred Shares subject to redemption pursuant to this Section E(9)(a) shall be redeemed by the Corporation in cash at a price (the “**Change of Control Redemption Price**”) equal to the sum of (I) the greater of (i) 125% of the Conversion Amount being redeemed and (ii) the product of (A) the Conversion Amount being redeemed and (B) the quotient determined by dividing (1) the greatest Closing Sale Price of the Common Stock

during the period commencing as of the Trading Day immediately prior to the public announcement of such proposed Change of Control and ending as of the Trading Day immediately prior to the consummation of such Change of Control by (2) the Conversion Price and (II) the applicable Make-Whole Additional Amount for the Preferred Shares being redeemed. The Corporation shall make payment of the Change of Control Redemption Price concurrently with the consummation of such Change of Control if such a Change of Control Redemption Notice is received prior to the consummation of such Change of Control and within five (5) Trading Days after the Corporation's receipt of such notice otherwise (the "**Change of Control Redemption Date**"). To the extent redemptions required by this Section E(9)(a) are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Corporation, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section E(9)(a), until the Change of Control Redemption Price (together with any interest thereon) is paid in full, the Preferred Shares may be converted, in whole or in part, by any Holder into shares of Common Stock, or in the event the Conversion Date is after the consummation of the Change of Control, shares or equity interests of the Successor Entity substantially equivalent to the Corporation's Common Stock pursuant to Section E(2)(c)(i) of this Article III. In the event of a partial redemption of the Preferred Shares pursuant hereto, the Stated Value redeemed shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Change of Control Redemption Notice or other applicable notice. The parties hereto agree that in the event of the Corporation's redemption of any portion of the Preferred Shares under this Section E(9)(a), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section E(9)(a) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. In the event that the Corporation does not pay the Change of Control Redemption Price on the Change of Control Redemption Date, then the Holder shall have the right to void the redemption pursuant to Section E(3)(e) of this Article III.

(b) Liquidation. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of the Capital Stock of the Corporation of any class junior in rank to the Preferred Shares in respect of the preferences as to distributions and payments on the liquidation, dissolution and winding up of the Corporation, an amount per Preferred Share equal to the greater of (i) the sum of the Conversion Amount plus the Make-Whole Additional Amount, and (ii) the amount the Holder of such Preferred Share would have received in such Liquidation Event had such Holder

converted such Preferred Share into Common Stock pursuant to this Section E immediately prior to such Liquidation Event; provided, that, if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of other classes or series of preferred stock of the Corporation that are of equal rank with the Preferred Shares as to payments of Liquidation Funds (the “**Pari Passu Shares**”), if any, then each Holder and each holder of any such Pari Passu Shares shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder as a liquidation preference, in accordance with the Articles of Incorporation or their respective certificate of designations, preferences and rights, as applicable, as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and Pari Passu Shares. To the extent necessary, the Corporation shall cause such actions to be taken by any of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section. All the preferential amounts to be paid to the Holders under this Section shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Corporation to the holders of, shares of other classes or series of preferred stock of the Corporation junior in rank to the Preferred Shares in connection with a Liquidation Event as to which this Section applies. The purchase or redemption by the Corporation of stock of any class, in any manner permitted by law, shall not, for the purposes hereof, be regarded as a Liquidation Event.

(10) Negative Covenants.

(a) As long as any Preferred Shares are outstanding, unless the Required Holders shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness, other than Permitted Indebtedness.

(b) No consideration shall be offered or paid to any of the Holders to amend or waive or modify any provision of the Preferred Shares or Series A Warrants, unless the same consideration is also offered to all of the Holders. This provision constitutes a separate right granted to each of the Holders by the Corporation and shall not in any way be construed as the Holders acting in concert or as a group with respect to the purchase, disposition or voting of securities or otherwise.

(c) Except for dividends and grants pursuant to the Rights Plan, while any Preferred Shares are outstanding, the Corporation shall not, directly or indirectly, declare or pay or otherwise distribute any dividends or distributions (whether in cash, any securities or other property) on the shares of Common Stock.

(11) Ranking. All shares of Common Stock shall be of junior rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon



the liquidation, dissolution and winding up of the Corporation. The rights of the shares of Common Stock shall be subject to the preferences and relative rights of the Preferred Shares. Without the prior express written consent of the Required Holders, the Corporation shall not hereafter authorize or issue additional or other Capital Stock that is of senior or pari-passu rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon a Liquidation Event. The Corporation shall be permitted to issue preferred stock that is junior in rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon a Liquidation Event; provided, that the maturity date (or any other date requiring redemption, repayment or any other payment, including, without limitation, dividends in respect of any such preferred shares) of any such junior preferred shares is not on or before 91 days after the Maturity Date. In the event of the merger or consolidation of the Corporation with or into another corporation, the Preferred Shares shall maintain their relative powers, designations and preferences provided for herein (except that the Preferred Shares may not be *pari passu* with, or junior to, any Capital Stock of the successor entity) and no merger shall result inconsistent therewith.

(12) Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, shall be required before the Corporation may: (a) amend or repeal any provision of, or add any provision to, the Articles of Incorporation or bylaws of the Corporation, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Shares, regardless of whether any such action shall be by means of amendment to the Articles of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of shares of Preferred Shares; (c) create or authorize (by reclassification or otherwise) any new class or series of shares that has a preference over or is on a parity with the Preferred Shares with respect to dividends or the distribution of assets on the liquidation, dissolution or winding up of the Corporation; (d) purchase, repurchase or redeem any shares of Common Stock (other than pursuant to equity incentive agreements with employees giving the Corporation the right to repurchase shares upon the termination of services at cost); (e) pay dividends or make any other distribution on the Common Stock or other Capital Stock (other than the Preferred Shares); (f) amend any provision of the Articles of Incorporation with respect to the Preferred Shares or (g) whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares.

(13) Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the Preferred Shares, and, in the case of loss, theft or destruction, of an indemnification undertaking by the Holder to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred

stock certificates if the Holder contemporaneously requests the Corporation to convert such Preferred Shares into Common Stock.

(14) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Section E shall be cumulative and in addition to all other remedies available under this Section E, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Section E. The Corporation covenants to each Holder that there shall be no characterization concerning this Section E other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(15) Construction. This Section E shall be deemed to be jointly drafted by the Corporation and all Holders and shall not be construed against any person as the drafter hereof.

(16) Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(17) Notice. Whenever notice or other communication is required to be given under this Section E, unless otherwise provided herein, such notice shall be given in accordance with the following instructions: (a) if within the domestic United States, by first class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or, as specified in this Section E of this Article III, by facsimile or by electronic mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the party giving such notice or other communication), provided, that any notice or other communications sent by facsimile or by electronic mail shall also be sent by a nationally recognized overnight express courier, or (b) if delivered from outside the United States, by International Federal Express, and (c) will be deemed given (i) if delivered by first class registered or certified domestic mail, three (3) Business Days after being so mailed, (ii) if delivered by nationally recognized overnight express courier, one (1) Business Day after being so mailed, and (iii) if delivered by International Federal Express, two (2) Business Days after being so mailed, and (iv) if delivered by facsimile or electronic mail, upon mechanical or electronic confirmation of transmission, and will be delivered and addressed as follows:

(a) if to the Corporation, to:

Amerigon Incorporated  
21680 Haggerty Road, Ste. 101  
Northville, MI 48167  
Attention: Daniel R. Coker  
Facsimile: (248) 504-0500  
E-mail: seriesnotices@amerigon.com

with a copy to:

Honigman Miller Schwartz and Cohn LLP  
2290 First National Building  
660 Woodward Ave.  
Detroit, MI 48226  
Attention: Kenneth J. Phillips  
Facsimile: (313) 465-7659  
E-mail: kphillips@honigman.com

(b) if to a Holder, at such address or addresses as may have been furnished to the Corporation in writing.

The Corporation shall provide the Holder with prompt written notice of all actions taken pursuant to this Section E, including in reasonable detail a description of such action and the reason therefor. The Corporation may update its notice information by written notice to the Holders in accordance herewith.

(18) Transfer of Preferred Shares. A Holder may assign some or all of the Preferred Shares and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

(19) Preferred Share Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Preferred Shares, in which the Corporation shall record the name and address of the persons in whose name the Preferred Shares have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any Preferred Share is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

(20) Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Section E, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and

in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries.

(21) Independent Nature of Holders' Obligations and Rights. The rights and obligations of each Holder under any Transaction Document are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holder as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Section E or out of any other Transaction Documents, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose."

(22) Payments. Notwithstanding anything to the contrary herein, to the extent that any provision of this Section E permits the Corporation to make a payment to the Holders of Preferred Shares, at the Corporation's option, in cash or in shares of Common Stock, the Corporation shall only be permitted to make any portion of such payment in shares of Common Stock if both of the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval have been obtained by the Corporation prior to the time of such elections; provided, however, that in the event that both of the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval have not been obtained and to the extent that the whole applicable payment by the Corporation to the applicable Holders is not permitted under the Bank Facility to be made only in cash, the Corporation shall pay in cash the amount of such payment which is permitted to be paid in cash under the Bank Facility and the Corporation shall make the remainder of such payment in shares of Common Stock to the extent that there are authorized and unissued shares of Common Stock.

(23) Currency. All payments made in cash pursuant to this Section E shall be made in U.S. Dollars by wire transfer in immediately available funds. Unless otherwise set forth in this Section E, all amounts set forth in this Section E shall be designated in U.S. Dollars.

FURTHER RESOLVED, that these resolutions of the Board, adopted on March 22, 2011, are to be filed as an amendment to the Corporation's Articles of Incorporation pursuant to Sections 611(2) and 302(4) of the Michigan Business Corporation Act.

Signed this 30 day of March, 2011.

AMERIGON INCORPORATED

By: /s/ Daniel R. Coker

Name: Daniel R. Coker

Title: President and Chief Executive Officer

EXHIBIT I

AMERIGON INCORPORATED

CONVERSION NOTICE

Reference is made to Section E of Article III of the Articles of Incorporation of Amerigon Incorporated. In accordance with and pursuant to such Section E, the undersigned hereby elects to convert the number of shares of Series C Convertible Preferred Stock, without par value (the “**Preferred Shares**”), of Amerigon Incorporated, a Michigan corporation (the “**Corporation**”), indicated below into shares of Common Stock, without par value (the “**Common Stock**”), of the Corporation, as of the date specified below.

Date of Conversion: \_\_\_\_\_

Number of Preferred Shares to be converted: \_\_\_\_\_

Stock certificate no(s). of Preferred Shares to be converted: \_\_\_\_\_

Tax ID Number (If applicable): \_\_\_\_\_

Aggregate number of shares of Common Stock beneficially owned by the undersigned and the undersigned’s affiliates other than pursuant to the conversion of the Preferred Shares (as calculated in accordance with Section E(8)(a) of Article III of the Articles of Incorporation of the Corporation): \_\_\_\_\_

Please confirm the following information: \_\_\_\_\_

Conversion Price: \_\_\_\_\_

Number of shares of Common Stock to be issued: \_\_\_\_\_

Please issue the Common Stock into which the Preferred Shares are being converted in the following name and to the following address:

Issue to: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Authorization: \_\_\_\_\_

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

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

Dated:

Account Number (if electronic book entry transfer): \_\_\_\_\_

Transaction Code Number (if electronic book entry transfer): \_\_\_\_\_

Installment Amounts to be reduced and amount of reduction: \_\_\_\_\_

## PLACEMENT AGENCY AGREEMENT

March 30, 2011

Roth Capital Partners, LLC  
24 Corporate Plaza  
Newport Beach, CA 92660

Ladies and Gentlemen:

Amerigon Incorporated, a Michigan corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell, through Roth Capital Partners, LLC ("Roth"), up to 7,000 shares of the Company's Series C preferred stock, no par value (the "Shares") directly to various investors (the "Investors").

The Shares are being sold in connection with the Company's acquisition (the "Acquisition") of all of the equity interests of W.E.T. Automotive Systems AG (the "Target"), a stock company incorporated under the laws of Germany, owned by Indigo Capital IV LP, ICWET LP and Industrie-Beteiligungs-Gesellschaft mbH (the "Sellers"), representing approximately 75% of the outstanding voting capital of the Target, pursuant to a share purchase agreement entered into between the Company, its affiliate, Amerigon Europe GmbH ("Amerigon Europe"), and the Sellers on February 28, 2011 (the "Acquisition Agreement"). The Company has also entered into a Business Combination Agreement (the "BCA") with the Target setting forth (1) the terms and conditions upon which Amerigon Europe is obligated to launch a tender offer for the outstanding shares of the Target and (2) sets forth certain terms and conditions that govern the parties conduct prior to and after the closing of such tender offer.

In addition, concurrently with the sale of the Shares, the Company will also enter into a series of senior secured credit facilities in aggregate principal amount of approximately \$93 million and a series of senior unsecured credit facilities in aggregate principal amount of approximately €40 million with a syndicate of financial institutions to finance a portion of the purchase price of the Acquisition (the "Debt Financing"). The Debt Financing, the Acquisition and related events are collectively referred to in this Agreement as the "Acquisition Transactions" and the agreements related to the Acquisition Agreement, the BCA the credit facilities and other documents to be entered into in connection with the Acquisition Transactions are collectively referred to in this Agreement as the "Acquisition Agreements".

Upon the Closing (as defined below), payment of the purchase price for the sale of the Shares shall be made by the Investors by wire transfer, in accordance with the Company's written wire instructions, of immediately available funds to either Bank of America, N.A. or JPMorgan Chase & Co. (the "Exchange Banks") pursuant to a letter agreement between the Company, the Investors and the Exchange Banks (such payment, the "Escrow Funding"), for conversion to Euros and then further delivery by wire transfer to an escrow account (the "Escrow Account") in the name of the Company at BNP Paribas Securities Services S.A. Zweigniederlassung Frankfurt am Main (the "Escrow Agent"). Such funds shall remain in the Escrow Account until distributed the by the Escrow Agent in accordance with the escrow



agreement entered into between the Company, the Investors and the Escrow Agent (the "Escrow Agreement"), which shall specify, among other things, that funds may be disbursed from the Escrow Account either because of the fulfillment of certain conditions for the consummation of the Acquisition Transactions (the "Acquisition Release") or the failure of such conditions to occur by July 1, 2011, or such later date as the Company and the Investors may agree, and the consequent redemption of the Shares pursuant to the instrument governing the terms of the Shares (the "Redemption Release").

The Company and Roth hereby confirm their agreement as follows:

**1. Agreement to Act as Placement Agent.** On the basis of the representations, warranties and agreements of the Company herein contained, and subject to all the terms and conditions of this Agreement, Roth shall serve as the exclusive placement agent in connection with the issuance and sale by the Company of the Shares from the Registration Statement (as defined in Section 2 below), with the terms of such offering (the "Offering") to be subject to market conditions and negotiations between the Company, Roth and the Investors. Roth shall act on a best efforts basis and does not guarantee that it will be able to sell the Shares in the prospective Offering. As compensation for services rendered, upon the Escrow Funding, the Company shall pay to Roth an aggregate amount equal to 3.0% of the gross amount to be paid by the Investors in connection with the sale of the Shares. The Company shall also remit to Roth, upon its submission to the Company of the invoice, an amount to cover the fees and expenses of its counsel payable pursuant to Section 7(h) in connection with the Offering. Upon the Acquisition Release, the Company shall pay to Roth an aggregate amount equal to an additional 3.0% of the gross amount to be paid by the Investors in connection with the sale of the Shares. For clarity, no additional 3.0% fee shall be due in the event of a Redemption Release. The purchase price to the Investors for each Share is US\$10,000.00 (the "Offering Price"). Roth may retain other brokers or dealers to act as sub-agents on its behalf in connection with the Offering. The term of Roth's exclusive engagement will be 15 days from the date hereof (the "Exclusive Term"). Roth will be entitled to collect all fees earned through termination.

**2. Registration Statement and Final Prospectus.** The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-171787) under the Securities Act of 1933 (the "Securities Act") and the rules and regulations (the "Rules and Regulations") of the Commission thereunder, and such amendments to such registration statement (including post effective amendments) as may have been required to the date of this Agreement. Such registration statement, as amended (including any post effective amendments), has been declared effective by the Commission. Such registration statement, as amended (including post effective amendments thereto), the exhibits and any schedules thereto and the documents and information otherwise deemed to be a part thereof or included therein by the Securities Act or otherwise pursuant to the Rules and Regulations, is herein called the "Registration Statement." If the Company has filed or files an abbreviated registration statement in connection with the Shares pursuant to Rule 462(b) under the Securities Act (the "Rule 462 Registration Statement"), then any reference herein to the term Registration Statement shall include such Rule 462 Registration Statement. The Company will file with the Commission pursuant to Rule 424 under the Securities Act a prospectus supplements relating to the Shares and to the shares of common stock of the Company, no par value (the "Common Stock"), issuable upon conversion of the Shares and payable as dividends,

mandatory repurchase amounts, upon redemption, or as amortization on the Shares, the warrants (the “Warrants”) to purchase up to an aggregate of 1,125,000 shares of Common Stock, and the shares of Common Stock underlying the Warrants, each registered in connection with the Offering, to the form of prospectus included in the Registration Statement. Such prospectus in the form in which it appears in the Registration Statement is hereinafter called the “Base Prospectus,” and the final prospectus supplement as filed, along with the Base Prospectus, is hereinafter called the “Final Prospectus.”

For purposes of this Agreement, all references to the Registration Statement, the Rule 462 Registration Statement, the Base Prospectus, the Final Prospectus, or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Interactive Data Electronic Applications system. All references in this Agreement to amendments or supplements to the Registration Statement, the Rule 462 Registration Statement, the Base Prospectus, or the Final Prospectus shall be deemed to mean and include the subsequent filing of any document under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that is deemed to be incorporated therein by reference or otherwise deemed by the Rules and Regulations to be a part thereof.

### ***3. Representations and Warranties Regarding the Offering.***

(a) The Company represents and warrants to, and agrees with, Roth, as of the date hereof and as of the Closing Date, except as otherwise indicated, as follows:

(i) At each time of effectiveness, at the date hereof and at the Closing Date, the Registration Statement and any post-effective amendment thereto, complied or will comply in all material respects with the requirements of the Securities Act and the Rules and Regulations and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Time of Sale Disclosure Package (as defined below) as of the date hereof and at the Closing Date, and the Final Prospectus, as amended or supplemented, at the time of filing pursuant to Rule 424(b) under the Securities Act and at the Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences shall not apply to statements in or omissions from the Registration Statement or any post-effective amendment thereto or the Final Prospectus in reliance upon, and in conformity with, written information furnished to the Company by Roth specifically for use in the preparation thereof. The Registration Statement contains all exhibits and schedules required to be filed by the Securities Act or the Rules and Regulations. No order preventing or suspending the effectiveness or use of the Registration Statement or the Final Prospectus is in effect and no proceedings for such purpose have been instituted or are pending, or, to the Knowledge of the Company, are contemplated or threatened by the Commission. The term “Knowledge” as used in this Agreement shall mean actual knowledge of the Company’s officers after due and reasonable inquiry.

(ii) The documents incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, were filed on a timely basis with the Commission and none of such documents, when they were filed (or, if amendments to such documents were filed, when such amendments were filed), contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Any further documents so filed and incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. As used in this paragraph and elsewhere in this Agreement, “Time of Sale Disclosure Package” means the Base Prospectus, the Final Prospectus most recently filed with the Commission before the time of this Agreement, any subscription agreement between the Company and the Investors, and any issuer free writing prospectus as defined in Rule 433 of the Act (each, an “Issuer Free Writing Prospectus”), if any, that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

(iii) The financial statements of the Company and, to the Knowledge of the Company, the Target, respectively, together with the related notes, included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus comply in all material respects with the requirements of the Securities Act and the Exchange Act and fairly present the financial condition of the Company and, to the Knowledge of the Company, the Target, respectively, as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with generally accepted accounting principles consistently applied throughout the periods involved, except as otherwise noted therein; and the supporting schedules included in the Registration Statement present fairly the information required to be stated therein. No other financial statements or schedules are required to be included in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus. To the Company’s Knowledge, each of Grant Thornton LLP and KPMG LLP is an independent public accounting firm with respect to the Company within the meaning of the Securities Act and the Rules and Regulations. The pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto included under the caption “Prospectus Supplement Summary—Historical Financial Data of Amerigon”, “Summary Unaudited Pro Forma Condensed Combined Financial Data” and elsewhere in each of the Registration Statement, Time of Sale Disclosure Package and Final Prospectus present fairly the information contained therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly presented on the basis described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein.

(iv) The Company had a reasonable basis for, and made in good faith, each “forward-looking statement” (within the meaning of Section 27A of the Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus.

(v) All statistical or market-related data included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources, to the extent required.

(vi) There is no action pending to delist the Company’s shares of Common Stock from The NASDAQ Global Select Market (“NASDAQ”), nor has the Company received any notification that NASDAQ is currently contemplating terminating such listing. When and if issued, the shares of Common Stock underlying the Shares issuable upon conversion and payable as dividends, mandatory repurchase amounts, upon redemption or as amortization amounts, and shares of Common Stock underlying the Warrants will be listed on NASDAQ.

(vii) The Shares have been or will be qualified for sale under the securities laws of such jurisdictions (United States and foreign) as Roth determines, or are or will be exempt from the qualification and broker-dealer requirements of such jurisdictions.

(viii) The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(ix) The Company is not an “ineligible issuer,” as defined in Rule 405 of the Securities Act. Subject to Section 7(d) below, the Company represents and warrants that it has not prepared or had prepared on its behalf or used or referred to any Issuer Free Writing Prospectus in connection with the Offering. Subject to Section 7(d) below, the Company has not distributed and the Company will not distribute, prior to the completion of the distribution of the Shares, any offering material in connection with the Offering other than a Securities Purchase Agreement between the Company and the Investors, the form of which is attached hereto as **Schedule I**, and the Base Prospectus, the Final Prospectus, the Registration Statement, and copies of the documents, if any, incorporated by reference therein.

(x) The Company is not and, after giving effect to the offering and sale of the Shares and the use of proceeds therefrom, will not be an “investment company,” as such term is defined in the Investment Company Act of 1940, as amended.

(b) Any certificate signed by any officer of the Company and delivered to Roth or to Roth’s counsel shall be deemed a representation and warranty by the Company to Roth as to the matters covered thereby.

#### **4. Representations and Warranties Regarding the Company.**

(a) The Company represents and warrants to and agrees with, Roth, except as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, as follows:

(i) The Company and each of its subsidiaries has been duly organized and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation. The Company and each of its subsidiaries has the corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus, and is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have or is reasonably likely to result in a material adverse effect upon the business, prospects, properties, operations, condition (financial or otherwise) or results of operations of (x) the Company and its subsidiaries, taken as a whole or (y) the Company and its subsidiaries, giving pro forma effect to the Acquisition Transactions, taken as a whole, or in the Company's ability to perform its obligations under this Agreement (a "Material Adverse Effect").

(ii) The Company has the power and authority to enter into this Agreement and the Acquisition Agreements and to perform the transactions contemplated hereby and thereby. This Agreement and the Acquisition Agreements have been duly authorized, executed and delivered by the Company, and constitute a valid, legal and binding obligation of the Company, enforceable in accordance with their terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity.

(iii) The execution, delivery and performance of this Agreement and the Acquisition Agreements and the consummation of the Acquisition Transactions and the transactions herein contemplated will not (A) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any law, rule or regulation to which the Company or any subsidiary is subject, or by which any property or asset of the Company or any subsidiary is bound or affected, (B) conflict with, result in any violation or breach of, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, lease, credit facility, debt, note, bond, mortgage, indenture or other instrument (the "Contracts") or obligation or other understanding to which the Company or any subsidiary is a party of by which any property or asset of the Company or any subsidiary is bound or affected, or (C) result in a breach or violation of any of the terms and provisions of, or constitute a default under, the Company's charter or bylaws.

(iv) All consents, approvals, orders, authorizations and filings required on the part of the Company and its subsidiaries in connection with the execution, delivery or performance of this Agreement have been obtained or made, other than such consents, approvals, orders and authorizations the failure of which to make or obtain is not reasonably likely to result in a Material Adverse Effect.

(v) All of the issued and outstanding shares of capital stock of the Company are duly authorized and validly issued, fully paid and nonassessable, and have been issued in compliance with all applicable securities laws, and conform to the description thereof in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus. Except for the Shares and the issuances of options or restricted stock in the ordinary course of business, since the respective dates as of which information is provided in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, the Company has not entered into or granted any convertible or exchangeable securities, options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company any shares of the capital stock of the Company. The Shares, when issued, will be duly authorized and validly issued, fully paid and nonassessable, issued in compliance with all applicable securities laws, and free of preemptive, registration or similar rights.

(vi) The Company does not own, directly or indirectly, any capital stock or other ownership interest in any partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity.

(vii) Each of the Company and its subsidiaries has filed all foreign, federal, state and local returns (as hereinafter defined) required to be filed with taxing authorities prior to the date hereof or has duly obtained extensions of time for the filing thereof. Each of the Company and its subsidiaries has paid all taxes (as hereinafter defined) shown as due on such returns that were filed and has paid all taxes imposed on or assessed against the Company or such respective subsidiary. The provisions for taxes payable, if any, shown on the financial statements filed with or as part of the Registration Statement are sufficient for all accrued and unpaid taxes, whether or not disputed, and for all periods to and including the dates of such consolidated financial statements. Except as disclosed in writing to Roth, (i) no issues have been raised (and are currently pending) by any taxing authority in connection with any of the returns or taxes asserted as due from the Company or its subsidiaries, and (ii) no waivers of statutes of limitation with respect to the returns or collection of taxes have been given by or requested from the Company or its subsidiaries. The term “taxes” mean all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto. The term “returns” means all returns, declarations, reports, statements, and other documents required to be filed in respect to taxes.

(viii) Excluding the Debt Financing and except as would not be reasonably likely to have a Material Adverse Effect, since the respective dates as of which information is given in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, (a) neither the Company nor any of its subsidiaries has incurred any liabilities or obligations, direct or contingent, or entered into any transactions other than in the ordinary course of business, (b) the Company has not declared or paid any dividends or made any distribution of any kind with respect to its capital stock; (c) there has not been any change in the capital stock of the Company or any of its subsidiaries (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or the issuance of restricted stock awards or restricted stock units under the Company's existing stock awards plan, or any new grants thereof in the ordinary course of business), (d) there has not been any change in the Company's long-term or short-term debt, and (e) there has not been the occurrence of any other adverse event, provided, however, that none of the following, in and of itself or themselves shall constitute a Material Adverse Effect: (i) changes in the economy or financial markets generally in North America, Europe or Asia or changes that are the result of acts of war or terrorism, (ii) changes that are the result of factors generally affecting the industries in which the Company operates provided that no such factors shall have a disproportionate impact on the Company, (iii) a decline in the price of the Common Stock on NASDAQ, or any other trading market that the Common Stock is traded on; provided, the exception in this clause (iii) shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such decline has resulted in, or contributed to, a Material Adverse Effect provided, further, that none of the foregoing shall affect any of the conditions of Roth's obligations set forth in Section 8.

(ix) There is not pending or, to the Knowledge of the Company, threatened, any action, suit or proceeding to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company is the subject before or by any court or governmental agency, authority or body, or any arbitrator or mediator, which is reasonably likely to result in a Material Adverse Effect.

(x) The Company and each of its subsidiaries holds, and is in compliance with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders ("Permits") of any governmental or self-regulatory agency, authority or body required for the conduct of its business, and all such Permits are in full force and effect, in each case except where the failure to hold, or comply with, any of them is not reasonably likely to result in a Material Adverse Effect.

(xi) The Company and its subsidiaries have good and marketable title to all property (whether real or personal) described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus as being owned by them that are material to the business of the Company, in each case free and clear of all liens, claims, security interests, other encumbrances or defects, except those that are not reasonably likely to result in a Material Adverse Effect. The property held under lease by the Company and its subsidiaries is held by them under valid, subsisting and enforceable

leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company or its subsidiaries.

(xii) The Company and each of its subsidiaries owns or possesses or has valid right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions, trade secrets and similar rights (“Intellectual Property”) necessary for the conduct of the business of the Company and its subsidiaries as currently carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus. To the Knowledge of the Company, no action or use by the Company or any of its subsidiaries will involve or give rise to any infringement of, or license or similar fees for, any Intellectual Property of others, except where such action, use, license or fee is not reasonably likely to result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice alleging any such infringement or fee.

(xiii) The Company and each of its subsidiaries has complied with, is not in violation of, and has not received any notice of violation relating to any law, rule or regulation relating to the conduct of its business, or the ownership or operation of its property and assets, including, without limitation, (A) the Currency and Foreign Transactions Reporting Act of 1970, as amended, or any money laundering laws, rules or regulations, (B) any laws, rules or regulations related to health, safety or the environment, including those relating to the regulation of hazardous substances, (C) the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder, (D) the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder, and (E) the Employment Retirement Income Security Act of 1974 and the rules and regulations thereunder, in each case except where the failure to be in compliance is not reasonably likely to result in a Material Adverse Effect.

(xiv) Neither the Company nor any of its subsidiaries nor, to the Knowledge of the Company, any director, officer, employee, representative, agent or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the Offering of the Shares contemplated hereby, or lend, contribute or otherwise make available such proceeds to any person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xv) The Company and each of its subsidiaries carries, or is covered by, insurance in such amounts and covering such risks as is adequate for the conduct of its business and the value of its properties and as is customary for companies engaged in similar businesses in similar industries.

(xvi) No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the Knowledge of the Company, is imminent that is reasonably likely to result in a Material Adverse Effect.



(xvii) Neither the Company nor any of its subsidiaries is in violation, breach or default under its certificate of incorporation, bylaws or other equivalent organizational or governing documents, except where the violation is not reasonably likely to result in a Material Adverse Effect.

(xviii) Neither the Company, its subsidiaries nor, to its Knowledge, any other party is in violation, breach or default of any Contract that is reasonably likely to result in a Material Adverse Effect.

(xix) No supplier, customer, distributor or sales agent of the Company has notified the Company that it intends to discontinue or decrease the rate of business done with the Company, except where such decrease is not reasonably likely to result in a Material Adverse Effect.

(xx) There are no claims, payments, issuances, arrangements or understandings for services in the nature of a finder's, consulting or origination fee with respect to the introduction of the Company to Roth or the sale of the Shares hereunder or any other arrangements, agreements, understandings, payments or issuances with respect to the Company that may affect Roth's compensation, as determined by FINRA.

(xxi) Except as disclosed to Roth in writing, the Company has not made any direct or indirect payments (in cash, securities or otherwise) to (i) any person, as a finder's fee, investing fee or otherwise, in consideration of such person raising capital for the Company or introducing to the Company persons who provided capital to the Company, (ii) any FINRA member, or (iii) any person or entity that has any direct or indirect affiliation or association with any FINRA member within the 12-month period prior to the date on which the Registration Statement was filed with the Commission ("Filing Date") or thereafter.

(xxii) To the Company's Knowledge, no (i) officer or director of the Company or its subsidiaries, (ii) owner of 5% or more of the Company's unregistered securities or that of its subsidiaries or (iii) owner of any amount of the Company's unregistered securities acquired within the 180-day period prior to the Filing Date, has any direct or indirect affiliation or association with any FINRA member. The Company will advise Roth and its counsel if it becomes aware that any officer, director or stockholder of the Company or its subsidiaries is or becomes an affiliate or associated person of a FINRA member participating in the Offering.

(xxiii) Other than Roth, no person has the right to act as a placement agent, underwriter or as a financial advisor in connection with the sale of the Shares contemplated hereby.

#### **5. Representations and Warranties of the Company Regarding the Acquisition.**

(a) With respect to the Acquisition Transactions, the Company represents, warrants and agrees as follows:

(i) The representations and warranties of the Company set forth in each of the Acquisition Agreements were when made, and are and will be, as of the date hereof and as of the Closing Date, true and correct and the Company has no reason to believe that the respective representation and warranties of each of the Sellers and of the Target in the Acquisition Agreement and the BCA, respectively, were not, when made, and as of the date hereof and as of the Closing Date, true and correct.

(ii) The Company's Current Report on Form 8-K filed with the Commission on February 28, 2011, accurately describes the Acquisition and complies as to form in all material respects to the requirements of the Exchange Act and applicable rules and regulations of the Commission thereunder.

(iii) The tender offer materials provided or to be provided in connection with the Acquisition Transactions, will be, when filed, true and correct and will comply as to form in all material respects to applicable laws, regulations and the rules of any securities exchange on which the Target's securities are listed.

(iv) The Company has and will continue to use commercially reasonable efforts to satisfy or to be caused to be satisfied the conditions precedent to the closing of the Acquisition Transactions, including the tender offer contemplated by the BCA.

**6. Closing and Settlement.** Subject to the terms and conditions hereof, payment of the purchase price for, and delivery by the Company of irrevocable instructions to the Company's transfer agent regarding the issuance of, the Shares shall be made at the time of closing (the "Closing" and the date on which the Closing occurs, the "Closing Date") at the offices of Roth (or at such other place as shall be agreed upon by Roth and the Company), the first such Closing to take place at 7:00 a.m. prevailing Pacific time, on March 31, 2011 (unless another time shall be agreed to by Roth and the Company). Payment of the purchase price at each Closing shall be made by wire transfer of immediately available funds to the Escrow Agent c/o the Company, and such amount (less disbursements permitted under the Escrow Agreement) shall remain in such account until distributed by the Escrow Agent in accordance with the Escrow Agreement (which shall reflect the terms herein).

One or more certificates in definitive form for the Shares that the Investors have agreed to purchase pursuant to the Securities Purchase Agreement, the form of which is attached hereto as **Schedule I**, and in such denomination or denominations and registered in such name or names as required by the Securities Purchase Agreement shall be delivered by or on behalf of the Company promptly following the Closing, against payment by or on behalf of the Investors, of the purchase price therefor by wire transfer of immediately available funds pursuant to the Escrow Funding.

**7. Covenants.** The Company covenants and agrees with Roth as follows:

(a) During the period beginning on the date hereof and ending on the later of the Closing Date or such date as determined by Roth, the Final Prospectus is no longer required by law to be delivered in connection with sales by an underwriter or dealer (the "Prospectus

Delivery Period”), prior to amending or supplementing the Registration Statement, including any Rule 462 Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, the Company shall furnish to Roth for review and comment a copy of each such proposed amendment or supplement, and the Company shall not file any such proposed amendment or supplement to which Roth reasonably objects.

(b) From the date of this Agreement until the end of the Prospectus Delivery Period, the Company shall promptly advise Roth in writing (A) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (B) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to the Time of Sale Disclosure Package or the Final Prospectus, (C) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (D) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending its use or the use of the Time of Sale Disclosure Package, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time during the Prospectus Delivery Period, the Company will use its reasonable efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 430B, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission (without reliance on Rule 424(b)(8) or Rule 164(b) of the Securities Act).

(c) During the Prospectus Delivery Period, the Company will comply with all requirements imposed upon it by the Securities Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, and by the Exchange Act, as now and hereafter amended, so far as necessary to permit the continuance of sales of or dealings in the Shares as contemplated by the provisions hereof, the Registration Statement, the Time of Sale Disclosure Package and the Final Prospectus. If during such period any event occurs the result of which would cause the Final Prospectus to include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary or appropriate in the opinion of the Company or its counsel or Roth or its counsel to amend the Registration Statement or supplement the Final Prospectus to comply with the Securities Act, the Company will promptly notify Roth and will amend the Registration Statement or supplement the Final Prospectus so as to correct such statement or omission or effect such compliance.

(d) The Company covenants that it will not, unless it obtains the prior written consent of Roth, make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus” (as defined in Rule 405 of the Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Act. In the event that Roth expressly consents in writing to any such free writing prospectus (a “Permitted Free Writing Prospectus”), the Company covenants that it shall (i) treat each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) comply with the requirements of Rule 164 and 433 of the Act applicable to

such Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(e) The Company will furnish to Roth and counsel for Roth copies of the Registration Statement, the Final Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as Roth may from time to time reasonably request.

(f) The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 of the Rules and Regulations.

(g) The Company will not take, directly or indirectly, during the Prospectus Delivery Period, any action designed to or which might reasonably be expected to cause or result in, or that has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(h) If the Escrow Funding occurs, or does not occur because a condition to Roth's obligations under Section 8 is not satisfied or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by Roth, the Company will pay or cause to be paid (A) all expenses (including transfer taxes allocated to the respective transferees) incurred in connection with the delivery of the Shares, including the reasonable legal fees of Roth's counsel, (B) all expenses and fees (including, without limitation, fees and expenses of the Company's counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Shares, the Time of Sale Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectus and any amendment thereof or supplement thereto, (C) all reasonable filing fees and reasonable fees and disbursements of Roth's counsel incurred in connection with the qualification of the Shares for offering and sale by Roth or by dealers under the securities or blue sky laws of the states and other jurisdictions that Roth shall designate, (D) the fees and expenses of any transfer agent or registrar, (E) listing fees, if any, and (F) all other costs and expenses incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein.

(i) The Company will not issue or sell any shares of its preferred stock or other equity or equity-linked securities (other than under existing stock option plans) during the Exclusive Term at less than the Offering Price or equivalent.

(j) The Company will (A) keep Roth apprised of developments relating to, or changes in the terms of, the Acquisition Transactions or Acquisition Agreements, (B) promptly provide Roth with copies of any amendments or waivers of the Acquisition Agreements, and (C) promptly notify Roth of (i) any material regulatory action, request, or condition, imposed or threatened, relating to the Acquisition Transactions; (ii) any claim, lawsuit or any other

proceeding relating to the Acquisition Transactions; (iii) any other matter that may be deemed material to an Investor with respect to the Acquisition Transactions.

**8. Conditions of Roth's Obligations.** The obligations of Roth hereunder are subject to the accuracy, as of the date hereof and at the applicable Closing Date (as if made at the Closing Date), of and compliance with all representations, warranties and agreements of the Company contained herein, the performance by the Company of its obligations hereunder and the following additional conditions:

(a) If filing of the Final Prospectus, or any amendment or supplement thereto, is required under the Securities Act or the Rules and Regulations, the Company shall have filed the Final Prospectus (or such amendment or supplement) with the Commission in the manner and within the time period so required (without reliance on Rule 424(b)(8) or Rule 164(b) under the Securities Act); the Registration Statement shall remain effective; no stop order suspending the effectiveness of the Registration Statement or any part thereof, any Rule 462 Registration Statement, or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package or the Final Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; any request of the Commission for additional information (to be included in the Registration Statement, the Time of Sale Disclosure Package, the Final Prospectus, or otherwise) shall have been complied with to Roth's satisfaction.

(b) Roth shall not have reasonably determined and advised the Company that the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, or any amendment thereof or supplement thereto, contains an untrue statement of fact which, in Roth's reasonable opinion, is material, or omits to state a fact which, in Roth's reasonable opinion, is material and is required to be stated therein or necessary to make the statements therein not misleading.

(c) On the applicable Closing Date, there shall have been furnished to Roth the opinion and negative assurance letters of counsel for the Company, dated the applicable Closing Date and addressed to Roth, in form and substance reasonably satisfactory to Roth, to the effect set forth in **Schedule II**.

(d) Roth shall have received a letter from each of Grant Thornton LLP and KPMG LLP, on the applicable Closing Date addressed to Roth, confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualifications of accountants under Rule 2-01 of Regulation S-X of the Commission, and confirming, as of the date of each such letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Time of Sale Disclosure Package, as of a date not more than three business days prior to the date of such letter), the conclusions and findings of said firms with respect to the financial information, including any financial information contained in Exchange Act Reports filed by the Company, and other matters required by Roth.

(e) On the applicable Closing Date, there shall have been furnished to Roth a certificate, dated the applicable Closing Date and addressed to Roth, signed by the chief

executive officer and the chief financial officer of the Company, in their capacity as officers of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct, in all material respects (other than those representations and warranties that are qualified as to materiality, which are true and correct in all respects), as if made at and as of the applicable Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the applicable Closing Date;

(ii) No stop order or other order (A) suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof, (B) suspending the qualification of the Shares for offering or sale, or (C) suspending or preventing the use of the Time of Sale Disclosure Package or the Final Prospectus has been issued, and no proceeding for that purpose has been instituted or, to their Knowledge, is contemplated by the Commission or any state or regulatory body; and

(iii) There has been no occurrence of any event resulting or reasonably likely to result in a Material Adverse Effect during the period from and after the date of this Agreement and prior to the applicable Closing Date.

(f) The Common Stock shall be registered under the Exchange Act and shall be listed on NASDAQ, and the Company shall not have taken any action designed to terminate, or likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from NASDAQ, nor shall the Company have received any information suggesting that the Commission is contemplating terminating such registration or listing.

(g) The Company shall have furnished to Roth and counsel for Roth such additional documents, certificates and evidence as Roth or counsel for Roth may have reasonably requested.

(h) There shall not have occurred any (i) changes in the economy or financial markets generally in North America, Europe or Asia, (ii) changes that are the result of acts of war or terrorism, (iii) changes that are the result of factors generally affecting the industries in which the Company operates, (iv) a decline in the price of the Common Stock on NASDAQ, or any other trading market that the Common Stock is traded on that, in each case, in the judgment of Roth makes it impracticable to complete the Offering or could result in a Material Adverse Effect.

If any condition specified in this Section 8 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by Roth by notice to the Company at any time at or prior to the applicable Closing Date and such termination shall be without liability of any party to any other party, except that Section 1, Section 7(h), Section 9 and Section 10 shall survive any such termination and remain in full force and effect (provided, however, that Section 1 shall only remain in full force and effect with respect to any amounts required to be paid that have not been paid at the time of such termination).

## 9. Indemnification and Contribution.

(a) The Company agrees to indemnify, defend and hold harmless Roth, its affiliates, directors and officers and employees, and each person, if any, who controls Roth within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities to which Roth or such person may become subject, under the Securities Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to Rules 430A and 430B of the Rules and Regulations, the Time of Sale Disclosure Package, the Final Prospectus, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Registration Statement or the Final Prospectus), or any Issuer Free Writing Prospectus or in any materials or information provided to Investors by, or with the written approval of, the Company in connection with the marketing of the Offering of the Shares, including any roadshow or investor presentations (whether in person or electronically) ("Marketing Materials"), or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) in whole or in part, any inaccuracy in the representations and warranties of the Company contained herein, or (iii) in whole or in part, any failure of the Company to perform its obligations hereunder or under law, and will reimburse Roth for any legal or other expenses reasonably incurred by it in connection with evaluating, investigating or defending against such loss, claim, damage, liability or action; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Time of Sale Disclosure Package, the Final Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any Marketing Materials, in reliance upon and in conformity with written information furnished to the Company by Roth specifically for use in the preparation thereof.

(b) Roth will indemnify and hold harmless the Company, its affiliates, directors, officers and employees, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Roth), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Time of Sale Disclosure Package, the Final Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any Marketing Materials, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Time of Sale Disclosure Package, the Final

Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any Marketing Materials, in reliance upon and in conformity with written information furnished to the Company by Roth specifically for use in the preparation thereof, and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with defending against any such loss, claim, damage, liability or action.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b), above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the failure to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that if (i) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (ii) a conflict or potential conflict exists (based on the reasonable advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party), or (iii) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, the indemnified party shall have the right to employ a single counsel to represent it in any claim in respect of which indemnity may be sought under subsection (a) or (b) of this Section 9, in which event the reasonable and documented fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the indemnified party as incurred.

The indemnifying party under this Section 9 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is a party or could be named and indemnity was or would be sought hereunder by such indemnified party, unless such settlement, compromise or consent (a) includes an unconditional release of such indemnified party from all liability for claims that are the subject matter of such action, suit or proceeding and (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.



(d) If the indemnification provided for in this Section 9 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b), above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and Roth, on the other hand, from the Offering of the Shares or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and Roth, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and Roth, on the other hand, shall be deemed to be in the same proportion as the total net proceeds from the Offering (before deducting expenses) received by the Company, and the total placement agent fees received by Roth, in each case as set forth on the cover page of the Final Prospectus, bear to the aggregate offering price of the Shares set forth on such cover. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or Roth and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and Roth agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim that is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), Roth shall not be required to contribute any amount in excess of the amount of Roth's placement agent fees actually received by Roth from the Offering of the Shares. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company under this Section 9 shall be in addition to any liability that the Company may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to each person, if any, who controls Roth within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act; and the obligations of Roth under this Section 9 shall be in addition to any liability that Roth may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to the Company, and its officers, directors and each person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

(f) For purposes of this Agreement, Roth confirms, and the Company acknowledges, that there is no information concerning Roth furnished in writing to the Company by Roth specifically for preparation of or inclusion in the Registration Statement, the Time of Sale Disclosure Package or the Final Prospectus, other than the statements regarding Roth set forth in the "Plan of Distribution" section of the Final Prospectus and Time of Sale Disclosure

Package, only insofar as such statement relate to the amount of selling concession and related activities that may be undertaken by Roth.

**10. Representations and Agreements to Survive Delivery.** All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto including, but not limited to, the agreements of Roth and the Company contained in Section 1, Section 7(h) and Section 9 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of Roth or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Shares hereunder.

**11. Notices.** Except as otherwise provided herein, all communications hereunder shall be in writing and, if to Roth, shall be mailed or delivered to Roth Capital Partners, LLC, 24 Corporate Plaza, Newport Beach, CA, Attention: Managing Director; and if to the Company, shall be mailed or delivered to it at Amerigon Incorporated, 21680 Haggerty Road, Ste. 101, Northville, MI 48167, Attention: Daniel R. Coker, with a copy to Honigman Miller Schwartz and Cohn LLP, 660 Woodward Avenue, Detroit, MI 48226, Attention: Kenneth J. Phillips, Esq.; or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

**12. Persons Entitled to Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 9. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term "successors and assigns" as herein used shall not include any purchaser, as such purchaser, of any of the Shares.

**13. Absence of Fiduciary Relationship.** The Company acknowledges and agrees that: (a) Roth has been retained solely to act as placement agent in connection with the sale of the Shares and that no fiduciary, advisory or agency relationship between the Company and Roth has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether Roth has advised or is advising the Company on other matters; (b) the price and other terms of the Shares set forth in this Agreement were established by Roth and the Investors following discussions and arms-length negotiations and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that Roth and its affiliates are engaged in a broad range of transactions that may involve interests that differ from those of the Company and that Roth has no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that Roth is acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of Roth, and not on behalf of the Company.

**14. No Limitations.** Nothing in this Agreement shall be construed to limit the ability of Roth or its affiliates to (a) trade in the Company's or any other company's securities or publish research on the Company or any other company, subject to applicable law, or (b) pursue

or engage in investment banking, financial advisory or other business relationships with entities that may be engaged in or contemplate engaging in, or acquiring or disposing of, businesses that are similar to or competitive with the business of the Company.

**15. Amendments and Waivers.** No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver be deemed or constitute a continuing waiver unless otherwise expressly provided.

**16. Partial Unenforceability.** The invalidity or unenforceability of any section, paragraph, clause or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph, clause or provision.

**17. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

**18. Counterparts.** This Agreement may be executed and delivered (including by facsimile transmission and electronic mail attaching a portable document file (.pdf)) in one or more counterparts and, if executed and delivered in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

Please sign and return to the Company the enclosed duplicates of this letter whereupon this letter will become a binding agreement between the Company and Roth in accordance with its terms.

Very truly yours,

AMERIGON INCORPORATED

By: /s/ Barry Steele

Name: Barry Steele

Title: Chief Financial Officer

Confirmed as of the date first above-mentioned by Roth.

ROTH CAPITAL PARTNERS, LLC

By: /s/ Aaron M. Gurewitz

Name: Aaron M. Gurewitz

Title: Head of Equity Capital Markets

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**SCHEDULE I**

**Securities Purchase Agreement**

Included as Exhibit 10.2 to this

Current Report on Form 8-K

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**SCHEDULE II**

**Company Opinions**

The Registrant hereby agrees to furnish supplementally  
a copy of this Schedule II upon request.

## SECURITIES PURCHASE AGREEMENT

**SECURITIES PURCHASE AGREEMENT** (the “**Agreement**”), dated as of March 30, 2011, by and among Amerigon Incorporated, a Michigan corporation, with headquarters located at 21680 Haggerty Road, Ste. 101, Northville, Michigan 48167 (the “**Company**”), and the investors listed on the Schedule of Buyers attached hereto (individually, a “**Buyer**” and collectively, the “**Buyers**”).

**WHEREAS:**

A. The Company and the Buyers desire to enter into this transaction to purchase the Preferred Shares (as defined below) pursuant to a currently effective shelf registration statement on Form S-3, which has at least \$100,000,000 of initial offering price of unallocated securities available for sale as of the date hereof (Registration Number 333-171787) (the “**Registration Statement**”), which Registration Statement has been declared effective in accordance with the Securities Act of 1933, as amended (the “**1933 Act**”), by the United States Securities and Exchange Commission (the “**SEC**”).

B. The Company has authorized a new series of convertible preferred stock of the Company designated as Series C Convertible Preferred Stock, the terms of which are set forth in the certified resolutions of the board of directors (the “**Board of Directors**”) of the Company establishing and designating the rights and preferences for such series of preferred stock (the “**Certificate of Designations**”) in the form attached hereto as Exhibit A (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the “**Preferred Shares**”), which Preferred Shares shall be convertible into the Company’s common stock, no par value (the “**Common Stock**”), in accordance with the terms of the Certificate of Designations. The Company has authorized the Warrants and the Warrant Shares (each as defined below) for issuance, subject to the conditions of the Transaction Documents.

C. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, that aggregate number of Preferred Shares set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers (which aggregate number for all Buyers shall be 7,000). Such Preferred Shares will be sold under the Registration Statement; provided, however, such Preferred Shares will not be listed for trading on the Principal Market (as defined below) or any other trading market.

D. If the transactions (the “**W.E.T Acquisition**”) contemplated by each of (a) the Share Sale and Purchase Agreement, dated February 28, 2011, by and among Indigo Capital IV LP (“**Indigo**”), ICWET LP (“**ICW**”), Industrie-Beteiligungs-Gesellschaft mbH (IBG) (together with Indigo and ICW, the “**Sellers**”), Amerigon Europe GmbH (“**Amerigon Europe**”), the Company and TMF Deutschland AG and (b) the Business Combination Agreement, dated February 28, 2011, by and among W.E.T. Automotive Systems Aktiengesellschaft (“**W.E.T.**”), Amerigon Europe and the Company (collectively, the “**W.E.T. Agreements**”) have been terminated or not been consummated such that the Escrow Funds (as defined below) have been released by the Escrow Agent (as defined below) on or prior to July 1, 2011 (unless the Buyers have agreed to extend the July 1, 2011 deadline to a later date, in which case the deadline shall be the later date) (the earlier of the date of such termination or deadline, the “**W.E.T. Date**”) to the Buyers as part of

the redemption of the Preferred Shares in accordance with the Certificate of Designations, as soon as practicable following the W.E.T. Date but in no event later than two (2) Trading Days thereafter, the Company shall issue Warrants to each Buyer, in substantially the form attached hereto as Exhibit B (the “**Warrants**”), representing the right to acquire that number of shares of Common Stock set forth opposite such Buyer’s name in column (4) on the Schedule of Buyers (as exercised and as appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock after the Closing Date, collectively, the “**Warrant Shares**”). The Warrants and the Warrant Shares issuable upon exercise of such Warrants shall be issued pursuant to the Registration Statement.

E. At Closing, the parties hereto and BNP PARIBAS Securities Services S.A. Zweigniederlassung Frankfurt am Main, as escrow agent (the “**Escrow Agent**”), will execute and deliver an Escrow Agreement, in the form attached hereto as Exhibit C (as amended or modified from time to time, the “**Escrow Agreement**”), pursuant to which the Purchase Price (as defined below) for each Buyer (collectively, the “**Escrow Funds**”), will be deposited into an account with the Escrow Agent. The Escrow Funds shall be held in escrow and released in accordance with the terms and conditions set forth in the Escrow Agreement.

F. At Closing, the parties hereto will acknowledge and agree in writing to the terms of that certain letter from Bank of America, N.A., as administrative agent, swing line leader and L/C issuer under the Credit Agreement (as defined below) to the Buyers referred to in the Credit Agreement as the Preferred Equity Subordination Agreement (the “**Subordination Agreement**”).

G. Dividends accumulate on the Preferred Shares in accordance with the Certificate of Designations, which subject to certain conditions, may be paid in shares of Common Stock (the “**Dividend Shares**”).

H. The Preferred Shares, the shares of Common Stock issuable upon conversion of the Preferred Shares (the “**Conversion Shares**”), the Dividend Shares, the Warrants and the Warrant Shares are collectively referred to herein as the “**Securities**.”

**NOW, THEREFORE**, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES.

(a) Purchase of Preferred Shares.

(i) Preferred Shares. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer, severally, but not jointly, shall purchase from the Company on the Closing Date (as defined below), the number of Preferred Shares as is set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers (the “**Closing**”).

(ii) Closing. The date and time of the Closing (the “**Closing Date**”) shall be 10:00 a.m., New York City time, on the date hereof (or such later date as is mutually agreed to by the Company and each Buyer) after notification of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 6 and 7 below, at the offices of Schulte Roth & Zabel



LLP, 919 Third Avenue, New York, New York 10022. The timing of the Closing shall be in accordance with Rule 15c6-1 promulgated under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”).

(iii) **Purchase Price.** The aggregate purchase price for the Preferred Shares to be purchased by such Buyer at the Closing (the “**Purchase Price**”) shall be the amount set forth opposite such Buyer’s name in column (5) of the Schedule of Buyers. Each Buyer shall pay \$10,000 for each Preferred Share to be purchased by such Buyer at the Closing.

(b) **Form of Payment.** On the Closing Date, (i) each Buyer shall pay its Purchase Price to the Escrow Agent for the Preferred Shares to be issued and sold to such Buyer at the Closing, by wire transfer of immediately available funds in accordance with written wire instructions of an intermediary bank (the “**Exchange Bank**”) as determined by the Company, who shall act as an intermediary for purposes of (1) accepting transfers from each Buyer of its Purchase Price in U.S. Dollars, (2) converting such Purchase Price into Euros (€) at the exchange rate agreed upon between the Company and the Exchange Bank (each U.S. Dollar Payment as converted into Euros, a “**Euro Exchanged Amount**”) and (3) transferring all Euro Exchanged Amounts to the Escrow Agent pursuant to the terms set forth herein, and (ii) the Company shall issue and deliver to each Buyer the Preferred Shares (in such denominations as is set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers), each duly executed on behalf of the Company and registered on the transfer books of the Company in the name of such Buyer or its designee. The Escrow Agent shall hold the Escrow Funds in escrow in accordance with the terms and conditions set forth in the Escrow Agreement.

2. **BUYER’S REPRESENTATIONS AND WARRANTIES.** Each Buyer, severally and not jointly, represents and warrants with respect to only itself that:

(a) **Organization; Authority.** Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The execution, delivery and performance by such Buyer of the transactions contemplated by this Agreement has been duly authorized by all necessary action on the part of such Buyer. This Agreement has been duly executed by such Buyer, and when delivered by such Buyer in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(b) **No Conflicts.** The execution, delivery and performance by such Buyer of this Agreement and the consummation by such Buyer of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws)

applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations under any of the Transaction Documents.

(c) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

(d) Short Sales. Other than consummating the transactions contemplated hereunder, such Buyer has not, nor has any Person acting on behalf of or pursuant to any understanding with such Buyer, directly or indirectly, executed any Short Sales of the securities of the Company during the period commencing as of the time that such Buyer first was contacted by the Company or any other Person representing the Company with respect to the transactions contemplated hereunder and ending upon the execution hereof. Notwithstanding the foregoing, in the case of a Buyer that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Buyer's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Buyer's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future. For the purpose of this Agreement:

(i) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof; and

(ii) "**Short Sales**" means all "short sales" as defined in Rule 200 of Regulation SHO under the 1934 Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

The Company acknowledges and agrees that each Buyer does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 2.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Shelf Registration Statement. The Registration Statement with respect to the Securities has been prepared by the Company in conformity in all material respects with the requirements of the 1933 Act, and the rules and regulations (the "**Rules and Regulations**") of the SEC thereunder and has been filed with the SEC. The Company and the transactions contemplated by this Agreement meet the requirements and comply with the conditions for the use of Form S-3. The Registration Statement meets the requirements of Rule 415(a)(1)(x) under the 1933 Act and

complies in all material respects with said rule. Copies of the Registration Statement, including any amendments thereto, the base prospectus (meeting in all material respects the requirements of the Rules and Regulations) contained therein (the “**Base Prospectus**”) and the exhibits, financial statements and schedules, as finally amended and revised, have heretofore been delivered by the Company to the Buyers. The Registration Statement shall be deemed to include any registration statement filed by the Company in connection with the Securities pursuant to Rule 462(b) under the 1933 Act and all information omitted therefrom in reliance upon Rules 430A, 430B or 430C under the 1933 Act and contained in the Prospectus referred to below. The Registration Statement has become effective under the 1933 Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. The term “**Prospectus**” as used in this Agreement means the Base Prospectus together with the final prospectus supplement relating to the Securities (the “**Prospectus Supplement**”) first filed with the SEC pursuant to and within the time limits described in Rule 424(b) under the 1933 Act. Any reference herein to the Registration Statement or the Prospectus or to any amendment or supplement to any of the foregoing documents shall be deemed to refer to and include any documents incorporated by reference therein, and, in the case of any reference herein to the Prospectus, also shall be deemed to include any documents incorporated by reference therein, and any supplements or amendments thereto, filed with the SEC after the date of filing of the Prospectus Supplement under Rule 424(b) under the 1933 Act and prior to the termination of the offering of the Securities.

(b) Prospectus. As of the Applicable Time (as defined below), as of the Closing Date and as of the date of the issuance of the Warrants or the Warrant Shares pursuant to the Registration Statement (if applicable), neither (x) the General Use Free Writing Prospectus(es) (as defined below) issued at or prior to the Applicable Time, the Statutory Prospectus (as defined below), all considered together (collectively, the “**General Disclosure Package**”), nor (y) any individual Limited Use Free Writing Prospectus (as defined below), when considered together with the General Disclosure Package, included or will include any untrue statement of a material fact or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. For the purpose of this Agreement:

(i) “**Applicable Time**” means 5:30 p.m. (New York time) on the date of this Agreement or such other time as agreed to by the Company and the Buyers.

(ii) “**Statutory Prospectus**” as of any time means the Base Prospectus included in the Registration Statement immediately prior to that time.

(iii) “**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 under the 1933 Act, relating to the Securities in the form filed or required to be filed with the SEC or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the 1933 Act.

(iv) “**General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is identified on Schedule I to this Agreement.

(v) “**Limited Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Free Writing Prospectus.

(c) Organization. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Michigan, with corporate power and authority to own or lease its properties and conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus. The Company has no significant subsidiaries (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the SEC) other than those entities listed on Schedule 3(c) (collectively, the “**Subsidiaries**”). Each of the Subsidiaries has been duly organized and is validly existing as an entity in good standing under the laws of the jurisdiction of its organization, with corporate power and authority to own or lease its properties and conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus. The Subsidiaries, together with the subsidiaries listed in Exhibit 21 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2010 (the “**Annual Report**”), are the only subsidiaries, direct or indirect, of the Company. The Company and each of the Subsidiaries are duly qualified to transact business in all jurisdictions in which the conduct of their business requires such qualification, except where the failure to be so qualified would not reasonably be expected to result in any material adverse effect on (x) the business, properties, assets, operations, results of operations or condition (financial or otherwise) of (i) the Company and its Subsidiaries, taken as a whole, (ii) the Company and its Subsidiaries, giving pro forma effect to the W.E.T. Acquisition, or (y) the transactions contemplated hereby and the other Transaction Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents (as defined below) (collectively a “**Material Adverse Effect**”). The outstanding shares of capital stock of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company or another Subsidiary free and clear of all liens, encumbrances and equities and claims, except as described in the Annual Report; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into shares of capital stock or ownership interests in the Subsidiaries are outstanding.

(d) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Escrow Agreement, the Certificate of Designations, the Warrants (if and when issued), the Lock-Up Agreements (as defined in Section 3(vv)) and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the “**Transaction Documents**”) and to issue the Securities (and in the case of the issuance of the Conversion Shares and the Dividend Shares in excess of the Exchange Cap (as defined in the Certificate of Designations) or the Company’s existing authorized share capital (the “**Authorized Share Cap**”), subject to the Company Stockholder Approval (as defined below)) in accordance with the terms hereof and thereof. The Company had the requisite corporate power and authority to enter into and perform its obligations under the W.E.T. Agreements. The execution and delivery of the Transaction Documents and the W.E.T. Agreements by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the W.E.T. Acquisition, the issuance of the Preferred Shares, the issuance of Conversion Shares, the issuance of the Warrant Shares, the reservation for issuance of the Conversion Shares issuable upon conversion of the Preferred Shares or the Warrant Shares issuable upon exercise of the Warrants, and the reservation for issuance and the issuance of the Dividend Shares issuable pursuant to the Certificate of Designations have been duly authorized by the Board of Directors, and no further filing, consent, or authorization is required by the Board

of Directors or its stockholders other than the Company Stockholder Approval. This Agreement, the other Transaction Documents of even date herewith and the W.E.T. Agreements have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(e) Issuance of Securities. The outstanding shares of Common Stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; the Securities to be issued and sold (if applicable) by the Company have been duly authorized (and in the case of the issuance of Conversion Shares and the Dividend Shares in excess of the Exchange Cap or the Authorized Share Cap, subject to the Company Stockholder Approval) and when issued and paid for (if applicable) as contemplated in the Transaction Documents will be free from all taxes, liens and charges with respect to the issue thereof, validly issued, fully paid and non-assessable, and no preemptive rights of stockholders exist with respect to any of the Securities or the issue and sale thereof. As of the Closing, a number of shares of Common Stock shall have been duly authorized and reserved for issuance which equals or exceeds 100% of the aggregate of the maximum number of shares of Common Stock (i) issuable upon conversion of the Preferred Shares or (ii) issuable upon exercise of the Warrants. Neither the filing of the Registration Statement nor the offering or sale of the Securities as contemplated by this Agreement gives rise to any rights, other than those which have been waived or satisfied, for or relating to the registration of any shares of Common Stock. Upon conversion in accordance with the Preferred Shares, the exercise in accordance with the Warrants, or the issuance of the Dividend Shares in accordance with the Certificate of Designations the Conversion Shares, the Warrant Shares and the Dividend Shares, respectively, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. There are no securities or instruments issued by the Company containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities.

(f) Equity Capitalization. As of the date hereof and as of the Closing Date, the Company has or will have, as the case may be, an authorized, issued and outstanding capitalization as is set forth in the Registration Statement and the Prospectus (subject, in each case, to the issuance of shares of Common Stock upon exercise of stock options and warrants disclosed as outstanding in the Registration Statement and the Prospectus and the grant or issuance of options or shares under existing equity compensation plans or stock purchase plans described in the Registration Statement or the Prospectus), and such authorized capital stock conforms to the description thereof set forth in the Registration Statement and the Prospectus. All of the Securities conform to the description thereof contained in the Registration Statement and the Prospectus. The form of certificates for the Conversion Shares, the Dividend Shares and the Warrant Shares will conform to the corporate law of the jurisdiction of the Company's incorporation.

(g) Disclosure.

(i) The SEC has not issued an order preventing or suspending the use of any Issuer Free Writing Prospectus or the Prospectus relating to the offering of the Securities, and

no proceeding for that purpose or pursuant to Section 8A of the 1933 Act has been instituted or, to the Company's knowledge, threatened by the SEC. The Registration Statement conforms, and the Prospectus and any amendments or supplements thereto will conform, to the requirements of the 1933 Act and the Rules and Regulations. The documents incorporated, or to be incorporated, by reference in the Prospectus, at the time filed with the SEC conformed in all material respects, or will conform in all respects, to the requirements of the 1934 Act or the 1933 Act, as applicable, and the Rules and Regulations. The Registration Statement and any amendments and supplements thereto do not contain, and on the Closing Date will not contain, any untrue statement of a material fact and do not omit, and on the Closing Date will not omit, to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendments and supplements thereto do not contain, and on the Closing Date will not contain, any untrue statement of a material fact; and do not omit, and on the Closing Date will not omit, to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(ii) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the Company notified or notifies the Buyers as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein that has not been superseded or modified. If at any time following issuance of an Issuer Free Writing Prospectus, there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in light of the circumstances, not misleading, the Company has notified or will notify promptly the Buyers so that any use of such Issuer Free Writing Prospectus may cease until it is amended or supplemented.

(iii) All disclosure provided to the Buyers in the Prospectus, the General Disclosure Package or in this Agreement, including the Schedules to this Agreement, furnished by or on behalf of the Company does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, prospects, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

(h) Offering Materials. The Company has not, directly or indirectly, distributed and will not distribute any offering material in connection with the offering and sale of the Securities other than the Prospectus, any Issuer Free Writing Prospectus and other materials, if any, permitted under the 1933 Act. The Company will file with the SEC all Issuer Free Writing Prospectuses in the time required under Rule 433(d) under the 1933 Act. The Company has satisfied or will satisfy the conditions in Rule 433 under the 1933 Act to avoid a requirement to file with the SEC any electronic road show.

(i) Ineligible Issuer Status. (i) At the time of filing the Registration Statement, and (ii) as of the date hereof (with such date being used as the determination date for purposes of this clause (ii)), the Company was not and is not, as applicable, an “ineligible issuer” (as defined in Rule 405 under the 1933 Act, without taking into account any determination by the SEC pursuant to Rule 405 under the 1933 Act that it is not necessary that the Company be considered an ineligible issuer), including, without limitation, for purposes of Rules 164 and 433 under the 1933 Act with respect to the offering of the Securities as contemplated by the Registration Statement.

(j) Financial Statements. The consolidated financial statements of the Company and the Subsidiaries, and, to the Company’s knowledge, W.E.T., respectively, together with related notes and schedules as set forth or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, present fairly in all material respects the financial position and the results of operations and cash flows of the Company and the consolidated Subsidiaries and W.E.T., respectively, at the indicated dates and for the indicated periods. Such consolidated financial statements and related schedules have been prepared in accordance with United States generally accepted principles of accounting (“GAAP”), consistently applied throughout the periods involved, except as disclosed therein and except that unaudited financial statements may not contain all footnotes required by GAAP, and all adjustments necessary for a fair presentation of results for such periods have been made. The pro forma consolidated financial statements of the Company and its Subsidiaries and the related notes thereto in each of the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information contained therein, have been prepared in accordance with the SEC’s rules and guidelines with respect to pro forma financial statements and have been properly presented on the basis described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. The summary and selected consolidated financial and statistical data included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the information shown therein, at the indicated dates and for the indicated periods, and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of the Company. All disclosures, if any, contained in the Registration Statement, the General Disclosure Package and the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the Rules and Regulations) comply in all material respects with Regulation G of the 1934 Act and Item 10 of Regulation S-K under the 1933 Act, to the extent applicable. The Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations or any “variable interest entities” within the meaning of Financial Accounting Standards Board Interpretation No. 46) required to be disclosed under GAAP on the face of financial statements or in any footnotes thereto and, not disclosed in the Registration Statement, the General Disclosure Package and the Prospectus. There are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus that are not included or incorporated by reference as required.

(k) Accountants. To the Company’s knowledge, Grant Thornton LLP, who have certified certain of the financial statements filed with the SEC as part of, or incorporated by reference in, the Registration Statement, the General Disclosure Package and the Prospectus is an independent registered public accounting firm with respect to the Company within the meaning of

the 1933 Act and the applicable Rules and Regulations and the Public Company Accounting Oversight Board (United States) (the “PCAOB”).

(l) Internal Accounting Controls. (i) Neither the Company nor any of the Subsidiaries is aware of (i) any material weakness in its internal control over financial reporting or (ii) change in internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(ii) The Company and each of the Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(iii) The Company has established and maintains “disclosure controls and procedures” (as defined in Rules 13a-15(e) and 15d-15(e) under the 1934 Act); the Company’s “disclosure controls and procedures” are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported within the time periods specified in the rules and regulations of the 1934 Act, and that all such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the Chief Executive Officer and Chief Financial Officer of the Company required under the 1934 Act with respect to such reports.

(m) Sarbanes-Oxley. Solely to the extent that the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated by the SEC and The NASDAQ Global Select Market (the “**Principal Market**”) thereunder (collectively, the “**Sarbanes-Oxley Act**”) has been applicable to the Company, there is and has been no failure on the part of the Company to comply in all respects with any provision of the Sarbanes-Oxley Act. The Company has taken all necessary actions to ensure that it is in compliance in all respects with all provisions of the Sarbanes-Oxley Act that are in effect with respect to which the Company is required to comply and is actively taking steps to ensure that it will be in compliance with the other provisions of the Sarbanes-Oxley Act which will become applicable to the Company.

(n) Litigation. There is no action, suit, claim or proceeding pending or, to the Company’s knowledge, threatened against the Company or any of the Subsidiaries before any court or administrative agency or otherwise which if determined adversely to the Company or any of the Subsidiaries would have, individually or in the aggregate, a Material Adverse Effect, except as set forth, or incorporated by reference, in the Registration Statement, the General Disclosure Package and the Prospectus.

(o) Title. The Company and the Subsidiaries have good and marketable title to all of the material properties and assets reflected in the consolidated financial statements



hereinabove described or described in the Registration Statement, the General Disclosure Package and the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those reflected in such financial statements or described in the Registration Statement, the General Disclosure Package and the Prospectus or which are not material in amount or would not materially interfere with the use to be made of such properties or assets. The Company and the Subsidiaries occupy their leased properties under valid and binding leases conforming in all material respects to the description thereof set forth, or incorporated by reference, in the Registration Statement, the General Disclosure Package and the Prospectus.

(p) Taxes. The Company and the Subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and have paid all taxes indicated by such returns and all assessments received by them or any of them to the extent that such taxes have become due and are not being contested in good faith and for which an adequate reserve for accrual has been established in accordance with GAAP. All tax liabilities have been adequately provided for in the consolidated financial statements of the Company in accordance with GAAP, and the Company does not know of any actual or proposed additional material tax assessments. Except as disclosed in Schedule 3(p), (i) no issues have been raised (and are currently pending) by any taxing authority in connection with any of the returns or taxes asserted as due from the Company or its Subsidiaries, and (ii) no waivers of statutes of limitation with respect to the returns or collection of taxes have been given by or requested from the Company or its Subsidiaries.

(q) Absence of Certain Changes. Since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package and the Prospectus, as each may be amended or supplemented and except for the consummation of the transactions contemplated by this Agreement and the Credit Agreement (assuming for the purpose of this Section 3(q) that the consummation of the transactions contemplated by the Credit Agreement shall have occurred on the Closing Date), (i) there has not been any Material Adverse Effect (including as a result of force majeure), (ii) neither the Company nor any of its Subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions other than in the ordinary course of business, (iii) there has not been any change in the capital stock of the Company or any of its subsidiaries (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or the issuance of restricted stock awards or restricted stock units under the Company's existing stock awards plan, or any new grants thereof in the ordinary course of business), (iv) there has not been any material change in the Company's long-term or short-term indebtedness and (v) neither the Company nor the Subsidiaries have declared or paid any dividends. For the purposes of this Section 3(q), the following shall not constitute a Material Adverse Effect: (i) changes in the economy or financial markets generally in North America, Europe or Asia or changes that are the result of acts of war or terrorism, (ii) changes that are the result of factors generally affecting the industries in which the Company operates provided that no such factors shall have a disproportionate impact on the Company, (iii) a decline in the market price of the Common Stock; provided, the exception in this clause (iii) shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such decline has resulted in, or contributed to, a Material Adverse Effect; provided, that none of the foregoing shall affect any of the conditions of Buyer's obligations set forth in Section 7.

(r) **No Conflicts.** Neither the Company nor any of the Subsidiaries is, or with the giving of notice or lapse of time or both, will be after giving effect to the execution, delivery and performance of the W.E.T. Agreements and the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the W.E.T. Acquisition, the issuance of the Preferred Shares, the issuance of the Warrants, the reservation for issuance and the issuance of the Warrant Shares and subject to the Company Stockholder Approval, the reservation for issuance and issuance of Conversion Shares and the issuance of the Dividend Shares in excess of the Exchange Cap or the Authorized Share Cap), (i) in violation of its articles of organization, by-laws, any certificate of designations or other organizational documents or (ii) in violation of or in default under any agreement, lease, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound and, solely with respect to this clause (ii), which violation or default would have a Material Adverse Effect. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated and the fulfillment of the terms hereof will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any of their respective properties is bound, or of the articles of organization or by-laws of the Company or any law, order, rule or regulation judgment, order, writ or decree applicable to the Company or any Subsidiary of any court or of any government, regulatory body or administrative agency or other governmental body having jurisdiction, except to the extent that such conflict, breach or default would not have a Material Adverse Effect.

(s) **Contracts.** There is no document, contract or other agreement required to be described in the Registration Statement or Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed as required by the 1933 Act or the Rules and Regulations. Each description of a contract, document or other agreement in the Registration Statement and the Prospectus accurately reflects in all material respects the terms of the underlying contract, document or other agreement. Each contract, document or other agreement described in the Registration Statement and Prospectus or listed in the exhibits to the Registration Statement or incorporated by reference is in full force and effect and is valid and enforceable by and against the Company in accordance with its terms (except as rights to indemnity and contribution thereunder may be limited by federal or state securities laws and matter of public policy and except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principle). Neither the Company nor any of its Subsidiaries nor, to the Company's knowledge, any other party is in default in the observance or performance of any term or obligation to be performed by it under any such agreement or any other agreement or instrument to which the Company or its Subsidiaries is a party or by which the Company or its Subsidiaries or their respective properties or businesses may be bound, and no event has occurred which with notice or lapse of time or both would constitute such a default, in any such case in which the default or event, individually or in the aggregate, would have a Material Adverse Effect.

(t) **Regulatory Approvals.** Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated (except such additional steps as

may be required by the SEC, the Financial Industry Regulatory Authority, Inc. (the “**FINRA**”) or such additional steps as may be required under state securities or Blue Sky laws) has been obtained or made and is in full force and effect.

(u) Conduct of Business. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, except in all cases for possible violations which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future.

(v) Intellectual Property. Except as described in the Registration Statement, the Prospectus or in any document incorporated by reference therein, (i) the Company and each of the Subsidiaries hold all material licenses, certificates and permits from governmental authorities which are necessary to the conduct of their businesses in the manner in which they are being conducted; (ii) the Company and the Subsidiaries each own or possess the right to use all patents, patent rights, trademarks, trade names, service marks, service names, copyrights, license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, systems or procedures) and other intellectual property rights (“**Intellectual Property**”) necessary to carry on their business in all material respects in the manner in which it is being conducted; and (iii) neither the Company nor any of the Subsidiaries has received notice of conflict with, or infringement of, any Intellectual Property of any other person or entity. The Company has taken all steps reasonably necessary to secure ownership interests in Intellectual Property created for it by any contractors. There are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Company that are required to be described in the Registration Statement, the General Disclosure Package and the Prospectus and are not described therein in all material respects. Except as described in the Registration Statement, the Prospectus or in any document incorporated by reference therein, the Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other person or entity that are required to be set forth in the Prospectus and are not described therein in all material respects. Except as described in the Registration Statement, the Prospectus or in any document incorporated by reference therein, none of the technology employed by the Company and material to the Company’s business has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or, to the Company’s knowledge, any of its officers, directors or employees or, to the Company’s knowledge, otherwise in violation of the rights of any persons; the Company has not received any written or oral communications alleging that the Company has violated, infringed or conflicted with, or, by conducting its business as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, would violate, infringe or conflict with, any of the Intellectual Property of any other person or entity. Except as described in the Registration Statement, the Prospectus or in any document incorporated by reference therein, the Company knows of no infringement by others of Intellectual Property owned by or licensed to the Company.

(w) Manipulation of Prices. Neither the Company, nor to the Company’s knowledge, any of its affiliates, has taken or may take, directly or indirectly, any action designed to

cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Securities.

(x) Investment Company Act. Neither the Company nor any Subsidiary is or, after giving effect to the offering and sale of the Securities contemplated hereunder and the application of the net proceeds from such sale as described in the Prospectus, and for so long any Buyer holds any Securities, will be an “investment company” within the meaning of such term under the Investment Company Act of 1940 as amended (the “**1940 Act**”), and the rules and regulations of the SEC thereunder.

(y) Industry and Market Data. The statistical, industry-related and market-related data included in the Registration Statement, the General Disclosure Package and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree in all material respects with the sources from which they are derived.

(z) Forward-Looking Statement. The Company had a reasonable basis for, and made in good faith, each “forward-looking statement” (within the meaning of Section 27A of the Act or Section 21E of the 1934 Act) contained or incorporated by reference in Registration Statement, the General Disclosure Package and the Prospectus.

(aa) Money Laundering Laws. The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the “**Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any or its subsidiaries with respect to the Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(bb) Office of Foreign Assets Control. Neither the Company nor, to the Company’s knowledge, any director, officer, agent, employee or affiliate of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(cc) Insurance. The Company and each of the Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses.

(dd) Employee Benefits. The Company and each Subsidiary is in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations

thereunder (“ERISA”); no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company and each Subsidiary would have any material liability; the Company and each Subsidiary has not incurred and does not expect to incur material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); and each “pension plan” for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(ee) Employee Relations. (i) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer of the Company or any of its Subsidiaries (as defined in Rule 501(f) of the 1933 Act) has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer’s employment with the Company or any such Subsidiary. No executive officer of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters, except where such violation would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(ii) The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(ff) Transactions with Affiliates. To the Company’s knowledge, there are no affiliations or associations between any member of the FINRA and any of the Company’s officers, directors or 5% or greater security holders, except as set forth in the Registration Statement. There are no relationships or related-party transactions involving the Company or any of the Subsidiaries or, to the Company’s knowledge, any other person required to be described in the Prospectus which have not been described as required.

(gg) Environmental Laws. Neither the Company nor any of the Subsidiaries is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), owns or operates any real property contaminated with any substance that is subject to environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would,

individually or in the aggregate, have a Material Adverse Effect; and the Company is not aware of any pending investigation which would reasonably be expected to lead to such a claim.

(hh) Listing; 1934 Act Registration. The Common Stock is listed for trading on the Principal Market and the Conversion Shares and the Dividend Shares have been approved for listing subject to notice of issuance on the Principal Market. The Company is not aware of, and has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the 1934 Act or the quotation of the Common Stock, the Conversion Shares and the Dividend Shares on the Principal Market, nor, has the Company received any notification that the SEC or the Principal Market is contemplating terminating such registration or quotation.

(ii) Contributions; Foreign Corrupt Practices. Neither the Company nor any of the Subsidiaries has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law which violation is required to be disclosed in the Prospectus.

(jj) No Integrated Offering. None of the Company, its Subsidiaries, any of their affiliates, and any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with the offering of the Securities contemplated by this Agreement pursuant to the 1933 Act, the Rules and Regulations or the interpretations thereof by the SEC. None of the Company, its Subsidiaries, any of their affiliates, and any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to require approval of stockholders of the Company for purposes of any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. None of the Company, its Subsidiaries, their affiliates and any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would cause the offering of the Securities to be integrated with other offerings for purposes of any such applicable stockholder approval provisions.

(kk) Brokerage Fees; Commissions. Except as described in the Registration Statement and the Prospectus, neither the Company nor any of its Subsidiaries is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or the Buyers for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(ll) Consents. Other than as described in Section 3(t) hereof, or as have been previously obtained, filed or made, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, including issuance of the Securities, in each case in accordance with the terms hereof or thereof. The Company is unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, application or filings pursuant to the preceding sentence.

(mm) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company, (ii) to the Company's knowledge, an "affiliate" of the Company or any of its Subsidiaries (as defined in Rule 144 of the 1933 Act) or (iii) to the Company's knowledge, a "beneficial owner" of more than 10% of the shares of Common Stock (as used in this Agreement, the term "affiliate" shall have the meaning set forth in Rule 405 of the 1933 Act). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(nn) Dilutive Effect. The Company acknowledges that its obligation to issue Conversion Shares upon conversion of the Preferred Shares and the Dividend Shares in accordance with this Agreement and the Certificate of Designations is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(oo) Application of Takeover Protections; Rights Agreement. The Company and its Board of Directors have taken all necessary action, if any, in order to exempt the Company's issuance of the Securities and each Buyer's ownership of the Securities from the provisions of any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Articles of Incorporation of the Company or the laws of the state of its incorporation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of Securities and each Buyer's ownership of the Securities). Except as set forth on Schedule 3(oo), the Company does not have any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(pp) Subsidiary Rights. Except as set forth in the Registration Statement and Prospectus, the Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

(qq) Transfer Taxes. On the Closing Date, all stock transfer or other similar taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(rr) Acknowledgement Regarding Buyers' Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, but subject to the terms of the

Certificate of Designations and Section 9(p) herein, it is understood and acknowledged by the Company, (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or its Subsidiaries to agree, nor has any Buyer agreed with the Company or its Subsidiaries, to desist from purchasing or selling, long and/or short, securities of the Company, or “derivative” securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by any Buyer, including, without limitation, short sales or “derivative” transactions, before or after the closing of the transactions contemplated by this Agreement or future private placement transactions, may negatively impact the market price of the Company’s publicly-traded securities; (iii) that any Buyer, and counter parties in “derivative” transactions to which such Buyer is a party, directly or indirectly, presently may have a “short” position in the Common Stock which was established prior to such Buyer’s knowledge of the transactions contemplated by the Transaction Documents, and (iv) that such Buyer shall not be deemed to have any affiliation with or control over any arm’s length counter-party in any “derivative” transaction. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents, but subject to the terms of the Certificate of Designations and Section 9(p) herein, (a) one or more Buyers may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding and (b) such hedging and/or trading activities (if any) could reduce the value of the existing stockholders’ equity interests in the Company at and after the time that the hedging and/or trading activities are being conducted. The Company acknowledges that, except as prohibited by the Certificate of Designations and Section 9(p) herein, such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Warrants or any of the documents executed in connection herewith.

(ss) U.S. Real Property Holding Corporation. The Company is not, has not ever been, nor, while any Buyer holds any Securities, will not become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company shall so certify upon any Buyer’s request.

(tt) Bank Holding Company. Neither the Company nor any of its Subsidiaries or affiliates is, nor, while any Buyer holds any Securities, will become, subject to the Bank Holding Company Act of 1956, as amended (the “**BHCA**”) and to regulation by the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, nor, while any Buyer holds any Securities, will own or control, directly or indirectly, five percent or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises, nor, while any Buyer holds any Securities, will exercise, a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(uu) Placement Agent’s Fees. The Company shall be responsible for the payment of any placement agent’s fees, financial advisory fees, or broker’s commissions (other than for persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby. The Company acknowledges that it has engaged Roth Capital Partners LLC (the “**Agent**”) as placement agent in connection with the sale of Securities. Other



than the Agent, the Company has not engaged any placement agent or other agent in connection with the sale of the Securities.

(vv) Lock-Up Agreements. The Company and each of the parties set forth on Schedule 3(vv) hereto has executed and delivered to the Company a lock-up agreement in the form attached hereto as Exhibit D (the "**Lock-Up Agreements**").

(ww) W.E.T. Acquisition. With respect to the W.E.T. Acquisition:

(i) The representations and warranties of the Company set forth in each of the W.E.T. Agreements were when made, and are and will be, as of the date hereof and as of the Closing Date, true and correct and the Company has no reason to believe that the respective representation and warranties of each of the Sellers and of W.E.T. in the W.E.T. Agreements, were not, when made, and as of the date hereof and as of the Closing Date, true and correct.

(ii) The Company's Current Report on Form 8-K filed with the SEC on February 28, 2011, accurately describes the W.E.T. Acquisition and complies as to form in all material respects to the requirements of the 1934 Act and applicable rules and regulations of the SEC thereunder.

(iii) The tender offer materials provided or to be provided in connection with the W.E.T. Acquisition, will be, when filed, true and correct and will comply as to form in all material respects to applicable laws, regulations and the rules of any securities exchange on which the W.E.T.'s securities are listed.

(iv) The Company has and will continue to use commercially reasonable efforts to satisfy or to be caused to be satisfied the conditions precedent to the closing of the W.E.T. Acquisition, including the tender offer contemplated by the W.E.T. Agreements.

(xx) Solvency. After giving effect to the transactions contemplated by this Agreement and the Bank Facility (as defined in the Certificate of Designations), (i) the Company is solvent (*i.e.*, its assets have a fair market value in excess of the amount required to pay its probable liabilities on its existing debts as they become absolute and matured) and (ii) the Company has the ability to pay its debts from time to time incurred in connection therewith as such debts mature.

#### 4. COVENANTS.

(a) Reasonable Best Efforts. Each party shall use its reasonable best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Sections 6 and 7 of this Agreement.

(b) Maintenance of Registration Statement. For so long as any of the Preferred Shares and the Warrants remain outstanding, or the Warrants, the Warrant Shares, the Conversion Shares or the Dividend Shares may be issuable under this Agreement, the Warrants or the Certificate of Designations, as applicable, the Company shall use its reasonable best efforts to maintain the effectiveness of the Registration Statement for the issuance thereunder of the applicable Registrable Securities (as defined below); provided that, if at any time while the

Preferred Shares or the Warrants are outstanding the Company shall be ineligible to utilize Form S-3 (or any successor form) for the purpose of issuance of the Registrable Securities, the Company shall use its reasonable best efforts to promptly amend the Registration Statement on such other form as may be necessary to maintain the effectiveness of the Registration Statement for this purpose. For the purpose of this Agreement, “**Registrable Securities**” means (i) the Conversion Shares, (ii) the Dividend Shares, (iii) the Warrant Shares issued or issuable upon exercise of the Warrants, (iv) the Warrants and (v) any shares of capital stock of the Company issued or issuable with respect to the Preferred Shares, the Conversion Shares, the Warrants and/or the Warrant Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversion of the Preferred Shares or the exercise of the Warrants.

(c) Prospectus Supplement and Blue Sky. In the manner required by law, the Company shall have delivered to the Buyers, and as soon as practicable after the Closing the Company shall file, the Prospectus Supplement with respect to the Securities as required under and in conformity with the 1933 Act, including Rule 424(b) thereunder. If required, the Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or “Blue Sky” laws of the states of the United States following the Closing Date.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities solely for deposit into escrow under the terms of the Escrow Agreement and, if such proceeds are released under the terms of the Escrow Agreement, the Company will then use the proceeds solely to either (i) consummate the W.E.T. Acquisition and not for any other purpose, including without limitation, (A) the repayment of any outstanding Indebtedness of the Company or (B) the redemption or repurchase of any of its equity securities or (ii) repurchase the Preferred Shares in accordance with Section 4(q).

(e) Listing. The Company shall secure the listing of all of the Conversion Shares and the Dividend Shares promptly upon issuance of the Preferred Shares and the Warrant Shares promptly upon issuance of the applicable Warrants, in each case upon each securities exchange and automated quotation system, if any, upon which the Common Stock is then listed, including the Principal Market (subject to official notice of issuance) and shall use its reasonable best efforts to maintain, in accordance with the Certificate of Designations and the Warrants, such listing of all Conversion Shares, the Dividend Shares and the Warrant Shares from time to time issuable under the terms of the Transaction Documents. The Company shall use reasonable best efforts to maintain the authorization for quotation of the Common Stock on the Principal Market or if such authorization is not able to be maintained, on another Eligible Market (as defined in the Warrants). The Company shall not take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(e).

(f) **Fees.** The Company shall pay or reimburse Kingsbrook Opportunities Master Fund LP (“**Kingsbrook**”), as applicable, for its fees and expenses pursuant to that certain letter, dated as of the date hereof, between Kingsbrook and the Company. The Company shall be responsible for the payment of any placement agent’s fees, financial advisory fees, or broker’s commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorney’s fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment

(g) **Pledge of Securities.** The Company acknowledges and agrees that the Securities may be pledged by any holder of Securities (an “**Investor**”) in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities so long as such Investors sends the Company prompt notice of such pledge and the material terms thereof. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees, subject to applicable securities laws, to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by an Investor.

(h) **Disclosure of Transactions and Other Material Information.** On or before 8:30 a.m., New York City time, on the first Business Day following the execution of this Agreement, the Company shall issue a press release and file a Current Report on Form 8-K (x) including the audited consolidated financial statements of W.E.T. for the fiscal year 2010 (if not previously disclosed) and (y) describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching the material Transaction Documents (including, without limitation, this Agreement (and all schedules of this Agreement), the form of the Certificate of Designations, the form of Warrants and the Lock-Up Agreements, the Subordination Agreement and the Credit Agreement, dated March 30, 2011, by and among, among others, the Company and Amerigon Europe, as borrowers and Bank of America, N.A. as administrative agent, swing line lender and L/C issuer (the “**Credit Agreement**”), as exhibits to such filing (including all attachments, the “**8-K Filing**”). As of immediately following the filing of the 8-K Filing with the SEC, no Buyer shall be in possession of any material, nonpublic information received from the Company or any of its officers, directors, employees or agents, that is not disclosed in the 8-K Filing or in prior filings with the SEC. The Company shall not, and shall cause each of its officers, directors, employees and agents, not to, provide any Buyer with any material, nonpublic information regarding the Company from and after the filing of the 8-K Filing with the SEC without the express written consent of such Buyer. In the event of a breach of any of the foregoing covenants or any of the covenants contained in Section 4(h) by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of such Buyer), in addition to any other remedy provided herein or in the Transaction Documents, such Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Buyer shall have any liability to the Company, any of its Subsidiaries, or any of its

or their respective officers, directors, employees, stockholders or agents for any such disclosure. To the extent that the Company or any of its or their respective officers, directors, employees, stockholders or agents deliver any material, non-public information to a Buyer without such Buyer's consent, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information. Subject to the foregoing, neither the Company nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law, regulation or any Eligible Market on which the Company's securities are then listed or quoted (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of any applicable Buyer, neither the Company nor any of its affiliates shall disclose the name of such Buyer in any filing, announcement, release or otherwise other than disclosures made as a result of filing this Agreement as an exhibit to the 8-K Filing.

(i) Additional Preferred Shares; Variable Securities. So long as any Buyer beneficially owns any Preferred Shares, the Company will not issue any Preferred Shares other than to the Buyers as contemplated hereby and the Company shall not issue any other securities that would cause a breach or default under the Certificate of Designations. For so long as any Preferred Shares remain outstanding, the Company shall not issue any preferred stock that it is permitted to issue under Section III.E.11 of the Certificate of Designations unless the maturity date (or any other date requiring redemption, repayment or any other payment, including, without limitation, dividends in respect of any such preferred shares) of any such preferred stock is not on or before 91 days after all the Preferred Shares are redeemed, repaid or otherwise retired in full. For so long as any Preferred Shares or Warrants remain outstanding, the Company shall not, in any manner, issue or sell any rights, warrants or options to subscribe for or purchase Common Stock or directly or indirectly convertible into or exchangeable or exercisable for Common Stock at a price which varies or may vary with the market price of the Common Stock, including by way of one or more reset(s) to any fixed price unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price (as defined in the Certificate of Designations) with respect to the Common Stock into which any Preferred Share is convertible or the then applicable Exercise Price (as defined in the Warrants) with respect to the Common Stock into which any Warrant is exercisable.

(j) Corporate Existence. For so long as any Buyer beneficially owns any Preferred Shares or the Warrants, or there are Warrants that may be issuable under this Agreement or under the Certificate of Designations, the Company shall not be party to any Fundamental Transaction (as defined in the Warrants) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations and the Warrants.

(k) Reservation of Shares. So long as any Buyer owns any Securities, the Company shall take all action necessary to at all times (I) prior to the time that the Company obtains the Authorized Share Stockholder Approval, have authorized, and reserved for the purpose of issuance, no less than 100% of the sum of the number of shares of Common Stock issuable (i)

upon complete conversion or amortization of the Preferred Shares then outstanding at the then existing Conversion Price, and (ii) upon complete exercise of the Warrants then outstanding at the then existing Exercise Price (without taking into account any limitations on the conversion or amortization of the Preferred Shares or exercise of the Warrants set forth in the Certificate of Designations and Warrants, respectively) and (II) from and after the time that the Company obtains the Authorized Share Stockholder Approval, have authorized, and reserved for the purpose of issuance, no less than (i) 130% of the number of shares of Common Stock issuable upon complete conversion or amortization of the Preferred Shares and (ii) 100% of the number of shares issuable upon complete exercise of the Warrants then outstanding (without taking into account any limitations on the conversion of the Notes or exercise of the Warrants set forth in the Certificate of Designations Notes and Warrants, respectively) (the “**Required Reserved Amount**”). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserved Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company’s obligations under this Section 4(k), in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserved Amount.

(l) Additional Issuances of Securities.

(i) For purposes of this Section 4(l), the following definitions shall apply.

(1) “**Approved Stock Plan**” means any employee benefit plan which has been approved by the Board of Directors, pursuant to which the Company’s securities may be issued to any employee, officer or director for services provided to the Company;

(2) “**Common Stock Equivalents**” means, collectively, Options and Convertible Securities.

(3) “**Convertible Securities**” means any stock or securities (other than Options) convertible into or exercisable or exchangeable for Common Stock.

(4) “**Excluded Securities**” means any Common Stock issued or issuable: (i) in connection with any Approved Stock Plan, (ii) upon conversion of the Preferred Shares or exercise of the Warrants; provided, that neither the terms of the Certificate of Designations nor the terms of the Warrants are amended, modified or changed on or after the date hereof; and (iii) upon exercise of any Options or Convertible Securities which are outstanding on the day immediately preceding the date hereof, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the date hereof.

(5) “Options” means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(ii) From the date hereof until thirty (30) days after the release of the Escrow Funds in accordance with the terms and conditions set forth in the Escrow Agreement (the “Trigger Date”), the Company will not (A), directly or indirectly, file any registration statement with the SEC and shall not file any Prospectus Supplement with respect to any Subsequent Placement, (B) directly or indirectly, offer, sell, grant any option to purchase, or otherwise dispose of (or announce any offer, sale, grant or any option to purchase or other disposition of) any of its or its Subsidiaries’ equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security that is, at any time during its life and under any circumstances, convertible into or exchangeable or exercisable for shares of Common Stock or Common Stock Equivalents (any such offer, sale, grant, disposition or announcement being referred to as a “Subsequent Placement”) or (C) be party to any solicitations, negotiations or discussions with regard to the foregoing.

(iii) From the Closing Date until the second anniversary of the Closing Date the Company will not, directly or indirectly, effect any Subsequent Placement unless the Company shall have first complied with this Section 4(l)(iii).

(1) The Company shall deliver to each Buyer an irrevocable written notice (the “Offer Notice”) of any proposed or intended issuance or sale or exchange (the “Offer”) of the securities being offered (the “Offered Securities”) in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the persons or entities (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Buyers at least 30% of the Offered Securities, allocated among such Buyers (a) based on such Buyer’s pro rata portion of the Preferred Shares purchased hereunder (the “Basic Amount”), and (b) with respect to each Buyer that elects to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other Buyers as such Buyer shall indicate it will purchase or acquire should the other Buyers subscribe for less than their Basic Amounts (the “Undersubscription Amount”), which process shall be repeated until the Buyers shall have an opportunity to subscribe for any remaining Undersubscription Amount.

(2) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the third (3rd) Business Day after such Buyer’s receipt of the Offer Notice (the “Offer Period”), setting forth the portion of such Buyer’s Basic Amount that such Buyer elects to purchase and, if such Buyer shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such Buyer elects to purchase (in either case, the “Notice of Acceptance”). If the Basic Amounts subscribed for by all Buyers are less than the total of all of the Basic Amounts, then each Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, that if the

Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the “**Available Undersubscription Amount**”), each Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Buyer bears to the total Basic Amounts of all Buyers that have subscribed for Undersubscription Amounts, subject to rounding by the Company to the extent it deems reasonably necessary. Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to Buyers a new Offer Notice and the Offer Period shall expire on the fifth (5th) Business Day after such Buyer’s receipt of such new Offer Notice.

(3) The Company shall have fifteen (15) Business Days from the expiration of the Offer Period above to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers (the “**Refused Securities**”) pursuant to a definitive agreement (the “**Subsequent Placement Agreement**”) but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring person or persons or less favorable to the Company than those set forth in the Offer Notice and (ii) to publicly announce (a) the execution of such Subsequent Placement Agreement, and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(4) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(l)(iii)(3) above), then each Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer elected to purchase pursuant to Section 4(l)(iii)(2) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to the Buyers pursuant to Section 4(l)(iii)(3) above prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(l)(iii)(1) above.

(5) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, the Buyers shall acquire from the Company, and the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 4(l)(iii)(3) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. Notwithstanding

anything to the contrary contained in this Agreement, if the Company does not consummate the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, within fifteen (15) Business Days of the expiration of the Offer Period, the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 4(l)(iii)(3) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. The purchase by the Buyers of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Buyers of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the Buyers and their respective counsel.

(6) Any Offered Securities not acquired by the Buyers or other persons in accordance with Section 4(l)(iii)(3) above may not be issued, sold or exchanged until they are again offered to the Buyers under the procedures specified in this Agreement.

(7) The Company and the Buyers agree that if any Buyer elects to participate in the Offer, neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto (collectively, the “**Subsequent Placement Documents**”) shall include any term or provisions whereby any Buyer shall be required to agree to any restrictions in trading as to any securities of the Company owned by such Buyer prior to such Subsequent Placement.

(8) Notwithstanding anything to the contrary in this Section 4(l) and unless otherwise agreed to by the Buyers, the Company shall either confirm in writing to the Buyers that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that the Buyers will not be in possession of material non-public information, by the fifteenth (15<sup>th</sup>) Business Day following delivery of the Offer Notice. If by the fifteenth (15<sup>th</sup>) Business Day following delivery of the Offer Notice no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Buyers, such transaction shall be deemed to have been abandoned and the Buyers shall not be deemed to be in possession of any material, non-public information with respect to the Company. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide the Buyers with another Offer Notice and each Buyer will again have the right of participation set forth in this Section 4(l)(iii). The Company shall not be permitted to deliver more than one such Offer Notice to the Buyers in any 60 day period.

(9) Notwithstanding anything to the contrary in this Section 4(l), in case of any Subsequent Placement that is a firm commitment, fully underwritten public offering pursuant to an effective registration statement under the 1933 Act (a “**Public Offering**”), the Company may deliver to each Buyer an Offer Notice concurrently with the first delivery of a notice of Offer to any other offerees in such Public Offering, in which case, such Buyer must deliver a written notice to the Company prior to the “closing of the books” to accept such Offer, in whole or in part. The Company or the lead underwriter for any such Public Offering must inform each Buyer in writing at the time of



delivery of the notice pursuant to the immediately preceding sentence of the intended time for the “closing of the books” for such Public Offering. The Company or the lead underwriter must update each Buyer in writing of any acceleration or other change in the intended time for the “closing of the books” for such Public Offering. For clarity, in the case of a Public Offering, none of the provisions of this Section 4(l)(iii) shall apply except for Section 4(l)(iii)(1) and this Section 4(l)(iii)(9).

(iv) The restrictions contained in subsections (ii) and (iii) of this Section 4(l) shall not apply in connection with the issuance of any Excluded Securities.

(m) **Stockholder Approval.** (i) The Company shall prepare and file with the SEC, as promptly as practicable after the date hereof, but in no event later than twenty (20) calendar days after the Closing Date, the Proxy Statement (as defined below). The Company shall provide each stockholder entitled to vote at a special or annual meeting of stockholders of the Company (the “**Stockholder Meeting**”), which shall be called as promptly as practicable after the date hereof, but in no event later than July 1, 2011 (the “**Stockholder Meeting Deadline**”), a proxy statement (the “**Proxy Statement**”), in a form reasonably acceptable to the Buyers after review by Schulte Roth & Zabel LLP at the expense of the Company, soliciting each such stockholder’s affirmative vote at the Stockholder Meeting for approval of resolutions (the “**Resolutions**”) providing for (x) the issuance of all of the Securities as described in the Transaction Documents in accordance with applicable law, the provisions of the Bylaws and the rules and regulations of the Principal Market including Rule 5635(a) and (d) of the NASDAQ Listing Rules (such affirmative approval being referred to herein as the “**Principal Market Stockholder Approval**”) and (y) an increase in the authorized shares of Common Stock of the Company to not less than 100,000,000 shares of Common Stock and any actions required to cause such increase to occur (such affirmative approval being referred to herein as the “**Authorized Share Stockholder Approval**”, and collectively with the Principal Market Stockholder Approval, the “**Company Stockholder Approval**”), and the Company shall solicit its stockholders’ approval of the Resolutions and cause the Board of Directors to recommend to the stockholders that they approve the Resolutions. In connection therewith, the Company shall, at its expense, hire Georgeson Inc. or another proxy solicitation firm acceptable to Kingsbrook to solicit the Authorized Share Stockholder Approval and the Principal Market Stockholder Approval. The Company shall be obligated to seek to obtain the Principal Market Stockholder Approval and the Authorized Share Stockholder Approval by the Stockholder Meeting Deadline. If (i) the Principal Market Stockholder Approval is not obtained at the Stockholder Meeting, the Company shall cause an additional Stockholder Meeting to be held within six (6) months of the initial Stockholder Meeting and each calendar quarter thereafter with respect to the Resolutions relating to the Principal Market Stockholder Approval until Principal Market Stockholder Approval is obtained and (ii) the Authorized Share Stockholder Approval is not obtained at the Stockholder Meeting, the Company shall cause an additional Stockholder Meeting to be held within six (6) months of the initial Stockholder Meeting and each calendar quarter thereafter with respect to the Resolutions relating to the Authorized Share Stockholder Approval until the Authorized Share Stockholder Approval is obtained; provided, that in each case, the Company shall not be required to obtain either the Principal Market Stockholder Approval or the Authorized Share Stockholder Approval if the W.E.T. Acquisition is not consummated.

(n) Lock-Up. The Company shall not amend or waive any provision of any of the Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each Lock-Up Agreement in accordance with its terms. If any officer or director that is a party to a Lock-Up Agreement breaches any provision of a Lock-Up Agreement, the Company shall promptly use its best efforts to seek specific performance of the terms of such Lock-Up Agreement.

(o) W.E.T. Acquisition; Issuance of the Warrants. (i) Without the consent of the Buyers, the Company agrees not to make (and cause Amerigon Europe not to make) any amendments to the W.E.T. Agreements such that the purchase price payable by the Company and Amerigon Europe is more than 40 Euros per Share (as such term is defined in the W.E.T. Agreements) or otherwise fundamentally amend the terms and conditions as originally contemplated under the W.E.T. Agreements.

(ii) If the W.E.T. Acquisition is terminated or not consummated on or prior to the W.E.T. Date such that the Escrow Funds are released to redeem the Preferred Shares in accordance with the Certificate of Designations and the Escrow Agreement, the Company shall promptly, but no later than two (2) Trading Days of the W.E.T. Date, issue to each Buyer the Warrants to acquire up to that number of Warrant Shares as is set forth opposite such Buyer's name in column (4) on the Schedule of Buyers. In connection therewith, to the extent that the net proceeds to a Buyer upon return of the Escrow Funds in accordance with the Certificate of Designations and the Escrow Agreement is less than the sum of (1) 102.5% of the Stated Value (as defined in the Certificate of Designations) of such Buyer's Preferred Shares and (2) any accumulated but unpaid Dividends (as defined in the Certificate of Designations) related thereto (such difference, the "**Deficit Amount**"), the Company shall promptly, but no later than two (2) Trading Days of the W.E.T. Date, pay to such Buyer by wire transfer of immediately available funds, the Deficit Amount.

(iii) Issuance. As soon as practicable but no later than two (2) Trading Days of the W.E.T. Date, at the offices of Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, the Company shall issue to each Buyer the Warrants, duly executed on behalf of the Company and registered on the transfer books of the Company in the name of such Buyer or its designee. Such Warrants and the Warrant Shares issuable upon exercise of such Warrants shall be issued pursuant to the Registration Statement.

(iv) W.E.T. Acquisition. Notwithstanding the foregoing, (1) without the prior written consent of the Buyers, the Company agrees that it shall not, and shall cause Amerigon Europe not to, deliver the Purchase Release Instructions (as defined in the Escrow Agreement) unless the conditions set forth in Section 4.1 of the Escrow Agreement are satisfied, and (2) the Company agrees that it shall, and shall cause Amerigon Europe to, promptly send (and in no event later than the W.E.T. Date) the Non-Purchase Release Instructions upon the earliest to occur of (x) the Takeover Offer (as defined in the Escrow Agreement) lapsing, terminating or being withdrawn in accordance with its terms or (y) such time that the transactions contemplated by the W.E.T. Agreements and the Takeover Offer (as defined in the Escrow Agreement) cannot be, will not be or are not consummated on or prior to the W.E.T. Date. Notwithstanding anything in this Agreement to the contrary, the Company agrees that (1) it shall take all action to cause the "settlement of the offer period", the "settlement of the additional offer period" and the "withdrawal of the takeover offer", each as used in the definition of "Escrow Termination Date" in the Escrow Agreement, to occur no later than four weeks prior to the W.E.T. Date; and (2) the W.E.T. Date shall not be later than July 1, 2011 unless the Buyers have agreed to extend the July 1, 2011 deadline to a later date.

(p) Material Information; Notices. In the event the Company has made a good faith determination that the matters relating to any notice required to be provided to any Buyer pursuant to any Transaction Document (each a “**Required Notice**”) constitutes material non-public information, the Company shall give written notice (the “**Material Event Notice**”) to such Buyer, without disclosing any material, nonpublic information, asking if such Buyer will consent to the receipt of any material non-public information. Until the earlier to occur of (x) the date on which such Buyer gives written notice to the Company authorizing the delivery of such Required Notice to such Buyer (the “**Material Event Notice Acceptance**”) or (y) the date on which the material non-public information which is the subject of the Required Notice is publicly disclosed in a filing with the SEC, the Company shall be relieved of any obligation imposed by this Agreement or any other Transaction Document to deliver the Required Notice; provided that the Company shall not be relieved of its obligation to deliver any subsequent or other Required Notice pursuant to the terms of any Transaction Document. Notwithstanding anything in any Transaction Document to the contrary, the Company covenants and agrees that it shall not provide the Required Notice to any Buyer until the earlier to occur of (x) such time as the Material Event Notice Acceptance is received by the Company or (y) the material non-public information which is the subject of the Required Notice has been disclosed in a filing with the SEC.

(q) Closing Documents. On or prior to fourteen (14) calendar days after the Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer and Schulte Roth & Zabel LLP executed copies of the Transaction Documents and other document required to be delivered to any party pursuant to Section 7 hereof.

#### 5. REGISTER.

The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares and the Warrants in which the Company shall record the name and address of the Person in whose name the Preferred Shares and the Warrants have been issued (including the name and address of each transferee), the number of Conversion Shares issuable upon conversion of the Preferred Shares and the Warrant Shares issuable upon exercise of the Warrants held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives. The Company may deem and treat the registered holder of the Preferred Shares and the Warrants as the absolute owner hereof for the purpose of any exercise thereof or any distribution to the holder, and for all other purposes, absent actual written notice to the contrary.

#### 6. CONDITIONS TO THE COMPANY’S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Preferred Shares to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company’s sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) Such Buyer and each other Buyer shall have delivered to the Escrow Agent the Purchase Price for the Preferred Shares being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Exchange Bank.

(c) The representations and warranties of such Buyer shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

#### 7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

The obligation of each Buyer hereunder to purchase the Preferred Shares at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have duly executed and delivered to such Buyer (i) each of the Transaction Documents and (ii) a copy of irrevocable instructions to the Company's transfer agent to immediately issue to each Buyer the Preferred Shares (allocated in such amounts as such Buyer shall request) being purchased by such Buyer at the Closing pursuant to this Agreement.

(b) Such Buyer shall have received the opinion of Honigman, Miller, Schwartz and Cohn LLP, the Company's counsel, dated as of the Closing Date, in substantially the form of Exhibit E attached hereto.

(c) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of BSST LLC, ZT Plus, LLC and Amerigon Europe GmbH in such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction, as of a date within ten (10) days of the Closing Date.

(d) The Company shall have delivered to such Buyer a good standing certificate of the Company issued by the Secretary of State (or comparable office of each jurisdiction in which the Company conducts business and is required to so qualify), as of a date within ten (10) days of the Closing Date.

(e) The Company shall have delivered to such Buyer a certified copy of the Articles of Incorporation as certified by the Secretary of State of the State of Michigan (or a fax or pdf copy of such certificate) within ten (10) days of the Closing Date.

(f) The Company shall have delivered to such Buyer a certificate, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(d) as adopted by the Board of Directors in a form reasonably acceptable to such Buyer, (ii) the Articles of Incorporation and (iii) the Bylaws, each as in effect at the Closing, in the form attached hereto as Exhibit F.

(g) The representations and warranties of the Company shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect in the form attached hereto as Exhibit G.

(h) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of a date within five days of the Closing Date.

(i) The Common Stock (I) shall be designated for quotation or listed on the Principal Market and (II) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (A) in writing by the SEC or the Principal Market or (B) by falling below the minimum listing maintenance requirements of the Principal Market.

(j) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities.

(k) The Registration Statement shall be effective and available for the issuance and sale of the Securities hereunder and the Company shall have delivered to such Buyer the Prospectus and the Prospectus Supplement as required thereunder.

(l) Each of the Lock-Up Agreements shall be in full force and effect, enforceable against each of the parties set forth in Exhibit D hereto in accordance with their terms, and no default under any such Lock-Up Agreement shall have occurred.

(m) No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement.

(n) There shall not have occurred any (i) changes in the economy or financial markets generally in North America, Europe or Asia or changes that are the result of acts of war or terrorism, (ii) changes that are the result of factors generally affecting the industries in which the Company operates, (iii) a decline in the price of the Common Stock on the Principal Market or any other trading market that the Common Stock is traded on that, in each case, makes it impracticable to complete the transactions contemplated under the Transaction Documents or could result in a Material Adverse Effect.

(o) The Company shall have delivered to such Buyer such other documents relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. **TERMINATION.** In the event that the Closing shall not have occurred with respect to a Buyer on or before three (3) Business Days from the date hereof due to the Company's or such Buyer's failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party.

9. **MISCELLANEOUS.**

(a) **Governing Law; Jurisdiction; Jury Trial.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by delivering via registered mail a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) **Counterparts.** This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) **Headings.** The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) **Severability.** If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited

nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the holders that are not affiliates of the Company holding at least 66% of the aggregate number of Registrable Securities issued and issuable hereunder to holders that are not affiliates of the Company, and any amendment to this Agreement made in conformity with the provisions of this Section 9(e) shall be binding upon the Buyers and holders of Securities as applicable. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the applicable Securities then outstanding. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents, holders of Preferred Shares and holders of Warrants (only if such Warrants have been issued). The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement and the other Transaction Documents must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) solely for purpose of delivery of the Exercise Notice (as defined in the Warrant) under Section 1(a) of the Warrant and delivery of the Conversion Notice (as defined in the Certificate of Designations) under Section III.E.2(d)(i) of the Certificate of Designations, upon receipt, when sent by facsimile or e-mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); provided, that such facsimile or e-mail is followed by delivery by overnight courier service in accordance with subclause (iii) hereof; or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Amerigon Incorporated  
21680 Haggerty Road, Ste. 101  
Northville, Michigan 48167  
Telephone: (248) 504-0500  
E-mail: seriescnotices@amerigon.com  
Facsimile: (248) 348-9735  
Attention: Daniel R. Coker

with a copy (for informational purposes only) to:

Honigman, Miller, Schwartz and Cohn LLP  
660 Woodward Avenue  
2290 First National Building  
Detroit, Michigan 48226  
Telephone: (313) 465-7000  
E-mail: kphillips@honigman.com  
Facsimile: (313) 465-7659  
Attention: Kenneth J. Phillips, Esq.

If to the Transfer Agent:

Computershare Trust Company, N.A  
250 Royall Street  
Canton, Massachusetts 02021  
Telephone: (800) 962-4284  
E-mail: essential.registry@computershare.com  
Facsimile: (312) 601-2312

If to a Buyer, to its address, e-mail address and facsimile number set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Telephone:(212) 756-2000  
E-mail: eleazer.klein@srz.com  
Facsimile:(212) 593-5955  
Attention: Eleazer N. Klein, Esq.

or to such other address and/or facsimile number and e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the



recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission, (C) electronically generated by the sender's e-mail server containing the time, date and recipient e-mail address or (D) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Warrants. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of at least a majority of the aggregate number of Registrable Securities issued and issuable hereunder, including by way of a Fundamental Transaction (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations and the Warrants (only if the Warrants have been issued)). A Buyer may assign some or all of its rights hereunder without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Survival. Unless this Agreement is terminated under Section 8, the representations and warranties of the Company and the Buyers contained in Sections 2 and 3, and the agreements and covenants set forth in Sections 4, 5 and 9 shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as are reasonably necessary in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. (i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**"), as incurred, from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or

arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party that is not an affiliate of such Indemnitee (including for these purposes a derivative action brought on behalf of the Company but specifically not including any cause of action, suit or claim brought or made against such Indemnitee solely as a result of a Buyer's breach of any representations in this Agreement) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (iii) any disclosure made by such Buyer pursuant to Section 4(h) or 4(p) or (iv) the status of such Buyer or holder of the Securities as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim for indemnification in respect thereof is to be made against any indemnifying party under this Section 9(k), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for such Indemnitee to be paid by the indemnifying party, if, in the reasonable opinion of the Indemnitee, the representation by such counsel of the Indemnitee and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. Legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority of the Registrable Securities. The Indemnitee shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or Indemnified Liabilities by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee that relates to such action or Indemnified Liabilities. The indemnifying party shall keep the Indemnitee fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liabilities or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnitee with respect to all third

parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 9(k), except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(iii) The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred.

(iv) The indemnity agreements contained herein shall be in addition to (x) any cause of action or similar right of the Indemnitee against the indemnifying party or others, and (y) any liabilities the indemnifying party may be subject to pursuant to the law.

(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Buyer and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that such Buyer shall be required to return any shares of Common Stock subject to any such rescinded exercise notice concurrently with the return to such Buyer of the aggregate exercise price paid to the Company for such shares and the restoration of such Buyer's right to acquire such shares pursuant to the Transaction Documents.

(o) Payment Set Aside. To the extent that the Company makes a payment or payments to the Buyers hereunder or pursuant to any of the other Transaction Documents or the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated,

declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

(p) Trading Restrictions. For so long as any Buyer owns any Preferred Shares, during any Company Conversion Measuring Period, such Buyer shall not (x) sell at a price per share of Common Stock below the Conversion Price as of the Closing Date (as adjusted for any stock split, stock dividend, recapitalization or otherwise) a number of shares of Common Stock that is in excess of (i) the number of Pre-Installment Conversion Shares (as defined in the Certificate of Designations) delivered to such Buyer with respect to the related Installment Date for such Company Conversion Measuring Period and (ii) on any Trading Day during such Company Conversion Measuring Period, 15% of the aggregate dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market for such Trading Day; or (y) maintain a Net Short Position. For purposes of this Section 9(p), a “**Net Short Position**” by a person means a position whereby such person has executed one or more sales of Common Stock that is marked or required to be marked as a short sale and that is executed at a time when such Buyer has no equivalent offsetting long position in the Common Stock or contract for the foregoing. For purposes of determining whether a Buyer has an equivalent offsetting long position in the Common Stock, all Common Stock (i) that is owned by such Buyer or (ii) that would be issuable upon exercise in full of all Securities and any other Common Stock Equivalents then held by such Buyer (assuming that such Securities or Common Stock Equivalents were then fully convertible or exercisable, notwithstanding any provisions to the contrary, and giving effect to any exercise price adjustments that would take effect given only the passage of time) shall be deemed to be held long by such Buyer.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges, and each Buyer confirms, that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group, and the Company will not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents and the Company acknowledges, and each Buyer confirms, that the Buyers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Company acknowledges and each Buyer confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

**COMPANY:**

**AMERIGON INCORPORATED**

By: /s/ Daniel R. Coker

Name: Daniel R. Coker

Title: President and Chief Executive Officer

*[Signature Page to Securities  
Purchase Agreement]*

**IN WITNESS WHEREOF**, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

**BUYERS:**

Check here if the undersigned elects 9.99% as its Maximum Percentage (as such term is defined in the Warrants and the Certificate of Designations) on the Closing Date under the Warrants and the Certificate of Designations.

**EXHIBITS\***

Exhibit A	Form of Certificate of Designations
Exhibit B	Form of Warrant
Exhibit C	Form of Escrow Agreement
Exhibit D	Form of Lock-Up Agreement
Exhibit E	Form of Opinion of Company's Counsel
Exhibit F	Form of Secretary's Certificate
Exhibit G	Form of Officer's Certificate

**SCHEDULES**

Schedule I	List of General Use Free Writing Prospectus
Schedule 3(c)	Significant Subsidiaries
Schedule 3(p)	Unresolved Tax Issues
Schedule 3(o)	Stockholders Rights Plan
Schedule 3(vv)	Lock-Up Agreement Parties

\* The Registrant hereby agrees to furnish supplementally a copy of any omitted exhibit to the Commission upon request.

## **SCHEDULE 1**

### List of General Use Free Writing Prospectus

- None.

## **SCHEDULE 3(c)**

### Significant Subsidiaries

- BSST LLC, a Delaware limited liability company.
- ZT Plus, LLC, a Delaware limited liability company.
- Amerigon Europe, GmbH, a German limited liability company.

## **SCHEDULE 3(p)**

### Unresolved Tax Issues

- None.

## **SCHEDULE 3(oo)**

### Stockholders Rights Plan

- Rights Agreement, dated as of January 26, 2009, between Amerigon and Computershare Trust Company, N.A., as amended by Amendment No. 1 to Rights Agreement, dated March 29, 2011, by and between Amerigon Incorporated and Computershare Trust Company, N.A.

## **SCHEDULE 3(v)**

### Lock-Up Agreement Parties

- Francois J. Castaing
- John M. Devine
- Maurice E.P. Gunderson
- Oscar B. Marx, III
- James J. Paulsen
- Daniel R. Coker
- Lon E. Bell
- James L. Mertes
- Daniel J. Pace
- Barry G. Steele
- Stephen C. Davis



## AMERIGON INCORPORATED

March \_\_, 2011

Amerigon Incorporated  
21680 Haggerty Road, Ste. 101  
Northville, Michigan 48167  
Telephone: (248) 504-0500

Re: Amerigon Incorporated-Lock - Up Agreement

Dear Sirs:

This Lock-Up Agreement is being delivered to you in connection with the Securities Purchase Agreement (the "**Purchase Agreement**"), dated as of March 30, 2011 by and among Amerigon Incorporated (the "**Company**") and the investors listed on the Schedule of Buyers attached thereto (the "**Buyers**"), with respect to the issuance of (i) Series C Convertible Preferred Shares (the "**Preferred Shares**") convertible into the Company's common stock, no par value (the "**Common Stock**") and (ii) Series A Warrants (as defined in the Certificate of Designations) which will be exercisable to purchase Common Stock. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

In order to induce the Buyers to enter into the Purchase Agreement, the undersigned agrees that, commencing on the date hereof and ending on the date that is 90 days after the release of the Escrow Funds from escrow in accordance with the terms and conditions set forth in the Escrow Agreement (the "**Lock-Up Period**"), the undersigned will not, and will cause all affiliates (as defined in Rule 144) of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned not to, (i) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase, make any short sale or otherwise dispose of or agree to dispose of, directly or indirectly, any shares of Common Stock or Common Stock Equivalents, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities and Exchange Act of 1934, as amended and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to any shares of Common Stock or Common Stock Equivalents owned directly by the undersigned (including holding as a custodian) or with respect to which the undersigned has beneficial ownership within the rules and regulations of the Securities and Exchange Commission (collectively, the "**Undersigned's Shares**"), (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Undersigned's Shares, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of shares of Common Stock or other securities, in cash or otherwise, (iii) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments

thereto, with respect to the registration of any shares of Common Stock or Common Stock Equivalents, or (iv) publicly disclose the intention to do any of the foregoing.

The foregoing restriction is expressly agreed to preclude the undersigned, and any affiliate of the undersigned and any person in privity with the undersigned or any affiliate of the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition or deemed sale or disposition of the Undersigned's Shares or the economics of the Undersigned's Shares even if the Undersigned's Shares would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include, without limitation, any short sale or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the Undersigned's Shares or with respect to any security that includes, relates to, or derives any significant part of its value from the Undersigned's Shares.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Shares (i) as a *bona fide* gift or gifts, provided, that the donee or donees thereof agree to be bound in writing by the restrictions set forth herein, (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein and so long as there is no net change in beneficial ownership of Common Stock held by the undersigned, (iii) by way of intestate succession, and (iv) by way of distributions to or from any partnership, corporation or limited liability company wholly controlled by the undersigned or by a member of the immediate family of the undersigned, provided, that the transferee or transferees thereof agree to be bound in writing by the restrictions set forth herein. Furthermore, notwithstanding the foregoing, any pledge in effect on the date hereof of the Undersigned's Shares as security for a margin account or loan pursuant to the terms of such account or loan, and any dispositions pursuant to the terms thereof shall not be prohibited by this Lock-up Agreement. For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. The undersigned now has, and, except as contemplated by clauses (i) and (ii) in the immediately preceding sentence, for the duration of this Lock-Up Agreement will have, good and marketable title to the Undersigned's Shares, free and clear of all liens, encumbrances, and claims whatsoever (except for pledges in effect on the date hereof of the Undersigned's Shares as security for a margin account or loan pursuant to the terms of such account or loan). The undersigned agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar (the "**Transfer Agent**") against the transfer of the Undersigned's Shares except in compliance with the foregoing restrictions.

In order to enforce this covenant, the Company shall impose irrevocable stop-transfer instructions preventing the Transfer Agent from effecting any actions in violation of this Lock-Up Agreement.

The undersigned acknowledges that the execution, delivery and performance of this Lock-Up Agreement is a material inducement to each Buyer to complete the transactions contemplated by the Purchase Agreement and that the Company shall be entitled to specific

performance of the undersigned's obligations hereunder. The undersigned hereby represents that the undersigned has the power and authority to execute, deliver and perform this Lock-Up Agreement, that the undersigned has received adequate consideration therefor and that the undersigned will indirectly benefit from the closing of the transactions contemplated by the Purchase Agreement.

The undersigned understands and agrees that this Lock-Up Agreement is irrevocable by the undersigned and shall be binding upon the undersigned's heirs, legal representatives, successors, and assigns.

The undersigned understands that, if the Purchase Agreement (other than the provisions thereof which survive termination) terminates or is terminated, in each case in accordance with its terms and provisions, prior to the payment for and delivery of the Preferred Shares to be sold thereunder, the undersigned shall be released from all obligations under this Lock-up Agreement. The undersigned also understands that, if the W.E.T. Acquisition is terminated or not consummated on or prior to the W.E.T. Date such that the Escrow Funds are released to redeem the Preferred Shares in accordance with the Certificate of Designations and the Escrow Agreement, the undersigned shall be released from all obligations under this Lock-up Agreement.

This Lock-Up Agreement may be executed in two counterparts, each of which shall be deemed an original but both of which shall be considered one and the same instrument.

This Lock-Up Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflicting provision or rule (whether of the State of New York, or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of New York to be applied. In furtherance of the foregoing, the internal laws of the State of New York will control the interpretation and construction of this Lock-Up Agreement, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

*[Remainder of page intentionally left blank]*

Very truly yours,

\_\_\_\_\_  
Exact Name of Stockholder

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

Agreed to and Acknowledged:

**AMERIGON INCORPORATED**

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

Name:

Title:

Published CUSIP Numbers

Senior Credit Facilities: 03076TAA7  
Revolving Credit Facility: 03076TAB5  
Company Term Facility: 03076TAC3  
Amerigon Germany Term Facility: 03076TAD1

**CREDIT AGREEMENT**

Dated as of March 30, 2011

among

**AMERIGON INCORPORATED**

and

**AMERIGON EUROPE GMBH,**

as Borrowers,

**BANK OF AMERICA, N.A.,**

as Administrative Agent, 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

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## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of March 30, 2011, among AMERIGON INCORPORATED, a Michigan corporation (the "Company"), AMERIGON EUROPE GMBH, a German limited liability company ("Amerigon Germany") and, together with the Company, the "Borrowers" and each, a "Borrower", each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, 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 Germany, as purchaser, the Company, 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 W.E.T. Automotive Systems AG, a German stock corporation (the "Target"), representing 71.80% of the total registered share capital of the Target, 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 Target, 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 term loan facilities 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, the other Loan Documents and the Target Credit Facility Documents and the transactions

contemplated by the Preferred Equity Documents, including the Preferred Equity Investment, 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 Bank of America 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 Company 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 Euro.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, 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 Dollars.

“Amerigon Germany Term Borrowing” means a borrowing consisting of simultaneous Amerigon Germany Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Amerigon Germany Term Lenders pursuant to Section 2.01(b).

“Amerigon Germany Term Commitment” means, as to each Amerigon Germany Term Lender, its obligation to make Amerigon Germany Term Loans to Amerigon Germany pursuant to Section 2.01(b) 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 “Amerigon Germany Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Amerigon Germany Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Amerigon Germany Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Amerigon Germany Term Commitments at such time and (b)

thereafter, the aggregate principal amount of the Amerigon Germany Term Loans of all Amerigon Germany Term Lenders outstanding at such time.

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

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

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

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

“Applicable Percentage” means (a) in respect of the Company Term Facility, with respect to any Company Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Company Term Facility represented by (i) on or prior to the Closing Date, such Company Term Lender’s Company Term Commitment at such time and (ii) thereafter, the principal amount of such Company Term Lender’s Company Term Loans at such time, (b) in respect of the Amerigon Germany Term Facility, with respect to any Amerigon Germany Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Amerigon Germany Term Facility represented by (i) on or prior to the Closing Date, such Amerigon Germany Term Lender’s Amerigon Germany Term Commitment at such time and (ii) thereafter, the principal amount of such Amerigon Germany Term Lender’s Amerigon Germany Term Loans at such time and (c) 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 Company Term Facility, the Amerigon Germany Term Facility, 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, 2.25% per annum for Base Rate Loans, 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):

<u>Pricing Level</u>	<u>Consolidated Leverage Ratio</u>	<u>Applicable Rate</u> Eurocurrency Rate; Letters of Credit	<u>Base Rate</u>	<u>Commitment Fee</u>
1	<1.00:1.00	2.50%	1.50%	0.50%
2	≥1.00:1.00 but <1.50:1.00	3.00%	2.00%	0.50%
3	≥1.50:1.00	3.25%	2.25%	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 or the L/C Issuer, as the case may be, 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 any of the Company Term Facility, the Amerigon Germany Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Company Term Loan, an Amerigon Germany 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 GAAP, (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 GAAP 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 Company 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 Company 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 Closing 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.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurocurrency Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“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, a Company Term Borrowing or an Amerigon Germany 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 Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in 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 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 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 Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than 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.

“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 GAAP, 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 created under the Collateral Documents and other Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that 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 that (i) (A) is a Lender or (B) 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, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case, with maturities of not more than 90 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and 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 GAAP 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.

“Certain Funds Period” means the period from the Closing Date through the Senior Loan Escrow Termination Date.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“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 Company entitled to vote for members of the board of directors or equivalent governing body of the Company 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 Company 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 Company, or control over the equity securities of the Company entitled to vote for members of the board of directors or equivalent governing body of the Company 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; or

(d) the Company shall cease to own, directly or indirectly, 100% of the outstanding Equity Interests of Amerigon Germany and each other Loan Party.

“Closing Date” means March 30, 2011.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, each of the mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

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

“Committed Loan Notice” means a notice of (a) an Amerigon Germany Term Borrowing, (b) a Company Term Borrowing, (c) a Revolving Credit Borrowing, (d) a conversion of Loans

from one Type to the other, or (e) 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.

“Company” has the meaning specified in the introductory paragraph hereto.

“Company Cash Escrow Account” means the account designated under the Company Cash Escrow Agreement to receive and hold the funds of the Company 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 this Agreement.

“Company Cash Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Company, Amerigon Germany, the Administrative Agent and the Escrow Agent in connection with the establishment and maintenance of the Company 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.

“Company Term Borrowing” means a borrowing consisting of simultaneous Company Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Company Term Lenders pursuant to Section 2.01(a).

“Company Term Commitment” means, as to each Company Term Lender, its obligation to make Company Term Loans to the Borrower 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 Company Term Lender’s name on Schedule 2.01 under the caption “Company Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Company Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

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

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

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

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

“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 Company 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 \$13,000,000 and (v) other non-recurring expenses, as approved by the Administrative Agent in its reasonable discretion, reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Company 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 and (ii) all non-cash items increasing Consolidated Net Income, in each case, of or by the Company 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 Restricted Payments made from proceeds of transactions permitted under Section 7.06(e)) 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, excluding, for the avoidance of doubt, any portion of the Preferred Equity Investment, and further excluding any such payments to the extent refinanced through the incurrence of such additional Indebtedness otherwise expressly permitted under Section 7.03, in each case, of or by the Company and its Subsidiaries for the most recently completed Measurement Period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Company 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 Company 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 Company or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Company or such Subsidiary. For the avoidance of doubt, Consolidated Funded Indebtedness shall not include any portion of the Preferred Equity Investment.

“Consolidated Interest Charges” means, for any Measurement Period, for the Company and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt

discount, fees, charges and related expenses of the Company and its Subsidiaries in connection with borrowed money (including capitalized interest), but excluding, for the avoidance of doubt, any portion of the Preferred Equity Investment, or in connection with the deferred purchase price of assets, in each case, to the extent treated as interest in accordance with GAAP plus (b) 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 GAAP, in each case, of or by the Company 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 Company 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 Company 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 Company’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 Company’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 Company 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 Company 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.

“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 Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate and any Mandatory Cost) otherwise applicable to such Loan plus 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.

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

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Domination Agreement” means that certain domination agreement (*Beherrschungsvertrag*) and/or 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 Target 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 Target and the transfer of up to the entire balance sheet profit of the Target 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 this Agreement.



“Equity Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Preferred Equity Investors, the Company, 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 Company 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 Company 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 Eurocurrency Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America’s London Branch to major banks in the London interbank Eurocurrency market at their request at the date and time of determination.

“Eurocurrency Rate Loan” means a Revolving Credit Loan, a Company Term Loan or an Amerigon Germany Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

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

“Excluded Subsidiary” means after the occurrence of the Funding Release Date and for so long as the Target Credit Facility Documents are in full force and effect, the Target and each direct and indirect Subsidiary of the Target.

“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 Company 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 Company Term Facility, the Amerigon Germany 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.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated February 28, 2011, among the Company, Amerigon Germany, the Administrative Agent and the Arranger.

“Final Amerigon Germany Term Loan Amount” has the meaning specified in Section 2.05(b)(vii).

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

“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(d).

“Foreign Plan Event” means (a) termination in whole of a Foreign Plan by the Company or any of its Subsidiaries (other than Excluded Subsidiaries); (b) commencement of proceedings by the applicable pension regulator to terminate in whole a Foreign Plan; (c) withdrawal by the Company 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 a Foreign Subsidiary.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“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 Release Date” means the first date on which all the conditions precedent in Section 4.03 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 Civil Code” means *Bürgerliches Gesetzbuch (BGB)* as amended.

“German Law” means the Laws of Germany.

“German Loan Party” means Amerigon Germany and any Subsidiary (other than an Excluded Subsidiary) of the Company 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.

“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.

“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.

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

(a) all 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, (i) with respect to such trade accounts payable owing to Ferrotec Corporation, not past due for more than 150 days after the date on which such trade account payable was created and (ii) with respect to all other trade accounts payable, 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.

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

“**Interest Payment Date**” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such 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; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December 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).

“**Interest Period**” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan 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.



“ISP” 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 Company (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 Dollars.

“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 Dollars.

“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.

“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. Letters of Credit may be issued in Dollars.

“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 \$5,000,000. 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 Escrow Agreement, each Collateral Document, each Secured 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.

“Loan Parties” means, collectively, the Company, Amerigon Germany 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 (a) the agreements, contracts and other documents as filed with the SEC as exhibits to the Company’s Form 10-K for the fiscal year ended December 31, 2010, whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC, (b) any of the Company’s Forms 10-K or Forms 10-Q and all exhibits attached thereto whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC filed after the date hereof, in each case, in accordance with Item 601(b)(4) and Item 601(b)(10) (or their equivalents) of Regulation S-K, as promulgated under the Securities Exchange Act of 1934 as amended, (c) any Form 8-K, Form S-3 or Form S-4 and all exhibits attached thereto whether actually attached as an exhibit or incorporated by reference to any earlier filings with the SEC filed after the date hereof and (d) any “material contract” as defined in Item 601(b)(10) of SEC Regulation S-K.

“Material Subsidiary” means, as of any date of determination, any Subsidiary other than an Excluded Subsidiary (a) which, as of the end of the then most recently ended fiscal quarter of the Company 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 Company and its Subsidiaries on a consolidated basis, (c) the IP Rights of which are material to the operation of the business of the Company 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 Company 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 Company, 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 Company 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 Company or, if fewer than four consecutive fiscal quarters of the Company have been completed since the Closing Date, the fiscal quarters of the Company 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, other than an Excluded Subsidiary, or any Extraordinary Receipt received or paid to the account of either Borrower or any of its Subsidiaries, other than an Excluded Subsidiary, 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, other than an Excluded Subsidiary, or the incurrence or issuance of any Indebtedness by either Borrower or any of its Subsidiaries, other than an Excluded Subsidiary, 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.

“Note” means a Company Term Note, an Amerigon Germany 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, Secured Cash Management Agreement or Secured 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 Target 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 Dollar 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 Dollar 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, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, 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.

“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 Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“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, the Administrative Agent and the Company, in form and substance reasonably satisfactory to the Administrative Agent.

“Press Release” means the press release made or to be made by or on behalf of the Company 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.

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

“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 Preferred Equity 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.

“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 Amerigon Germany Term Lenders” means, as of any date of determination, Amerigon Germany Term Lenders holding more than 50% of the Amerigon Germany Term Facility on such date; provided that the portion of the Amerigon Germany Term Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Amerigon Germany Term Lenders.

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

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

“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.

“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 other than an Excluded Subsidiary, 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 of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(c).



“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Company pursuant to Section 2.01(c), (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(c).

“Revolving Credit Note” means a promissory note made by the Company 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 Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

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

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

“Secured 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.

“Secured 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, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” has the meaning specified in Section 4.02(a)(ii).

“Security Agreement Supplement” has the meaning specified in Section 1.1 of the Security Agreement.

“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 on the Closing Date.

“Senior Loan Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, among the Company, Amerigon Germany, the Administrative Agent 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.

“Senior Loan Escrow Termination Date” means “Escrow Termination Date” under and as defined in the Senior Loan Escrow Agreement.

“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.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, 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 or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative 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, BSST LLC, a Delaware limited liability company, ZT Plus LLC, a Delaware limited liability company and each other direct or indirect Subsidiary of the Company 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) \$5,000,000 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.

“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” has the meaning specified in the Preliminary Statements.

“Target Credit Facility Documents” means that certain Credit Agreement, dated as of March 30, 2011 by and among the Target and W.E.T. Automotive Systems Ltd., a Canadian corporation, as borrowers, each lender from time to time party thereto, Banc of America Securities Limited, as administrative agent and Bank of America, as 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.

“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 Loan” means a Company Term Loan or an Amerigon Germany Term Loan.

“Threshold Amount” means \$750,000.

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

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

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

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

**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 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 Company 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 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (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 prior to such change therein and (ii) the Company 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.

**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 or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar 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 Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(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 or the L/C Issuer, as the case may be.

**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 Eastern time (daylight or standard, as applicable).

**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 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 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 Company Term Borrowing. Subject to the terms and conditions set forth herein, each Company Term Lender severally agrees to make a single loan to the Company on the Closing Date in an amount not to exceed such Company Term Lender's Company Term Commitment. The Company Term Borrowing shall consist of Company Term Loans made simultaneously by the Company Term Lenders in accordance with their respective Applicable Percentage of the Company Term Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Company Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. Company Term Loans may be borrowed only in Dollars.

(b) The Amerigon Germany Term Borrowing. Subject to the terms and conditions set forth herein, each Amerigon Germany Term Lender severally agrees to make a single loan to Amerigon Germany on the Closing Date in an amount not to exceed such Amerigon Germany Term Lender's Amerigon Germany Term Commitment. The Amerigon Germany Term Borrowing shall consist of Amerigon Germany Term Loans made simultaneously by the Amerigon Germany Term Lenders in accordance with their respective Applicable Percentage of the Amerigon Germany Term Facility. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Amerigon Germany Term Loans may be Base Rate Loans or Eurocurrency Rate Loans as further provided herein. Amerigon Germany Term Loans may be borrowed in Dollars or the Alternative Currency.

(c) 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 Company from time to time, including on the Closing Date in an aggregate amount not to exceed \$19,100,000, 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(c), prepay under Section 2.05, and reborrow under this Section 2.01(c). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. Revolving Credit Loans may be borrowed only in Dollars.

(d) Obligations for the Loans. The Company shall be obligated for all Loans and other Obligations hereunder and under the other Loan Documents, and, more specifically, shall be jointly and severally liable (together with Amerigon Germany) for all of the Amerigon Germany Term Loans, including all payments of principal, interest and fees in connection with the Amerigon Germany Term Loans. Amerigon Germany shall only be obligated for Amerigon



**2.02 Borrowings, Conversions and Continuations of Loans.** (a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon each Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. 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 of, conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars or of any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, (ii) four Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, and (iii) on the requested date of any Borrowing of Base Rate Loans; provided, however, that if the Company wishes to request Eurocurrency Rate 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, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, or (B) five Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, 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, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, or (y) four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, the Administrative Agent shall notify the Company (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Company pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Company is requesting a Revolving Credit Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) the currency of the Loans to be borrowed. If the Company fails to specify a currency in a Committed Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the Company fails to specify a Type of Loan in a Committed Loan Notice or if the Company fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of

one month. Any automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Company requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate 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 converted into or 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. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurocurrency Rate Loan.

(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 a conversion or continuation is provided by the Company, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans denominated in a currency other than Dollars, 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 1:00 p.m., in the case of any Loan denominated in Dollars, 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 or, as Loans to be made on the Closing Date, in accordance with the terms of the Senior Loan Escrow Agreement. Upon satisfaction of the applicable conditions set forth in Section 4.04 with respect to any Borrowing other than a release of funds from the Senior Loan Escrow Account (and, if such Borrowing is the initial Credit Extension into the Senior Loan Escrow Account, Section 4.02 and, if such Borrowing is the release of funds from the Senior Loan Escrow Account, Section 4.03), the Administrative Agent shall make all funds so received available to the Company or the other 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 Company; provided, however, that if, on the date the Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Company, 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; provided, further that all funds so received under the Term Loans or Revolving Loans in connection with the initial Credit Extension shall be funded only into the Senior Loan Escrow Account and shall not be made available to the Company or Amerigon Germany, as applicable, until the Funding Release Date in accordance with Section 4.03.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans (whether in Dollars or any Alternative Currency) without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be prepaid, or

redesignated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Administrative Agent shall promptly notify the Company and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, 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 Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars for the account of the Company 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 the Company 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 the Company for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Company 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, the Company's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Company 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 Dollars;

(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 the Company 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 the Company 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 the Company. 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, the Company 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 Company 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 Company (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 the Company 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, the Company shall not 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 the Company that one or more of the applicable conditions specified in Section 4.04 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 Company 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 Company 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 Company shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Company 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 Company shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans 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 Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit and the conditions set forth in Section 4.04 (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 Dollars, at the Administrative Agent’s Office for Dollar-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)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.04 cannot be satisfied or for any other reason, the Company 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, the Company, 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 4.04 (other than delivery by the Company of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Company 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 Company 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 Dollars 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 Company 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 the Company 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; or

(v) 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, the Company or any of its Subsidiaries.

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 the Company's instructions or other irregularity, the Company will immediately notify the L/C Issuer. The Company 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 the Company 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 Company hereby assumes 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 the Company'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 Company may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Company which the Company 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 Company 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 Company shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, in Dollars, a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar 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 Company shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Dollar 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 Company shall pay directly to the L/C Issuer for its own account, in Dollars, 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 Company shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of its Subsidiaries inures to the benefit of the Company, and that the Company's 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 Dollars (each such loan, a "Swing Line Loan") to the Company 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 Company 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 Company may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. 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 the Company's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.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 such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Promptly after receipt by the Swing Line Lender of any telephonic 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 2:00 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 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Company at its office by crediting the account of the Company 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 Company (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate 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 Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.04. The Swing Line Lender shall furnish the Company 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 Dollar-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 Base Rate Loan to the Company 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 Base Rate 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 Company 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 4.04. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company 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 Company for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate 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 Company 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 Company 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 Dollars, (B) four Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies, and (C) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurocurrency Rate Loans denominated in Dollars shall be in a principal amount of \$2,000,000 or a whole multiple of \$500,000 in excess thereof; (iii) any prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies shall be in a minimum principal amount of the Dollar Equivalent of \$2,000,000 or a whole multiple of \$500,000 in excess thereof; and (iv) any prepayment of Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 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 Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, 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 Company, 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 (x) to the Company Term Facility and/or the Amerigon Germany Term Facility, at the sole discretion of the Company, and (y) 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 Company 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 the Company, the Company 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 any Loan Party or any of its Subsidiaries (other than an Excluded Subsidiary) Disposes of any property (other than any Disposition of any property permitted by Section 7.05(a), (b), (c) or (d)) 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 (vi) and (x) 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 Company (as notified by the Company 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, such Loan Party 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 Company 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 any Loan Party or any of its Subsidiaries (other than an Excluded Subsidiary) of any of its Equity Interests (other than any sales or issuances of Equity Interests to another Loan Party or otherwise permitted under Section 7.06(b), (d) and (e)), 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 such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (x) below).

(iii) Upon the incurrence or issuance by any Loan Party or any of its Subsidiaries (other than an Excluded Subsidiary) 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 such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (x) below).

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of any Loan Party or any of its Subsidiaries (other than an Excluded Subsidiary), 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 such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (x) 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 Borrower (as notified by the 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, such Loan Party 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) Upon the failure of the Funding Release Date to occur on or prior to the Facility Termination Date, the Borrowers shall immediately prepay all of the Loans with proceeds on deposit in the Senior Loan Escrow Account in an aggregate principal amount equal to 100% of the proceeds on deposit in the Senior Loan Escrow Account (such prepayments to be applied as set forth in clause (vi) below).

(vi) Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(b) shall be applied first, to the Company Term Facility and/or the Amerigon Germany Term Facility, at the sole discretion of the Company, 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)(ix) 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.

(vii) Upon the determination by the Company and the Administrative Agent, on or prior to the Funding Release Date, of the final amount of the consideration required to be paid to the Sellers in connection with the Acquisition, Amerigon Germany shall immediately prepay (or the Company shall prepay or cause to be prepaid on behalf of Amerigon Germany) with proceeds on deposit in the Senior Loan Escrow Account, an aggregate principal amount of Amerigon Germany Term Loans, equal to 100% of the



difference between (A) the aggregate amount of proceeds of the Amerigon Germany Term Borrowing on deposit in the Senior Loan Escrow Account and (B) the final portion of the aggregate cash consideration of the Acquisition (the "Final Amerigon Germany Term Loan Amount") to be provided by Amerigon Germany pursuant to the Acquisition Agreement to be paid in connection with the Acquisition, which prepayment of such excess shall be applied first to the Revolving Credit Facility in an amount not to exceed \$9,010,524.16 and second, if any such excess remains, pro rata among the Amerigon Germany Term Facility to the principal repayment installments thereof in inverse order of maturity and the Revolving Credit Facility, in each case, prepayments of such excess shall be applied to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(viii) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Company 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.

(ix) 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 Company 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 Company or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

**2.06 Termination or Reduction of Commitments.** (a) Optional. The Company may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line 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 \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Company 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 or (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.

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

(ii) The aggregate Amerigon Germany Term Commitments shall be automatically and permanently reduced to zero on the date of the Amerigon Germany Term Borrowing.

(iii) 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.

(iv) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line 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 or Swing Line 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) Company Term Loans. The Company shall repay to the Company Term Lenders the aggregate principal amount of all Company 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	\$583,333
September 30, 2011	\$291,667
December 31, 2011 through June 30, 2012	\$875,000

September 30, 2012 through June 30, 2013	\$1,093,750
September 30, 2013 through June 30, 2014	\$1,312,500
September 30, 2014 through June 30, 2015	\$1,531,250
September 30, 2015 through December 31, 2015	\$1,750,000
Maturity Date	The then outstanding principal amount of Company Term Loans

(b) Amerigon Germany Term Loans. The Borrowers shall repay to the Amerigon Germany Term Lenders the aggregate principal amount of all Amerigon Germany 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 equal quarterly installments of the aggregate amount due for such period during such period of 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	1.67% of the aggregate Final Amerigon Germany Term Loan Amount
September 30, 2011	0.83% of the aggregate Final Amerigon Germany Term Loan Amount
December 31, 2011 through June 30, 2012	7.5% of the aggregate Final Amerigon Germany Term Loan Amount
September 30, 2012 through June 30, 2013	12.5% of the aggregate Final Amerigon Germany Term Loan Amount
September 30, 2013 through June 30, 2014	15% of the aggregate Final Amerigon Germany Term Loan Amount
September 30, 2014 through June 30, 2015	17.5% of the aggregate Final Amerigon Germany Term Loan Amount

September 30, 2015 through 20% of the aggregate Final Amerigon Germany Term Loan Amount  
December 31, 2015

Maturity Date The then outstanding principal amount of Amerigon Germany Term Loans

(c) Revolving Credit Loans. The Company 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.

(d) Swing Line Loans. The Company 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 Eurocurrency Rate Loan 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; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; and (iii) 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 Base 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 Company 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 Dollars 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 Dollars, 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 Dollars, 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 interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other 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 Dollars 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 Company or for any other reason, the Company or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Company 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(i) 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, Type (if applicable), 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 Dollars 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 Dollars 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 Dollars, 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 (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) 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 (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. 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 obtained by all of the Lenders 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 the Company 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 Company 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 Company 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 Company, 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 Company 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 Company 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 Company, 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 Company as a result of any judgment of a court of competent jurisdiction obtained by the Company 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 4.04 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 2.10(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 Company 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 2.04(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 Company, 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 Company 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.** Amerigon Germany hereby irrevocably appoints the Company 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 Company, whether or not Amerigon Germany joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to the Company in accordance with the terms of this Agreement shall be deemed to have been delivered to Amerigon Germany.

**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 Company and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Company 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 Company 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 Company 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 Company 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 Company 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 Company on behalf of such Borrower 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 Company 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 Company 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 Company and the Administrative Agent sufficient for the Administrative Agent and the Company 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 Dollars 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, Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Company through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case, until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) 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 Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base 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 and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to

determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, 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 Dollars 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 Dollars or an Alternative Currency), or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base 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 Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case, 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, conversion to 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 Base Rate Loans without reference to the Eurocurrency Rate component of the Base Rate in the amount specified therein.

**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 Company 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 Company 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 Company 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, conversion, payment or prepayment of any Loan other than a Base Rate 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, continue or convert any Loan other than a Base Rate 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 Company 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 Company 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 Administrative Agent's receipt of executed counterparts of this Agreement, each Escrow Agreement, the Guaranties, sufficient in number for distribution to the Administrative Agent, each Lender, the Company and Amerigon Germany, as applicable, 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 Loan Party, each dated the Closing Date and each in form and substance satisfactory to the Administrative Agent and each of the Lenders.

**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 Loan Party, each dated the Closing Date or the Initial Funding Date, as applicable, (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) Notes executed by the Borrowers in favor of each Lender requesting Notes;

(ii) a pledge and security agreement, in form and substance satisfactory to the Administrative Agent (together with each other pledge and security agreement and pledge and security agreement supplement delivered pursuant to Section 6.13, in each case as amended, the "Security Agreement"), duly executed by each Loan Party, together with:

(A) certificates representing any Equity Interests pledged under the Security Agreement accompanied by undated stock powers (or other transfers, stock transfer forms or the equivalent thereof) executed in blank and instruments evidencing any Indebtedness pledged under the Security Agreement indorsed in blank;

(B) proper Financing Statements in form appropriate for filing under the UCC of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement;

(C) completed requests for information, dated on or before the date of the initial Credit Extension, listing all effective financing statements filed in the jurisdictions referred to in clause (B), above that name any Loan Party as debtor, together with copies of such other financing statements;

(D) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement (including the payment of any recording or filing fees) that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby;

(E) the Account Control Agreements and the Securities Account Control Agreement, in each case, as referred to in the Security Agreement and duly executed by the appropriate parties; and

(F) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken (including receipt of surveys, title insurance and duly executed payoff letters, UCC-3 termination statements, landlords' and bailees' waiver and consent agreements);

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each 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 Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each 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 Loan Parties, and (B) Milbank, Tweed, Hadley & McCloy LLP, German counsel to the Loan Parties, in each case, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit I and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such 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 and dated as of the Initial Funding Date 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 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 and (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;

(viii) pro forma financial statements and budget of each Borrower and its respective Subsidiaries on a consolidated basis, including forecasts prepared by management of such Borrower, of consolidated balance sheets and statements of income or operations and cash flows of such Borrower and its Subsidiaries on a monthly basis for the first year following the Closing Date 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 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, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(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, (ii) all fees, if any, required to be paid to the Administrative Agent and the Arranger on or before the Funding Release Date shall have been paid into the Company Cash Escrow Account to be released and paid to the Administrative Agent and the Arranger, as applicable, on the Funding Release Date, (iii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid and (iv) all fees, if any, required to be paid to the Lenders on or before the Funding Release Date shall have been paid into the Company Cash Escrow Account to be released and paid to the Lenders on the Funding Release Date.

(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, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings, including through the Funding Release Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

(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 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 February 28, 2011 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 since February 28, 2011 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 have 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 Target and its Subsidiaries; the Acquisition Agreement shall provide for an aggregate purchase price not in excess of the Alternative Currency 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.

(g) 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.

(h) 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 Company shall be funded into the Company Cash Escrow Account, in each case, concurrently with the funding of the initial Credit Extensions hereunder into the Senior Loan Escrow Account and such aggregate amounts together with any cash on hand of the Borrowers 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 hereby and by the Related Documents and meet the ongoing financial needs of the Borrowers and their respective

Subsidiaries (other than Excluded Subsidiaries) after giving effect to the transactions contemplated hereby and by the Related Documents.

(i) 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 Company and each of its Subsidiaries has been, or concurrently with the execution of this Agreement, 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 execution of this Agreement, 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 Initial Funding Date specifying its objection thereto.

**4.03 Conditions to Release Funds from Escrow.** The obligation of the L/C Issuer and each Lender to release any funds on deposit in the Senior Loan Escrow Account hereunder is subject to satisfaction of the following conditions precedent:

(a) 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.

(b) Amerigon Germany has secured the acquisition of a number of shares in the Target which represent at least 71.80% of the Target's registered share capital. Such number of shares shall be deemed to have been secured if the sum of the Equity Interests of the Target 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 Target's registered share capital.

(c) The proceeds of the Company Cash Escrow Account and the Equity Escrow Account shall have been released or will be released simultaneously with the proceeds on deposit in the Senior Loan Escrow Account in accordance with the applicable Escrow Agreement.

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 4.03, 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.

Notwithstanding anything in this Agreement to the contrary, except as provided in this Section 4.03, during the Certain Funds Period no Lender shall be entitled to (i) refuse to make the funds on deposit in the Senior Loan Escrow Account available to the Borrowers, (ii) exercise any right of set off, indemnity or counterclaim or rescission or similar right or remedy which it may have in relation to any Loan (other than with respect to any proceeds of any Revolving Credit Loan not on deposit in the Senior Loan Escrow Account); provided that no such right of set off or other right shall be made against the Senior Loan Escrow Account or (iii) accelerate or cause repayment of any Loan (other than with respect to any proceeds of any Revolving Credit Loan not on deposit in the Senior Loan Escrow Account); provided that no such acceleration shall give rise to any rights against the Senior Loan Escrow Account; provided that nothing in this Section 4.03 shall affect the rights of any Lender or the L/C Issuer in respect of any outstanding Default upon the expiration of the Certain Funds Period irrespective of whether that Default occurred during the Certain Funds Period.

**4.04 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 conversion of Loans to the other Type, or 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 4.04, 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 conversion of Loans to the other Type or 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 represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.** Each Loan Party and each of its Material Subsidiaries (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 each Loan Party 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, any Loan Party of this Agreement or any other Loan Document or Related Document, or for the consummation of the transactions contemplated hereby or thereby, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (iv) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral 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 the Loan Parties or their 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 each Loan Party 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 Loan Party, enforceable against each Loan Party 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 GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Company 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 Company and its Subsidiaries and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Company 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 Company and its Subsidiaries as at December 31, 2010, and the related consolidated pro forma statements of income and cash flows of the Company and its Subsidiaries for the twelve (12) months then ended, certified by the chief financial officer or treasurer of the Company, copies of which have been furnished to each Lender, fairly present the consolidated pro forma financial condition of the Company and its Subsidiaries as at such date and the consolidated pro forma results of operations of the Company and its Subsidiaries for the period ended on such date, all in accordance with GAAP.

(e) The consolidated forecasted balance sheet and statements of income and cash flows of the Company 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 Company'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 either Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against either Borrower or any of its 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 any Loan Party nor any Material Subsidiary thereof 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.** Each Loan Party and each of its 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 each Loan Party and its Material Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.** The Loan Parties and 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 Company 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 each Loan Party and each of its 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 Loan Party or the applicable Material Subsidiary operates.

**5.11 Taxes.** Each Loan Party and each of its 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 GAAP. There is no proposed tax assessment against any Loan Party or any of its Material Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Material Subsidiary thereof is party to any tax sharing agreement.

## 5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from Federal income tax under Section 501(a) of the Code or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of either Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrowers and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of either Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither the Borrowers nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrowers and each ERISA Affiliate have met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrowers nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither the Borrowers nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrowers nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) 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.

(e) 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 Collateral Documents. 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 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 4.02(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.

**5.16 Compliance with Laws.** Each Loan Party and each Material Subsidiary thereof 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.** Each Loan Party and 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 the either Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party 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 either Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 Solvency.** Each Loan Party is, individually and together with its Material Subsidiaries on a consolidated basis, Solvent.

**5.19 Casualty, Etc.** Neither the businesses nor the properties of any Loan Party or any of its Material Subsidiaries 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 or Multiemployer Plans 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 and each jurisdiction in which Collateral in respect of a Foreign Obligor is located. 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 and each jurisdiction in which Collateral in respect of a Foreign Obligor is located.

(f) In the case of Amerigon Germany and each other German Loan Party, 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 Germany and it has no “establishment” (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

**5.22 Collateral Documents.** The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

**5.23 Other Representations and Warranties.**

(a) All representations and warranties made by each Loan Party under the Acquisition Agreement and the other Related Documents 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.

**5.24 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*).

**5.25 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:

**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 Company (commencing with the fiscal year ended December 31, 2011), a consolidated balance sheet of the Company 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 GAAP, 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 Company (commencing with the fiscal quarter ended March 31, 2011), a consolidated balance sheet of the Company 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 Company's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity, and cash flows for the portion of the Company'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 Company as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, 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 Company to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Company 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 Company, an annual business plan and budget of the Company and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Company, 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 Company 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 Company 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 Company 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 Company, and copies of all annual, regular, periodic and special reports and registration statements which the Company 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 any Loan Party 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 any Loan Party 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 any Loan Party or any Material Subsidiary thereof;

(f) not later than five Business Days after receipt thereof by any Loan Party 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;

(g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(h) within 30 days after the end of each fiscal year of the Company, (i) a report supplementing Schedule 5.17, setting forth (A) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party or any Material Subsidiary thereof during such fiscal year and (B) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright



applications submitted by any Loan Party or any Material Subsidiary thereof during such fiscal year and the status of each such application and (ii) 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 Company and to be in a form reasonably satisfactory to the Administrative Agent; and

(i) 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 Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Company'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 Company shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Company 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 Company 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 Company 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 Company 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.

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 Company setting forth details of the occurrence referred to therein and stating what action the Company 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 GAAP are being maintained by the Borrowers 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 the Borrowers 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 GAAP 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 Company; 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 finance a portion of the Acquisition, (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 and Give Security.** Upon the formation or acquisition of any new direct or indirect Material Subsidiary by any Loan Party (other than, for the avoidance of doubt, the acquisition of the Target pursuant to the Acquisition Agreement) or any Subsidiary (other than an Excluded Subsidiary) becoming a Material Subsidiary, then the Borrowers shall, at the Borrowers' 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 other Loan Parties' obligations under the Loan Documents, subject to the limitations as specified under Section 2.14, with respect to a German Loan Party;

(b) other than with regards to a German Loan Party, within 15 days after such event, cause such Material Subsidiary and 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 Security Agreement Supplements and other security agreements, as specified by and in form and substance satisfactory to the Administrative Agent (including delivery of all Equity Interests to be pledged in and of such Material Subsidiary and other instruments of the type specified in Section 4.02(a)(ii)), securing payment of all the Obligations of such Material Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such property; provided that Amerigon Germany shall execute and deliver to the Administrative Agent a security agreement pledging its Equity Interests in the Target within two Business Days after the Funding Release Date; and

(c) within 30 days after such event, cause such Material Subsidiary and each direct and indirect parent of such Material Subsidiary (if it has not already done so) to take whatever action (including the filing of UCC financing statements) that may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in

any representative of the Administrative Agent designated by it) valid and subsisting Liens on the property purported to be subject to the Security Agreement Supplements and security agreements delivered pursuant to this Section 6.13, enforceable against all third parties in accordance with their terms; and

(d) 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 Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (a), (b) and (c) above, and as to such other matters as the Administrative Agent may reasonably request.

Notwithstanding anything to the contrary in any Loan Document, (i) no more than 66% of the voting Equity Interests of any Material Subsidiary that is a CFC (or a Material Subsidiary that is held directly or indirectly by a CFC) shall be pledged as security for the Obligations of the Company or any of its Domestic Subsidiaries if such pledge results in material adverse tax consequences for the Company and its Subsidiaries, taken as a whole, (ii) no Material Subsidiary that is a CFC (or a Material Subsidiary that is held directly or indirectly by a CFC) shall be required to pledge as security for the Obligations of the Company or any of its Domestic Subsidiaries any of its assets if such pledge results in material adverse tax consequences for the Company and its Subsidiaries, taken as a whole and (iii) no Material Subsidiary that is a CFC (or a Material Subsidiary that is held directly or indirectly by a CFC) shall be required to guarantee the Obligations of the Company or its Domestic Subsidiaries if such guaranty results in material adverse tax consequences for the Company and its Subsidiaries, taken as a whole.

**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 GAAP.

**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, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Material Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be

created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured 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 Interest Rate Hedging.** Enter into within one hundred twenty (120) days after the Funding Release Date, and maintain at all times thereafter, interest rate Swap Contracts with Persons acceptable to the Administrative Agent, covering a notional amount of not less than 40% of the aggregate outstanding Indebtedness for borrowed money (other than the Total Revolving Credit Outstandings) as of the Funding Release Date, and providing for such Persons to make payments thereunder for an initial period of no less than three years.

**6.18 Lien Searches.** Promptly following receipt of the acknowledgment copy of any financing statements filed under the UCC in any jurisdiction by or on behalf of the Secured Parties, deliver to the Administrative Agent completed requests for information listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor, together with copies of such other financing statements.

**6.19 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.

**6.20 Parallel Debt.**

(a) Irrevocably and unconditionally undertake (and to the extent necessary undertake in advance) to pay to the Administrative Agent amounts equal to any amount owing from time to time by the Loan Parties to any Lender under this Agreement and any other Loan Document as and when those amounts are due (such payment undertakings under this Section 6.20 and the obligations and liabilities resulting therefrom, the “Parallel Debt”).

(b) Acknowledge with the Administrative Agent that the obligations of the Loan Parties under clause (a) above are several, separate and independent (*selbständiges Schuldanerkenntnis*) from, and shall not in any way limit or affect, the corresponding obligations of the Loan Parties to any Lender under this Agreement or any other Loan Document (the "Corresponding Debt") nor shall the amounts for which the Loan Parties are liable under clause (a) above be limited or affected in any way by its Corresponding Debt; provided that:

- (i) the Parallel Debt shall be decreased to the extent that the Corresponding Debt has been irrevocably paid or discharged;
- (ii) the Corresponding Debt shall be decreased to the extent that the Parallel Debt has been irrevocably paid or discharged;
- (iii) the amount of the Parallel Debt shall at all times be equal to the amount of the Corresponding Debt; and
- (iv) for the avoidance of doubt, the Parallel Debt shall become due and payable at the same time when the Corresponding Debt becomes due and payable.

(c) Acknowledge that the Parallel Debt represents the debt of each Loan Party and neither constitutes any several and joint liability (*gesamtschuldnerische Haftung*) of the Loan Parties nor is subject to any debt owed by a collective ownership (*Gesamthand*) formed by the Loan Parties.

(d) Acknowledge that the security granted under the German Security Documents with respect to the Parallel Debt is granted to the Administrative Agent in its capacity as sole creditor of the Parallel Debt.

(e) Acknowledge, without limiting or affecting the Administrative Agent's rights against the Loan Parties (whether under this Agreement or any other Loan Document), that:

- (i) nothing in this Agreement shall impose any obligation on the Administrative Agent to advance any sum to the Loan Parties or otherwise under any Loan Document; and
- (ii) for the purpose of any vote taken under any Loan Document, the Administrative Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

(f) Acknowledge and confirm that the provisions contained in this Agreement shall not be interpreted so as to increase the maximum total amount of the Obligations.

(g) Cause the Parallel Debt to remain effective in case a third person should assume or be entitled, partially or in whole, to any rights of any of the Lenders under any of the other Loan Documents, be it by virtue of assignment, novation or otherwise.

(h) Cause all monies received or recovered by the Administrative Agent pursuant to this Agreement and all amounts received or recovered by the Administrative Agent from or by

the enforcement of any security granted to secure the Parallel Debt shall be applied in accordance with this Agreement.

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

**6.22 Post Closing.**

(a) Within 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 Company or Amerigon Germany 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 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 Target 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.

**6.23 Rights Under Acquisition Agreement.** Exercise Amerigon Germany's right under clause 8.1 of the Acquisition Agreement (i.e. to request that consummation of the closing under clause 7 of the Acquisition Agreement to be replaced by the Sellers accepting the Takeover Offer and transferring their shares in the Target in accordance with the Offer Document) immediately after all closing conditions under the Acquisition Agreement other than the closing conditions 4.1(a) and 4.2(b) have been satisfied or waived, but in no event later than Facility Termination Date.

**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 Loan 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 GAAP;

(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); and

(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.

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

(a) Investments held or made by the Company or such Material Subsidiary in the form of Cash Equivalents or any other form permitted under and in accordance with the corporate cash investment policy of the Company as in effect on the Closing Date or thereafter to the extent of any changes approved by the Required Lenders in their sole discretion;

(b) advances to officers, directors and employees of the Company and its Material Subsidiaries 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 Company in any Loan Party and Investments of any Subsidiary in the Company or in another Material 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 consisting of the acquisition of Equity Interests of the Target in connection with (i) the Takeover Offer, (ii) the Acquisition Agreement or (iii) the “squeeze-out” of minority holders of the Equity Interests of the Target in the event Amerigon Germany acquires at least ninety-five percent (95%) of the Equity Interests (or such other threshold as may be required pursuant to applicable Laws at the time of such acquisition) of the Target in connection with the Takeover Offer; and

(g) other Investments not exceeding (i) \$500,000 in the aggregate at any one time outstanding during the fiscal year ending March 2012 and (ii) \$1,000,000 in the aggregate at any one time outstanding anytime thereafter.

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

(a) Indebtedness under the Loan Documents and the Target 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 Company or any Loan Party in respect of Indebtedness otherwise permitted hereunder of the Company or any other Loan Party;

(d) obligations (contingent or otherwise) of the Company 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 at any one time outstanding shall not exceed \$750,000;

(f) obligations of the Company under the Preferred Equity Documents;

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

(h) unsecured Indebtedness in an aggregate principal amount not to exceed \$500,000 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) the Company, provided that the Company shall be the continuing or surviving Person, or (ii) any one or more Material Subsidiaries, provided that when any Borrower or Subsidiary Guarantor is merging with another Subsidiary, such Borrower or Subsidiary Guarantor, as the case may be, shall be the continuing or surviving Person;

(b) Amerigon Germany may merge or otherwise consolidate with the Target; 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 Target Credit Facility Documents; and

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

**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 or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Material Subsidiary to the Company or to a Material Subsidiary; provided that if the transferor of such property is a Borrower or Subsidiary Guarantor, the transferee thereof must either be a Borrower or a Subsidiary Guarantor;

(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 Company 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 (h) in any fiscal year shall not exceed \$500,000;

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) each Material Subsidiary may make Restricted Payments to the Company, 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 Company and each Material Subsidiary may make Restricted Payments payable solely in the form of common stock or other common Equity Interests of such Person;

(c) the Company may make payments, including Restricted Payments, in accordance with the terms and conditions of the Preferred Equity Documents to the extent such payments are permitted under the Preferred Equity Subordination Agreement;

(d) the Company 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

(e) the Company may issue and sell its common Equity Interests, and, so long as both immediately prior to and immediately after giving effect to any such issuance or sale no Default exists or would occur as a result thereof, the Company may use the Net Cash Proceeds thereof to

satisfy its obligations under the Preferred Equity Documents as permitted under clause (c) above; provided that if no such payments are then due and payable under the Preferred Equity Documents, the Company may retain such Net Cash Proceeds solely to make such payments at such future time as such payments may be due and owing under the Preferred Equity Documents, so long as on any such due date, the Company is permitted to make such payment in accordance with the Preferred Equity Subordination Agreement; provided, further that any such Net Cash Proceeds (i) not elected to be used, held or otherwise retained by the Company to satisfy the cash obligations of the Company under the Preferred Equity Documents or (ii) upon the occurrence of any event described in clause (b) of the Preferred Equity Subordination Agreement, shall be 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 Company 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 Company, 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(g) or (b) otherwise on fair and reasonable terms substantially as favorable to the Company or such Material Subsidiary as would be obtainable by the Company 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 the Company or any Subsidiary Guarantor or to otherwise transfer property to the Company or any Subsidiary Guarantor, (ii) of any Material Subsidiary to Guarantee the Indebtedness of the Company or (iii) of the Company or any Material 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 Company 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 Company set forth below to be greater than the ratio set forth below opposite such period:

<b>Four Fiscal Quarters Ending</b>	<b>Maximum Consolidated Leverage Ratio</b>
Closing Date through December 31, 2011	2.75:1.00
March 31, 2012 through December 31, 2013	2.50:1.00
March 31, 2014 and each fiscal quarter thereafter	2.25:1.00

**7.12 Amendments of Organization Documents and Preferred Equity Arrangements.** Amend any of its Organization Documents or the Preferred Equity Documents, without the consent of the Required Lenders, except (a) amendments made to the Organizational Documents of the Company to increase the authorized number of common Equity Interests in the Company to up to 100,000,000 shares in order to make Restricted Payments (in the form of common stock or other common Equity Interests) under the Preferred Equity Documents and (b) amendments made to the Organizational Documents and Preferred Equity Documents of the Company to the extent permitted under the Preferred Equity Subordination Agreement.

**7.13 Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by GAAP, 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, the Preferred Equity Investment or 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), (c) payments, including Restricted Payments, in respect of the Preferred Equity Investment in accordance with the Preferred Equity Documents to the extent permitted under the Preferred Equity Subordination Agreement and (d) prepayment of the Preferred Equity Investment in accordance with the Preferred Equity Documents if the Funding Release Date has not occurred on or prior to the Facility Termination Date solely with amounts on deposit in the Equity Escrow Account.

**7.15 Amendment, Etc. of Related Documents and Indebtedness.** (a) Cancel or terminate any Related Document (other than any Preferred Equity 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 (other than any Preferred Equity 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 (other than any Preferred Equity Document), (d) take any other action in connection with any Related Document (other than any Preferred Equity

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).

**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 Company and its Material Subsidiaries, on a consolidated basis, in respect of all such obligations (other than building leases) to exceed \$500,000 payable in any period of 12 consecutive months.

**7.18 Tender Offer Extension.** Extend or permit the extension of the Takeover Offer beyond July 1, 2011.

## 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, 6.17, 6.21 or 6.22 or Article VII, or any Subsidiary Guarantor fails to perform or observe any term, covenant or agreement contained in Article IV of the applicable Subsidiary 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 or, after the Funding Release Date, the Target 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 Target under the Target 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) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.02 or 6.13 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby; or

(m) 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 Company 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 Secured Hedge Agreements and Secured 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 Company 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 Company (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 Secured Cash Management Agreements and Secured 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.**

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America 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.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**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 Company, 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 the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or (vi) 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 Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, 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 Company 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 (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) 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 Bank of America 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 Collateral and Guaranty Matters.** The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made; provided that Cash Collateralization of 105% of the undrawn amount of any Letter of Credit shall constitute a satisfactory arrangement), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(c) 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 or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under any Subsidiary Guaranty pursuant to this Section 9.10. In each case 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 evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under any Subsidiary Guaranty, in each case, in accordance with the terms of the Loan Documents and this Section 9.10.

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements.** No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Subsidiary Guaranty or any Collateral by virtue of the provisions hereof or of any Subsidiary Guaranty or any Collateral Document 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 the Collateral or any Subsidiary Guarantor (including the release or impairment of any Collateral or any Subsidiary 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 Secured Cash Management Agreements and Secured 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 4.02 (other than Section 4.02(b)(i) or (c)), Section 4.03 or, in the case of the initial Credit Extension or the release of funds from the Senior Loan Escrow Account, Section 4.04 or modify any condition set forth in Section 4.03 or the definitions of “Certain Funds Period”, “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 (ix) 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 Company Term Facility, the

Required Company Term Lenders, (ii) if such Facility is the Amerigon Germany Term Facility, the Required Amerigon Germany Term Lenders and (iii) 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," "Required Company Term Lenders," or "Required Amerigon Germany Term Lenders" without the written consent of each Lender under the applicable Facility;

(h) release all or substantially all of the Collateral or the value of any Subsidiary Guaranty without the written consent of each Lender, except to the extent the release of any 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 Company Term Facility, the Required Company Term Lenders, (ii) if such Facility is the Amerigon Germany Term Facility, the Required Amerigon Germany Term Lenders and (iii) 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 Company 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 Company 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 Company 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 Company, 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 \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Company Term Facility or the Amerigon Germany Term Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company 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 Company (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 \$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 Company 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 Company'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 Company 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 Company and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Company, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Company 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 Company 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 Base Rate 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 Base Rate 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 Company 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 Company.

For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to the Company 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 Company or any Subsidiary, provided that, in the case of information received from the Company 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 Company 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 Company 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 Company (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 4.02, 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 Company the right to replace a Lender as a party hereto, then the Company 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 Company 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 Company (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 Company 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.

**AMERIGON INCORPORATED**

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

Name: Daniel R. Coker

Title: President and Chief Executive Officer

**AMERIGON EUROPE GMBH**

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

Name:

Title:

*US Credit Agreement*

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**BANK OF AMERICA, N.A.**, as  
Administrative Agent

By: \_\_\_\_\_  
Name: Charlene Wright-Jones  
Title: Vice President

*US Credit Agreement*

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

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

Name: David K. Komrska

Title: Senior Vice President

*US Credit Agreement*

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

**COMERICA BANK**

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

*US Credit Agreement*

**THE HUNTINGTON NATIONAL BANK**

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

*US Credit Agreement*



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**KEYBANK NATIONAL ASSOCIATION**

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

Name:

Title:

*US 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 Company or any Lender, deliver to the Company 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:

$$\frac{AB+C(B-D)+E \times 0.01}{100 - (A+C)} \text{ per cent per annum}$$

- (b) in relation to any Loan in any currency other than Sterling:

$$\frac{E \times 0.01}{300} \text{ per cent per annum}$$

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 Company, 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

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Administrative Agent and the Company, 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 Company 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 authority which

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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.

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**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<u>Lender</u>	<u>Company Term Loan Commitment</u>	<u>Applicable Company Term Loan Percentage</u>	<u>Amerigon Germany Term Loan Commitment<sup>1</sup></u>	<u>Applicable Amerigon Germany Term Loan Percentage</u>	<u>Revolving Credit Commitment</u>	<u>Applicable Revolving Credit Percentage</u>
Bank of America, N.A.	\$7,834,005.93	22.3828763%	\$7,386,348.45	22.3828763%	\$5,595,718.51	22.3828763%
JPMorgan Chase Bank, N.A.	\$7,483,229.55	21.3806558%	\$7,055,616.43	21.3806558%	\$5,345,163.97	21.3806558%
Comerica Bank	\$7,483,229.55	21.3806558%	\$7,055,616.44	21.3806558%	\$5,345,163.96	21.3806558%
The Huntington National Bank	\$6,664,751.32	19.0421466%	\$6,283,908.38	19.0421466%	\$4,760,536.66	19.0421466%
KeyBank National Association	\$5,534,783.65	15.8136675%	\$5,218,510.30	15.8136675%	\$3,953,416.90	15.8136675%
<b>Total</b>	<b>\$ 35,000,000</b>	<b>100.000000000%</b>	<b>\$ 33,000,000</b>	<b>100.000000000%</b>	<b>\$ 25,000,000</b>	<b>100.000000000%</b>

<sup>1</sup> Final Dollar amount of the allocations subject to change on the Funding Release Date in accordance with the Amerigon German Term Loan Amount.

**SUBSIDIARIES, OTHER EQUITY INVESTMENTS  
AND LOAN PARTIES**

Part (a). Subsidiaries.

Part (b). Other Equity Investments.

Part (c). Loan Parties.

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 5.13

**INTELLECTUAL PROPERTY MATTERS**

The Registrant hereby agrees to furnish supplementally a copy of any omitted Schedule to the Commission upon request.

Schedule 5.17



**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

**ADMINISTRATIVE AGENT'S OFFICE;  
CERTAIN ADDRESSES FOR NOTICES****BORROWERS:**

AMERIGON INCORPORATED and AMERIGON EUROPE GMBH

21680 Haggerty Road  
Suite 101  
Northville, Michigan 48167

Attention: Barry Steele

Telephone:

Telecopier:

Electronic Mail: \_\_\_\_\_@\_\_\_\_\_

Website Address: www.\_\_\_\_\_

U.S. Taxpayer Identification Number(s):

Amerigon Incorporated: 94-4318554

Amerigon Europe GmbH: 103/121/53713

**ADMINISTRATIVE AGENT:**Administrative Agent's Office*(for payments and Requests for Credit Extensions):*

Jacqueline Jones

Bank of America, N.A.

901 Main Street

Mail Code: TX1-492-14-11

Dallas, TX 75202

Attention: Credit Services

Telephone: 214.209.9254

Facsimile: 214/290/9439

Electronic Mail: [jacqueline.r.jones@baml.com](mailto:jacqueline.r.jones@baml.com)

Account No. (for Dollars): 1292000883

Ref: Amerigon, Attn: Credit Services

ABA# 026009593

Bank of America London

Swift BOFAGB22

Acct #: 65280019

IBAN #: GB80BOFA16505065280019

Schedule 10.02

Attn: Credit Services  
Ref: Amerigon

Other Notices as Administrative Agent:

Charlene Wright-Jones  
Bank of America, N.A.  
Agency Management  
135 S. LaSalle Street  
Mail Code: IL4-135-05-41  
Chicago, IL 60603

Telephone: 312.828.3935  
Facsimile: 877.206.8427  
Electronic Mail: [charlene.wright-jones@baml.com](mailto:charlene.wright-jones@baml.com)

**L/C ISSUER:**

Alphonse Malave  
Bank of America, N.A.  
Trade Operations  
1 Fleet Way  
Mail Code: PA6-580-02-30  
Scranton, PA 18507

Telephone: 570.330.4212  
Facsimile: 570.330.4186  
Electronic Mail: [alphonse.malave@baml.com](mailto:alphonse.malave@baml.com)

**SWING LINE LENDER:**

Jacqueline Jones  
Bank of America, N.A.  
901 Main Street  
Mail Code: TX1-492-14-11  
Dallas, TX 75202

Attention: Credit Services  
Telephone: 214.209.9254  
Facsimile: 214/290/9439  
Electronic Mail: [jacqueline.r.jones@baml.com](mailto:jacqueline.r.jones@baml.com)

Account No.: 1292000883

Schedule 10.02



FORM OF COMMITTED LOAN NOTICE

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

To: Bank of America, N.A., 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), among AMERIGON INCORPORATED, a Michigan corporation (the "Company") and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The Company hereby requests (select one):

- A Borrowing of Loans     A conversion or continuation of Loans
- 1. On \_\_\_\_\_ (a Business Day).
- 2. In the amount of \_\_\_\_\_.
- 3. Comprised of \_\_\_\_\_. [Type of Loan requested]
- 4. In the following currency: \_\_\_\_\_.
- 5. 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.

AMERIGON INCORPORATED

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

FORM OF SWING LINE LOAN NOTICE

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

To: Bank of America, N.A., as Swing Line Lender  
Bank of America, N.A., 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), among AMERIGON INCORPORATED, a Michigan corporation and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, 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.

**AMERIGON INCORPORATED**

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), among AMERIGON INCORPORATED, a Michigan corporation and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, 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 the Collateral and 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.



**[AMERIGON INCORPORATED]**

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

**[AMERIGON EUROPE GMBH]**

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

LOANS AND PAYMENTS WITH RESPECT THERETO

<u>Date</u>	<u>Type of Loan Made</u>	<u>Currency and Amount of Loan Made</u>	<u>End of Interest Period</u>	<u>Amount of Principal or Interest Paid This Date</u>	<u>Outstanding Principal Balance This Date</u>	<u>Notation Made By</u>
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Form of Note

## FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_,

To: Bank of America, N.A., 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), among AMERIGON INCORPORATED, a Michigan corporation (the "Company;" and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The undersigned Responsible Officer, solely in such capacity and not individually, hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the Company, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Company, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. The Company has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the Company 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 Company has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the Company ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of the Company and its Subsidiaries in accordance with GAAP 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 Company and its Material Subsidiaries during the accounting period covered by such financial statements.

3. A review of the activities of the Company and its Material Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period each Loan Party performed and observed all its Obligations under the Loan Documents, and

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Form of Compliance Certificate

[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 \_\_\_\_\_, \_\_\_\_\_.

**AMERIGON INCORPORATED**

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 Transaction Expenses for Subject Period in an aggregate amount not exceeding \$13,000,000:	\$ _____
7.	Non-recurring reductions of Consolidated Net Income as approved by the Administrative Agent in its reasonable discretion for Subject Period:	\$ _____
8.	Income tax credits for Subject Period:	\$ _____
9.	Non-cash additions to Consolidated Net Income for Subject Period:	\$ _____
10.	Consolidated EBITDA (Lines I.A.1 + 2 + 3 + 4 + 5 + 6 +7 – 8 – 9):	\$ _____
B.	Capital Expenditures for Subject Period:	\$ _____
C.	Income taxes paid in cash for Subject Period:	\$ _____
D.	Restricted Payments for Subject Period:	\$ _____
E.	Line I.A.10 - 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 II.E ÷ Line II.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 II.A.10 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	2.75:1.00
March 31, 2012 through December 31, 2013	2.50:1.00
March 31, 2014 and each fiscal quarter thereafter	2.25:1.00

## 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>2</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>3</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>4</sup> hereunder are several and not joint.]<sup>5</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>6</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>2</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>3</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>4</sup> Select as appropriate.

<sup>5</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

<sup>6</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 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among AMERIGON INCORPORATED, a Michigan corporation and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

6. Assigned Interest[s]:<sup>7</sup>

<u>Assignor[s]</u> <sup>8</sup>	<u>Assignee[s]</u> <sup>9</sup>	<u>Facility Assigned</u> <sup>10</sup>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u> <sup>11</sup>	<u>Amount of Commitment /Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans</u> <sup>12</sup>	<u>CUSIP Number</u>
			\$ _____	\$ _____	_____ %	
			\$ _____	\$ _____	_____ %	
			\$ _____	\$ _____	_____ %	

[7. Trade Date: \_\_\_\_\_]<sup>13</sup>

<sup>7</sup> The reference to "Loans" in the table should be used only if the Credit Agreement provides for Term Loans.  
<sup>8</sup> List each Assignor, as appropriate.  
<sup>9</sup> List each Assignee, as appropriate.  
<sup>10</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>11</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>12</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.  
<sup>13</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>14</sup> Accepted:

BANK OF AMERICA, N.A., as  
Administrative Agent

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

[Consented to:]<sup>15</sup>

AMERIGON INCORPORATED

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

<sup>14</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>15</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 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time; the terms defined therein being used herein as therein defined), among AMERIGON INCORPORATED, a Michigan corporation and AMERIGON EUROPE GMBH, a German limited liability company, as borrowers, each lender from time to time party thereto and BANK OF AMERICA, N.A., as Administrative Agent, 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.

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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

**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.

PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, this "Security Agreement"), is made by AMERIGON INCORPORATED, a Michigan corporation (the "Company"), AMERIGON EUROPE GMBH, a German limited liability company ("Amerigon Germany") and each Guarantor (terms used in the preamble and the recitals have the definitions set forth in or incorporated by reference in Article I) from time to time party to this Security Agreement (each individually, a "Grantor" and collectively, the "Grantors"), in favor of BANK OF AMERICA, N.A., as the administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to that certain Credit Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Company, Amerigon Germany, the various financial institutions and other Persons from time to time party thereto, as lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to and maintain Loans with the Company and Amerigon Germany; and

WHEREAS, as a condition precedent to making and maintaining the Loans under the Credit Agreement, each Grantor is required to execute and deliver this Security Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders and the L/C Issuer to make and maintain the Credit Extensions and to induce the Secured Parties to enter into Secured Hedge Agreements and Secured Cash Management Agreements, each Grantor agrees, for the benefit of each Secured Party, as follows:

ARTICLE I  
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms (whether or not underscored) when used in this Security Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Administrative Agent" is defined in the preamble.

"Amerigon Germany" is defined in the preamble.

"Collateral" is defined in Section 2.1.

"Collateral Account" is defined in clause (b) of Section 4.3.

"Company" is defined in the preamble.

“Computer Hardware and Software Collateral” means all of the Grantors’ right, title and interest throughout the world in and to:

(a) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware, including all operating system software, utilities and application programs in whatsoever form;

(b) all software programs (including source code, object code and all related applications and data files), designed for use on the computers and electronic data processing hardware described in clause (a) above;

(c) all firmware associated therewith;

(d) all documentation (including flow charts, logic diagrams, manuals, guides, specifications, training materials, charts and pseudo codes) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c); and

(e) all rights with respect to all of the foregoing, including copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, improvements, error corrections, updates, additions or model conversions of any of the foregoing.

“Control Agreement” means an authenticated record in form and substance reasonably satisfactory to the Administrative Agent, that provides for the Administrative Agent to have “control” (as defined in the UCC) over certain Collateral.

“Copyright Collateral” means all of the Grantors’ right, title and interest throughout the world in and to:

(a) all copyrights, registered or unregistered and whether published or unpublished, now or hereafter in force including copyrights registered in the United States Copyright Office and corresponding offices in other countries of the world, and registrations and recordings thereof and all applications for registration thereof, whether pending or in preparation and all extensions and renewals of the foregoing (“Copyrights”), including the Copyrights which are the subject of a registration or application referred to in Item A of Schedule V;

(b) all express or implied Copyright licenses and other agreements for the grant by or to such Grantor of any right to use any items of the type referred to in clause (a) above (each a “Copyright License”), including each Copyright License referred to in Item B of Schedule V, to the extent permitted by any such Copyright License;



(c) the right to sue for past, present and future infringements of any of the Copyrights owned by such Grantor, and for breach or enforcement of any Copyright License; and

(d) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

“Credit Agreement” is defined in the first recital.

“Distributions” means all dividends paid on Equity Interests, liquidating dividends paid on Equity Interests, shares (or other designations) of Equity Interests resulting from (or in connection with the exercise of) stock splits, reclassifications, warrants, options, non-cash dividends, mergers, consolidations, and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any Equity Interests constituting Collateral.

“Filing Statements” is defined in Section 3.7(b).

“General Intangibles” means all “general intangibles” and all “payment intangibles”, each as defined in the UCC, and shall include all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations and all Intellectual Property Collateral (in each case, regardless of whether characterized as general intangibles under the UCC).

“Grantor” and “Grantors” are defined in the preamble.

“Intellectual Property” means Trademarks, Patents, Copyrights, Trade Secrets and all other similar types of intellectual property under any Law, statutory provision or common Law doctrine in the United States or anywhere else in the world.

“Intellectual Property Collateral” means, collectively, the Computer Hardware and Software Collateral, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral.

“Owned Intellectual Property Collateral” means all Intellectual Property that is owned by and used in the business of each Grantor that is (a) not licensed to a Grantor pursuant to a Trademark License, Patent License or Copyright License set forth in Schedules III, IV or V; and (b) not in the public domain.

“Patent Collateral” means all of the Grantors’ right, title and interest throughout the world in and to:

(a) inventions and discoveries, whether patentable or not, all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing and all reissues, divisionals, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing (“Patents”), including each Patent and Patent application referred to in Item A of Schedule III;

(b) all Patent licenses, and other agreements for the grant by or to such Grantor of any right to use any items of the type referred to in clause (a) above (each a “Patent License”), including each Patent License referred to in Item B of Schedule III, to the extent permitted by any such Patent License;

(c) the right to sue third parties for past, present and future infringements of any Patent or Patent application, and for breach or enforcement of any Patent License; and

(d) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

“Permitted Liens” means all Liens permitted by Section 7.01 of the Credit Agreement.

“Securities Act” is defined in Section 6.2(a).

“Security Agreement” is defined in the preamble.

“Security Agreement Supplement” is defined in Section 7.6.

“Termination Date” means the date on which all Obligations (other than contingent indemnification obligations) have been indefeasibly paid in full in cash, all Letters of Credit have been terminated or expired (or Cash Collateralized), all Secured Hedge Agreements have been terminated or have been otherwise provided for on terms reasonably satisfactory to the parties thereto, and all Commitments shall have been terminated.

“Trademark Collateral” means all of the Grantors’ right, title and interest throughout the world in and to:

(a) (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos and other source or business identifiers, and all goodwill of the business associated therewith, now existing or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office and corresponding offices in other countries of the world, and all common-Law rights relating to the foregoing, and (ii) the right to obtain all reissues, extensions or renewals of the foregoing (collectively referred to as “Trademarks”), including those Trademarks referred to in Item A of Schedule IV;

(b) all Trademark licenses and other agreements for the grant by or to such Grantor of any right to use any Trademark (each a “Trademark License”), including each Trademark License referred to in Item B of Schedule IV, to the extent permitted by any such Trademark License;

(c) all of the goodwill of the business connected with the use of, and symbolized by the Trademarks described in clause (a) and, to the extent applicable, clause (b);

(d) the right to sue third parties for past, present and future infringements or dilution of the Trademarks described in clause (a) and, to the extent applicable, clause (b) or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark License; and

(e) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

“Trade Secrets Collateral” means all of the Grantors’ right, title and interest throughout the world in and to:

(a) all common Law and statutory trade secrets and all other confidential, proprietary or useful information and all know-how (collectively referred to as “Trade Secrets”) obtained by or used in or contemplated at any time for use in the business of a Grantor, whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret;

(b) all Trade Secret licenses and other agreements for the grant by or to such Grantor of any right to use any Trade Secret (each a “Trade Secret License”) including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret License, to the extent permitted by any such Trade Secret License; and

(c) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

SECTION 1.2. Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

SECTION 1.3. UCC Definitions. When used herein the terms Account, Certificated Securities, Chattel Paper, Commercial Tort Claim, Commodity Account, Commodity Contract, Deposit Account, Document, Electronic Chattel Paper, Equipment, Goods, Instrument, Inventory, Investment Property, Letter-of-Credit Rights, Payment Intangibles, Proceeds, Promissory Notes, Securities Account, Security Entitlement, Supporting Obligations and Uncertificated Securities have the meaning provided in Article 8 or Article 9, as applicable, of the UCC. Letters of Credit has the meaning provided in Section 5-102 of the UCC.

## ARTICLE II SECURITY INTEREST

SECTION 2.1. Grant of Security Interest. Each Grantor hereby grants to the Administrative Agent, for its benefit and the ratable benefit of each other Secured Party, a continuing security interest in all of such Grantor's right, title and interest in the following property, whether now or hereafter existing, owned or acquired by such Grantor, and wherever located, (collectively, the "Collateral"):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Commercial Tort Claims listed on Item I of Schedule II (as such schedule may be amended or supplemented from time to time);
- (d) Deposit Accounts;
- (e) Documents;
- (f) General Intangibles;
- (g) Goods;
- (h) Instruments;
- (i) Investment Property;
- (j) Intellectual Property Collateral;
- (k) Letter-of-Credit Rights and Letters of Credit;
- (l) Supporting Obligations;

(m) all books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing in this Section;

(n) all Proceeds and products of the foregoing and, to the extent not otherwise included, (i) all payments under insurance (whether or not the Administrative Agent is the loss payee thereof) and (ii) all tort claims; and

(o) all other property and rights of every kind and description and interests therein.

Notwithstanding the foregoing, the term "Collateral" shall not include, and the grant of a security interest as provided hereunder shall not extend to:

(i) Investment Property consisting of Equity Interests of a non-U.S. Subsidiary of such Grantor, in excess of 66% of the voting Equity Interests of each such non-U.S. Subsidiary, except that such 66% limitation shall not apply to a non-U.S. Subsidiary that (x) is treated as a partnership under the Code or (y) is

not treated as an entity that is separate from (A) such Grantor; (B) any Person that is treated as a partnership under the Code or (C) any "United States person" (as defined in Section 7701(a)(30) of the Code);

(ii) any asset, (x) the granting of a security interest in which would be void or illegal under any applicable governmental Law, rule or regulation, or pursuant thereto would result in, or permit the termination of, such asset, or (y) which contains a valid and enforceable prohibition on the creation of a security interest therein so long as such prohibition remains in effect and is valid notwithstanding Sections 9-406 and 9-408 of the UCC; or

(iii) any patent set forth on Schedule VI.

SECTION 2.2. Security for Obligations. This Security Agreement and the Collateral in which the Administrative Agent for the benefit of the Secured Parties is granted a security interest hereunder by (a) the Company, secures the payment and performance of all of the Obligations, (b) Amerigon Germany, secures the payment and performance of all of the Obligations to the extent attributable to the Amerigon Germany Term Loans and (c) each other Grantor, secures the payment and performance of all of the Obligations.

SECTION 2.3. Grantors Remain Liable. Anything herein to the contrary notwithstanding:

(a) the Grantors will remain liable under the contracts and agreements included in the Collateral to the extent set forth therein, and will perform all of their duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed;

(b) the exercise by the Administrative Agent of any of its rights hereunder will not release any Grantor from any of its duties or obligations under any such contracts or agreements included in the Collateral; and

(c) no Secured Party will have any obligation or liability under any contracts or agreements included in the Collateral by reason of this Security Agreement, nor will any Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 2.4. Distributions on Pledged Shares. In the event that any Distribution with respect to any Equity Interests pledged hereunder is permitted to be paid (in accordance with Section 7.06 of the Credit Agreement), such Distribution or payment may be paid directly to the applicable Grantor. If any Distribution is made in contravention of Section 7.06 of the Credit Agreement, such Grantor, shall hold the same segregated and in trust for the Administrative Agent until paid to the Administrative Agent in accordance with Section 4.1.5.

SECTION 2.5. Security Interest Absolute, etc. This Security Agreement shall in all respects be a continuing, absolute, unconditional and irrevocable grant of security interest, and shall remain in full force and effect until the Termination Date has occurred. All rights of the

Secured Parties and the security interests granted to the Administrative Agent (for its benefit and the ratable benefit of each other Secured Party) hereunder, and all obligations of the Grantors hereunder, shall, in each case, be absolute, unconditional and irrevocable irrespective of:

- (a) any lack of validity, legality or enforceability of any Loan Document;
- (b) the failure of any Secured Party (i) to assert any claim or demand or to enforce any right or remedy against any Loan Party or any other Person (including any other Grantor) under the provisions of any Loan Document or otherwise, or (ii) to exercise any right or remedy against any other guarantor (including any other Grantor) of, or collateral securing, any Obligations;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations, or any other extension, compromise or renewal of any Obligations, by operation of law or otherwise; and to the fullest extent permitted by applicable Law, each Grantor waives any defense arising out of any such extension, compromise or renewal even though such extension, compromise or renewal may operate, pursuant to applicable Law, to impair or extinguish any right or remedy of any Grantor against any Collateral;
- (d) any reduction, limitation, impairment or termination of any Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise or any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligations or otherwise and shall not be subject to (and each Grantor hereby waives any right to or claim of) any of the foregoing;
- (e) any amendment to, rescission, waiver, or other modification of, or any consent to or departure from, any of the terms of any Loan Document;
- (f) any addition, exchange or release of any collateral or of any Person that is (or will become) a grantor (including the Grantors hereunder) of the Obligations, or any surrender, release, invalidity, impairment or non-perfection of any collateral (or any security interest therein), or any amendment to or waiver or release of or addition to, or consent to or departure from, any other collateral held by any Secured Party securing any of the Obligations;
- (g) any change in the corporate existence, structure or ownership of the Grantors or any other Grantor of or other Person liable for any of the Obligations;
- (h) any insolvency, bankruptcy, reorganization or other similar proceeding under any Debtor Relief Law affecting any Loan Party or its assets or any resulting release or discharge of any obligation of any Loan Party; or
- (i) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, any Loan Party, any surety or any guarantor.

SECTION 2.6. Postponement of Subrogation. Each Grantor agrees that it will not exercise any rights against another Grantor which it may acquire by way of rights of subrogation under any Loan Document to which it is a party nor shall any Grantor seek or be entitled to seek any contribution or reimbursement from any Loan Party, in respect of any payment made under any Loan Document, in connection with any Collateral or otherwise, until following the Termination Date. Any amount paid to such Grantor on account of any such subrogation rights prior to the Termination Date shall be held in trust for the benefit of the Secured Parties and shall immediately be paid and turned over to the Administrative Agent for the benefit of the Secured Parties in the exact form received by such Grantor (duly endorsed in favor of the Administrative Agent, if required), to be credited and applied against the Obligations, whether matured or unmatured, in accordance with Section 6.1; provided that if such Grantor has made payment to the Secured Parties of all or any part of the Obligations and the Termination Date has occurred, then at such Grantor's request, the Administrative Agent (on behalf of the Secured Parties) will, at the expense of such Grantor, execute and deliver to such Grantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to such Grantor of an interest in the Obligations resulting from such payment. In furtherance of the foregoing, at all times prior to the Termination Date, such Grantor shall refrain from taking any action or commencing any proceeding against any Loan Party (or its successors or assigns, whether in connection with any proceeding under any Debtor Relief Law or otherwise) to recover any amounts in respect of payments made under this Security Agreement to any Secured Party.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

In order to induce the Secured Parties to enter into the Credit Agreement and make and maintain Credit Extensions thereunder and enter into Secured Cash Management Agreements and Secured Hedge Agreements, the Grantors represent and warrant to each Secured Party as set forth below.

SECTION 3.1. As to Equity Interests of the Pledgors' Subsidiaries, Investment Property.

(a) With respect to any Material Subsidiary of any Grantor that is:

(i) a corporation, business trust, joint stock company or similar Person, all Equity Interests issued by such Subsidiary are duly authorized and validly issued, fully paid and non-assessable (or equivalent thereof to the extent applicable in the jurisdiction in which Equity Interests are issued), and represented by a certificate;

(ii) a limited liability company organized under the laws of any State of the United States, no Equity Interest issued by such Subsidiary expressly provides that such Equity Interest is a security governed by Article 8 of the UCC; and

(iii) a partnership or limited liability company, no Equity Interest issued by such Subsidiary (A) is dealt in or traded on securities exchanges or in

securities markets, or (B) is held in a Securities Account, except, with respect to this clause (a)(iii), Equity Interests (1) for which the Administrative Agent is the registered owner or (2) that are subject to a Control Agreement entered into by such Grantor, the Administrative Agent and the issuer of such Equity Interest.

(b) Each Grantor has delivered all Certificated Securities constituting Collateral held by such Grantor on the Closing Date to the Administrative Agent, together with duly executed undated blank stock powers, or other equivalent instruments of transfer reasonably acceptable to the Administrative Agent.

(c) With respect to Uncertificated Securities constituting Collateral (other than Uncertificated Securities credited to a Securities Account) owned by any Grantor, such Grantor has caused the issuer thereof either to (i) register the Administrative Agent as the registered owner of such security or (ii) agree in an authenticated record with such Grantor and the Administrative Agent that such issuer will comply with instructions with respect to such security originated by the Administrative Agent without further consent of such Grantor.

(d) The percentage of the issued and outstanding Equity Interests of each Subsidiary pledged by each Grantor hereunder is as set forth on Schedule I.

SECTION 3.2. Grantor Name, Location, etc.

(a) The jurisdiction in which each Grantor is located for purposes of Sections 9-301 and 9-307 of the UCC is set forth in Item A of Schedule II.

(b) Each location a secured party would have filed a UCC financing statement in the five years prior to the date hereof to perfect a security interest in Equipment, Inventory and General Intangibles owned by such Grantor is set forth in Item B of Schedule II.

(c) The Grantors do not have any trade names other than those set forth in Item C of Schedule II hereto.

(d) During the twelve months preceding the date hereof, no Grantor has been known by any legal name different from the one set forth on the signature page hereto, nor has such Grantor been the subject of any merger or other corporate reorganization or otherwise acquired assets outside of the ordinary course of business, except as set forth in Item D of Schedule II hereto.

(e) Each Grantor's state issued organizational identification number and federal taxpayer identification number is (and, during the four months preceding the date hereof, such Grantor has not had a federal taxpayer identification number different from that) set forth in Item E of Schedule II hereto.

(f) No Grantor is a party to any federal, state or local government contract except as set forth in Item F of Schedule II hereto.



(g) No Grantor maintains any Deposit Accounts, Securities Accounts or Commodity Accounts with any Person, in each case, except as set forth on Item G of Schedule II.

(h) No Grantor is the beneficiary of any Letters of Credit, except as set forth on Item H of Schedule II.

(i) No Grantor has Commercial Tort Claims in which a suit has been filed by such Grantor, except as set forth on Item I of Schedule II.

(j) The name set forth on the signature page attached hereto is the true and correct legal name (as defined in the UCC) of each Grantor.

(k) Each Grantor has used its best efforts to obtain a legal, valid and enforceable consent of each issuer of any Letter of Credit to the assignment of the Proceeds of such Letter of Credit to the Administrative Agent and no Grantor has consented to, and is otherwise aware of, any Person (other than the Administrative Agent pursuant hereto) having control (within the meaning of Section 9-107 of the UCC) over, or any other interest in any of such Grantor's rights in respect thereof.

SECTION 3.3. Ownership, No Liens, etc. Each Grantor has rights in or the power to transfer the Collateral, and each Grantor owns its Collateral free and clear of any Lien, except for any security interest (a) in the case of the Equity Interests of each Subsidiary pledged hereunder, created by this Security Agreement and (b) in all other Collateral (other than the Equity Interests of each Subsidiary pledged hereunder) that is a Permitted Lien. No effective financing statement or other filing similar in effect covering all or any part of the Collateral is on file in any recording office, except those filed in favor of the Administrative Agent relating to this Security Agreement, Permitted Liens (but only in the case of Collateral other than the Equity Interests of each Subsidiary pledged hereunder) or as to which a duly authorized termination statement relating to such financing statement or other instrument has been delivered to the Administrative Agent on the Closing Date.

SECTION 3.4. Possession of Inventory, Control; etc.

(a) Each Grantor has, and agrees that it will maintain, exclusive possession of its Documents, Instruments, Promissory Notes, Goods, Equipment and Inventory, other than (i) Equipment and Inventory in transit in the ordinary course of business, (ii) Equipment and Inventory that is in the possession or control of a warehouseman, bailee agent or other Person (other than a Person controlled by or under common control with the applicable Grantor) that has been notified of the security interest created in favor of the Secured Parties pursuant to this Security Agreement, and on or prior to the Funding Release Date, or such later date as the Administrative Agent shall agree, has authenticated a record acknowledging that it holds possession of such Collateral for the Secured Parties' benefit and waives any Lien held by it against such Collateral, and (iii) Instruments or Promissory Notes that have been delivered to the Administrative Agent pursuant to Section 3.5. In the case of Equipment or Inventory described in clause (ii) above, no lessor or warehouseman of any premises or warehouse upon or in which such

Equipment or Inventory is located has (i) issued any warehouse receipt or other receipt in the nature of a warehouse receipt in respect of any such Equipment or Inventory, (ii) issued any Document for any such Equipment or Inventory, (iii) received notification of any Secured Party's interest (other than the security interest granted hereunder) in any such Equipment or Inventory or (iv) any Lien on any such Equipment or Inventory.

(b) Each Grantor is the sole entitlement holder of its Securities Accounts and Commodities Accounts and no other Person (other than the Administrative Agent pursuant to this Security Agreement or any other Person with respect to Permitted Liens) has control or possession of, or any other interest in, any of such accounts or any other securities or property credited thereto.

SECTION 3.5. Negotiable Documents, Instruments and Chattel Paper. Each Grantor has delivered to the Administrative Agent possession of all originals of all Documents, Instruments, Promissory Notes, and tangible Chattel Paper constituting Collateral and owned or held by such Grantor on the Closing Date duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 3.6. Intellectual Property Collateral.

(a) In respect of the Intellectual Property Collateral:

(i) set forth in Item A of Schedule III hereto is a complete and accurate list of all issued and applied-for Patents owned by each Grantor, including those that have been issued by or are on file with the United States Patent and Trademark Office or corresponding offices in other countries of the world, and set forth in Item B of Schedule III hereto is a complete and accurate list of all Patent Licenses;

(ii) set forth in Item A of Schedule IV hereto is a complete and accurate list all registered and applied-for Trademarks owned by each Grantor, including those that are registered, or for which an application for registration has been made, with the United States Patent and Trademark Office or corresponding offices in other countries of the world, and set forth in Item B of Schedule IV hereto is a complete and accurate list all Trademark Licenses; and

(iii) set forth in Item A of Schedule V hereto is a complete and accurate list of all registered and applied-for Copyrights owned by each Grantor, including those that are registered, or for which an application for registration has been made, with the United States Copyright Office or corresponding offices in other countries of the world, and set forth in Item B of Schedule V hereto is a complete and accurate list of all Copyright Licenses, including an indication of which of those Copyright Licenses are exclusive licenses granted to such Grantor in respect of any Copyright that is registered with the United States Copyright Office.

(b) Except as disclosed on Schedules III through V, or otherwise disclosed to the Administrative Agent, in respect of each Grantor:

(i) to the best of such Grantor's knowledge after due and diligent investigation and inquiry, the Owned Intellectual Property Collateral is valid, subsisting, unexpired and enforceable and has not been abandoned or adjudged invalid or unenforceable, in whole or in part;

(ii) such Grantor is the sole and exclusive owner of the entire right, title and interest in and to the Owned Intellectual Property Collateral (subject to Permitted Liens), and no claim has been made that such Grantor is or may be, in conflict with, infringing, misappropriating, diluting, misusing or otherwise violating any of the rights of any third party or that challenges the ownership, use, protectability, registerability, validity, enforceability of any Owned Intellectual Property Collateral or, to such Grantor's knowledge, any other Intellectual Property Collateral and, to such Grantor's knowledge, there is no valid basis for any such claims;

(iii) such Grantor has made all filings and recordations that it has reasonably deemed appropriate to protect its interest in any Owned Intellectual Property Collateral that is material to the business of such Grantor, including recordations of all of its interests in the Patent Collateral, the Trademark Collateral and the Copyright Collateral in the United States Patent and Trademark Office, the United States Copyright Office and corresponding offices in other countries of the world, as appropriate;

(iv) such Grantor has taken all reasonable steps to safeguard its Trade Secrets and to its knowledge (A) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated for the benefit of any other Person other than such Grantor; (B) no employee, independent contractor or agent of such Grantor has misappropriated any Trade Secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (C) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's Intellectual Property Collateral;

(v) no action by such Grantor is currently pending which asserts that any third party is infringing, misappropriating, diluting, misusing or voiding any Owned Intellectual Property Collateral and, to such Grantor's knowledge, no third party is infringing upon, misappropriating, diluting, misusing or voiding any Intellectual Property owned or used by such Grantor in any material respect, or any of its respective licensees;

(vi) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by such Grantor or to which such Grantor is bound that adversely affects its rights to own or use any Intellectual Property Collateral;

(vii) except for the Permitted Liens, such Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale or transfer of any Intellectual Property Collateral for purposes of granting a security interest or as collateral that has not been terminated or released;

(viii) such Grantor has executed and delivered to the Administrative Agent, Intellectual Property Collateral security agreements for all Copyrights, Patents and Trademarks owned by such Grantor, including all Copyrights, Patents and Trademarks on Schedules III, IV or V (as such schedules may be amended or supplemented from time to time);

(ix) such Grantor uses adequate standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with any Trademarks and has taken all commercially reasonable action necessary to ensure that all licensees of any Trademarks owned by such Grantor use such adequate standards of quality;

(x) the consummation of the transactions contemplated by the Loan Documents will not result in the termination or material impairment of any of the Intellectual Property Collateral;

(xi) all employees, independent contractors and agents who have contributed to the creation or development of any Owned Intellectual Property Collateral have been a party to an enforceable "work for hire" and assignment agreement with such Grantor in accordance with applicable Laws, according and granting exclusive ownership of such Owned Intellectual Property Collateral to such Grantor; and

(xii) such Grantor owns directly or is entitled to use by license or otherwise, all Intellectual Property used in, reasonably necessary for or material to the conduct of such Grantor's business.

#### SECTION 3.7. Validity, etc.

(a) This Security Agreement creates a valid security interest in the Collateral securing the payment of the Obligations.

(b) Each Grantor has filed or caused to be filed all UCC-1 financing statements in the filing office for each Grantor's jurisdiction of organization listed in Item A of Schedule II (collectively, the "Filing Statements") (or has authenticated and delivered to the Administrative Agent the Filing Statements suitable for filing in such offices) and has taken all other:

(i) actions necessary to obtain control of the Collateral as provided in Sections 9-104, 9-105, 9-106 and 9-107 of the UCC, provided that entering into and delivering any Control Agreement shall be deemed reasonably necessary; and

(ii) actions reasonably necessary to perfect the Administrative Agent's security interest with respect to any Collateral evidenced by a certificate of ownership.

(c) Upon the filing of the Filing Statements with the appropriate agencies therefor the security interests created under this Security Agreement shall constitute a perfected security interest in the Collateral described on such Filing Statements in favor of the Administrative Agent on behalf of the Secured Parties to the extent that a security interest therein may be perfected by filing pursuant to the relevant UCC, prior to all other Liens, except for Permitted Liens that are senior by operation of Law (in which case such security interest shall be second in priority of right only to the Permitted Liens until the obligations secured by such Permitted Liens have been satisfied).

SECTION 3.8. Authorization, Approval, etc. Except as have been obtained or made and are in full force and effect, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required either:

(a) for the grant by the Grantors of the security interest granted hereby or for the execution, delivery and performance of this Security Agreement by the Grantors;

(b) for the perfection or maintenance of the security interests hereunder including the first priority (subject to Permitted Liens that are senior by operation of Law (in which case such security interest shall be second in priority of right only to the Permitted Liens until the obligations secured by such Permitted Liens have been satisfied)) nature of such security interest (except with respect to the Filing Statements or, with respect to Intellectual Property Collateral, the recordation of any agreements with the United States Patent and Trademark Office or the United States Copyright Office) or the exercise by the Administrative Agent of its rights and remedies hereunder; or

(c) for the exercise by the Administrative Agent of the voting or other rights provided for in this Security Agreement, or, except (i) with respect to any securities issued by a Subsidiary of the Grantors, as may be required in connection with a disposition of such securities by Laws affecting the offering and sale of securities generally, the remedies in respect of the Collateral pursuant to this Security Agreement and (ii) any "change of control" or similar filings required by state licensing agencies.

SECTION 3.9. Best Interests. It is in the best interests of each Grantor (other than the Company) to execute this Security Agreement inasmuch as such Grantor will, as a result of being a Subsidiary of the Company, derive substantial direct and indirect benefits from the Credit Extensions made from time to time to the Company and Amerigon Germany by the Lenders pursuant to the Credit Agreement and the execution and delivery of the Secured Cash Management Agreements and Secured Hedge Agreements among the Loan Parties and certain Secured Parties, and each Grantor agrees that the Secured Parties are relying on this representation in agreeing to make such Credit Extensions pursuant to the Credit Agreement to the Company and Amerigon Germany.

ARTICLE IV  
COVENANTS

Each Grantor covenants and agrees that, until following the Termination Date, such Grantor will perform, comply with and be bound by the obligations set forth below.

SECTION 4.1. As to Investment Property; Deposit Accounts, etc.

SECTION 4.1.1. Equity Interests of the Pledgors' Subsidiaries. No Grantor will allow any of its Subsidiaries:

(a) that is a corporation, business trust, joint stock company or similar Person, to issue Uncertificated Securities;

(b) that is a partnership or limited liability company, to (i) issue Equity Interests that are to be dealt in or traded on securities exchanges or in securities markets, (ii) expressly provide in its Organization Documents that its Equity Interests are securities governed by Article 8 of the UCC, or (iii) place such Subsidiary's Equity Interests in a Securities Account, except, with respect to this clause (b), Equity Interests (1) for which the Administrative Agent is the registered owner or (2) that are subject to a Control Agreement entered into by such Grantor, the Administrative Agent and the issuer of such Equity Interests; and

(c) to issue Equity Interests in addition to or in substitution for the Equity Interests pledged hereunder, except to such Grantor (and such Equity Interests are promptly pledged and delivered to the Administrative Agent pursuant to the terms of this Security Agreement).

SECTION 4.1.2. Certificated and Uncertificated Securities.

(a) Such Grantor will deliver all Certificated Securities that constitute Collateral owned or held by such Grantor to the Administrative Agent, together with duly executed undated blank stock powers, or other equivalent instruments of transfer reasonably acceptable to the Administrative Agent.

(b) Such Grantor will cause the issuer of any and all Uncertificated Securities (other than Uncertificated Securities credited to a Securities Account) constituting Investment Property and Collateral owned or held by such Grantor, to either (i) register the Administrative Agent as the registered owner thereof on the books and records of the issuer or (ii) execute a Control Agreement relating to such Investment Property pursuant to which the issuer agrees to comply with the Administrative Agent's instructions with respect to such Uncertificated Securities without further consent by such Grantor.

SECTION 4.1.3. Deposit Accounts, Securities Accounts and Commodities Accounts. Such Grantor will:

(a) maintain all of its Deposit Accounts only with the Administrative Agent or with any depository institution that has entered into a Control Agreement in favor of the

Administrative Agent; provided that such Grantor shall not be required to enter into and deliver Control Agreements for any account (i) maintained exclusively for the purpose of payroll, 401(k) and other retirement plans and employee benefits and healthcare benefits, (ii) maintained for the purpose of holding the cash collateral as provided for on Schedule 7.01 to the Credit Agreement or (iii) other Deposit Accounts with an aggregate balance of all funds in such Deposit Account not in excess of \$300,000, individually, or \$400,000 in the aggregate for all such Deposit Accounts at any time; and

(b) cause the intermediary maintaining any Securities Accounts, Commodity Accounts, Commodity Contracts or Security Entitlements constituting Investment Property owned or held by any Grantor, to execute a Control Agreement relating to such Investment Property.

SECTION 4.1.4. Negotiable Documents, Instruments and Chattel Paper. Each Grantor agrees that it will, promptly following receipt thereof, deliver to the Administrative Agent possession of all originals of negotiable Documents, Instruments, Promissory Notes and Chattel Paper that it acquires following the Closing Date duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent. No Grantor shall create any tangible Chattel Paper without placing a legend on such tangible Chattel Paper reasonably acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper.

SECTION 4.1.5. Distributions; Voting Rights; etc. Each Grantor agrees promptly upon receipt of notice of the occurrence of an Event of Default from the Administrative Agent and without any request therefor by the Administrative Agent, so long as such Event of Default shall continue:

(a) to deliver (properly endorsed where required hereby or requested by the Administrative Agent) to the Administrative Agent all Distributions with respect to Investment Property that is Collateral, all interest, principal, other cash payments on Payment Intangibles, and all Proceeds of the Collateral, in each case thereafter received by such Grantor, all of which shall be held by the Administrative Agent as additional Collateral; and

(b) with respect to Collateral consisting of general partner interests or limited liability company interests;

(i) to promptly modify its Organization Documents to admit the Administrative Agent as a general partner or member, as applicable;

(ii) so long as the Administrative Agent has notified such Grantor of the Administrative Agent's intention to exercise its voting power under this clause, that the Administrative Agent may exercise (to the exclusion of such Grantor) the voting power and all other incidental rights of ownership with respect to any Investment Property constituting Collateral and such Grantor

hereby grants the Administrative Agent an irrevocable proxy, exercisable under such circumstances, to vote such Investment Property; and

(iii) to promptly deliver to the Administrative Agent such additional proxies and other documents as may be reasonably necessary to allow the Administrative Agent to exercise such voting power.

All dividends, Distributions, interest, principal, cash payments, Payment Intangibles and Proceeds that may at any time and from time to time be held by such Grantor, but which such Grantor is then obligated to deliver to the Administrative Agent, shall, until delivery to the Administrative Agent, be held by such Grantor separate and apart from its other property in trust for the Administrative Agent. The Administrative Agent agrees that unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given the notice referred to in this Section 4.1.5, such Grantor will have the exclusive voting power with respect to any Investment Property constituting Collateral and the Administrative Agent will, upon the written request of such Grantor, promptly deliver such proxies and other documents, if any, as shall be reasonably requested by such Grantor which are necessary to allow such Grantor to exercise that voting power; provided that no vote shall be cast, or consent, waiver, or ratification given, or action taken by such Grantor that would impair the value of any such Collateral or be inconsistent with or violate any provision of any Loan Document.

SECTION 4.1.6. Continuous Pledge. Each Grantor will at all times keep pledged to the Administrative Agent pursuant hereto, on a first-priority, perfected basis all Investment Property, all Distributions with respect thereto, all Payment Intangibles to the extent they are evidenced by a Document, Instrument, Promissory Note or Chattel Paper, and all interest and principal with respect to such Payment Intangibles, and all Proceeds and rights from time to time received by or distributable to such Grantor in respect of any of the foregoing Collateral.

SECTION 4.2. Change of Name, etc. No Grantor will change its name or place of incorporation or organization or federal taxpayer identification number except upon 30 days' prior written notice to the Administrative Agent.

SECTION 4.3. As to Accounts.

(a) Each Grantor shall have the right to collect all Accounts so long as no Event of Default shall have occurred and be continuing.

(b) Upon (i) the occurrence and during the continuance of an Event of Default and (ii) the delivery of written notice (unless an Event of Default pursuant to clause (f) of the definition thereof shall have occurred, in which case, no such notice shall be required) by the Administrative Agent to each Grantor, all Proceeds of Collateral received by such Grantor shall be delivered in kind to the Administrative Agent for deposit in a Deposit Account of such Grantor maintained with the Administrative Agent (together with any other Accounts pursuant to which any portion of the Collateral is deposited with the Administrative Agent, the "Collateral Accounts"), and such Grantor shall not commingle any such Proceeds, and shall hold separate and apart from all other property, all such



Proceeds in express trust for the benefit of the Administrative Agent until delivery thereof is made to the Administrative Agent.

(c) Following the delivery of notice pursuant to clause (b)(ii), the Administrative Agent shall have the right to apply any amount in the Collateral Account to the payment of any Obligations which are due and payable.

(d) With respect to each of the Collateral Accounts, it is hereby confirmed and agreed that (i) deposits in such Collateral Account are subject to a security interest as contemplated hereby, (ii) such Collateral Account shall be under the control of the Administrative Agent and (iii) the Administrative Agent shall have the sole right of withdrawal over such Collateral Account.

(e) The Administrative Agent will make available to the applicable Grantor all amounts in any Collateral Account upon the request of such Grantor, so long as no Event of Default has occurred and is then continuing (as certified by the Company to the Administrative Agent).

**SECTION 4.4. As to Grantors' Use of Collateral.**

(a) Subject to clause (b), each Grantor (i) may in the ordinary course of its business, at its own expense, sell, lease or furnish under the contracts of service any of the Inventory normally held by such Grantor for such purpose, and use and consume, in the ordinary course of its business, any raw materials, work in process or materials normally held by such Grantor for such purpose, (ii) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as the Administrative Agent may request following the occurrence and during the continuance of an Event of Default or, in the absence of such request, as such Grantor may deem advisable, and (iii) may grant, in the ordinary course of business, to any party obligated on any of the Collateral, any rebate, refund or allowance to which such party may be lawfully entitled, and may accept, in connection therewith, the return of Goods, the sale or lease of which shall have given rise to such Collateral.

(b) At any time following the occurrence and during the continuance of an Event of Default, whether before or after the maturity of any of the Obligations, the Administrative Agent may (i) revoke any or all of the rights of each Grantor set forth in clause (a), (ii) notify any parties obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder and (iii) enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby.

(c) Upon the request of the Administrative Agent following the occurrence and during the continuance of an Event of Default, each Grantor will, at its own expense,

notify any parties obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder.

(d) At any time following the occurrence and during the continuation of an Event of Default, the Administrative Agent may endorse, in the name of such Grantor, any item, howsoever received by the Administrative Agent, representing any payment on or other Proceeds of any of the Collateral.

(e) No Grantor shall take or omit to take any action the taking or the omission of which would result in any impairment in the collectability of, or any other material impairment or alteration of, any obligation of the maker of any Payment Intangible or other Instrument constituting Collateral, except as otherwise provided in this Section 4.4.

SECTION 4.5. As to Intellectual Property Collateral. Each Grantor covenants and agrees to comply with the following provisions as such provisions relate to any Intellectual Property Collateral material to the operations or business of such Grantor:

(a) such Grantor shall not (i) do or fail to perform any act whereby any of the Patent Collateral may lapse or become abandoned or dedicated to the public or unenforceable, (ii) itself or permit any of its licensees to (A) fail to continue to use any of the Trademark Collateral in order to maintain the Trademark Collateral in full force free from any claim of abandonment for non-use, (B) fail to maintain as in the past the quality of products and services offered under the Trademark Collateral, (C) fail to employ the Trademark Collateral registered with any federal or state or foreign authority with an appropriate notice of such registration, (D) adopt or use any other Trademark which is confusingly similar or a colorable imitation of any of the Trademark Collateral, unless rights in such Trademark Collateral inure solely to Grantor and do not infringe or weaken the validity or enforceability of any of the Intellectual Property Collateral or (E) do or permit any act or knowingly omit to do any act whereby any of the Trademark Collateral may lapse or become invalid or unenforceable, or (iii) do or permit any act or knowingly omit to do any act whereby any of the Copyright Collateral or any of the Trade Secrets Collateral may lapse or become invalid or unenforceable or placed in the public domain except upon expiration of the end of an unrenovable term of a registration thereof, unless, in the case of any of the foregoing requirements in clauses (i), (ii) and (iii), such Grantor shall reasonably and in good faith determine that any of such Intellectual Property Collateral is of negligible economic value to such Grantor, and the loss of such Intellectual Property Collateral would not have a Material Adverse Effect on the business;

(b) such Grantor shall promptly notify the Administrative Agent if it knows, or reasonably suspects, that any application or registration relating to any material item of the Intellectual Property Collateral may become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any foreign counterpart thereof or any court) regarding such

Grantor's ownership of any Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same;

(c) such Grantor shall inform the Administrative Agent (i) concurrently with the delivery of the Compliance Certificate by the Company with respect to fiscal quarters ending June and December of such Grantor or any of its agents, employees, designees or licensees filing an application with the United States Patent and Trademark Office or corresponding offices in other countries of the world with respect to the registration of any Patent or any Trademark or (ii) of such Grantor receiving, as owner or exclusive licensee, (A) within fifteen (15) days thereafter with respect to a material Copyright registration or (B) within thirty (30) days after the end of each fiscal year with respect to any other Copyright registration with the United States Copyright Office or corresponding offices in other countries of the world, and upon request of the Administrative Agent, promptly execute and deliver an Intellectual Property Security Agreement substantially in the form set forth as Exhibits A, B and C hereto and other documents as the Administrative Agent may reasonably request to evidence the Administrative Agent's security interest in such Intellectual Property Collateral;

(d) such Grantor shall take all reasonably necessary steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office and corresponding offices in other countries of the world, to maintain and pursue any application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, the Intellectual Property Collateral, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and the payment of fees and taxes (except to the extent that dedication, abandonment or invalidation is permitted under the foregoing clause (a) or (b)); and

(e) such Grantor shall (i) execute and deliver to the Administrative Agent a Patent Security Agreement or a Trademark Security Agreement in the form of Exhibit A and Exhibit B, as applicable, concurrently with the delivery of the Compliance Certificate by the Company with respect to fiscal quarters ending June and December with respect to any Patent or any Trademark and (ii) execute and deliver to the Administrative Agent a Copyright Security Agreement in the form of Exhibit C (A) promptly, but within fifteen (15) days, after it obtains an ownership interest or an exclusive license in any material Copyright and (B) within thirty (30) days after the end of each fiscal year if it obtains an ownership interest or an exclusive license in any other Copyright, and, in each case, such Grantor shall execute and deliver to the Administrative Agent any other document required to acknowledge or register, record or perfect the Administrative Agent's interest in any part of such item of Intellectual Property unless such Grantor shall determine in good faith using its commercially reasonable business judgment (with the consent of the Administrative Agent) that any such Intellectual Property is not material and is of negligible economic value to such Grantor.

SECTION 4.6. As to Letter-of-Credit Rights.

(a) Each Grantor, by granting a security interest in its Letter-of-Credit Rights to the Administrative Agent, intends to (and hereby does) collaterally assign to the Administrative Agent its rights (including its contingent rights ) to the Proceeds of all Letter-of-Credit Rights of which it is or hereafter becomes a beneficiary or assignee. Such Grantor will promptly use its best efforts to cause the issuer of each letter of credit and each nominated person (if any) with respect thereto to consent to such assignment of the Proceeds thereof in a consent agreement in form and substance satisfactory to the Administrative Agent and deliver written evidence of such consent to the Administrative Agent.

(b) Upon the occurrence and during the continuance of an Event of Default, such Grantor will, promptly upon request by the Administrative Agent, (i) notify (and such Grantor hereby authorizes the Administrative Agent to notify) the issuer and each nominated person with respect to each of the letters of credit issued in favor of such Grantor that the Proceeds thereof have been assigned to the Administrative Agent hereunder and any payments due or to become due in respect thereof are to be made directly to the Administrative Agent and (ii) arrange for the Administrative Agent to become the transferee beneficiary of such letter of credit.

SECTION 4.7. As to Commercial Tort Claims. Each Grantor covenants and agrees that, until the Termination Date, with respect to any Commercial Tort Claim hereafter arising, it shall deliver to the Administrative Agent a supplement in form and substance reasonably satisfactory to the Administrative Agent, together with all supplements to schedules thereto identifying such new Commercial Tort Claims and take all such action reasonably requested by the Administrative Agent to grant to the Administrative Agent and perfect a security interest in such Commercial Tort Claim.

SECTION 4.8. Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the U.S. Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with such Grantor that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for the Grantor to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the U.S. Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such electronic chattel paper or transferable record.

SECTION 4.9. Further Assurances, etc. Each Grantor agrees that, from time to time at its own expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or that the Administrative Agent may reasonably request, in order to perfect, preserve and protect any security interest granted or purported to be granted hereby or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, such Grantor will:

(a) from time to time upon the request of the Administrative Agent, promptly deliver to the Administrative Agent such stock powers, instruments and similar documents, reasonably satisfactory in form and substance to the Administrative Agent, with respect to such Collateral as the Administrative Agent may reasonably request and will, from time to time upon the request of the Administrative Agent, after the occurrence and during the continuance of any Event of Default, promptly transfer any securities constituting Collateral into the name of any nominee designated by the Administrative Agent;

(b) file (and hereby authorize the Administrative Agent to file) such Filing Statements or continuation statements, or amendments thereto, and such other instruments or notices (including any assignment of claim form under or pursuant to the federal assignment of claims statute, 31 U.S.C. § 3726, any successor or amended version thereof or any regulation promulgated under or pursuant to any version thereof), as may be reasonably necessary or that the Administrative Agent may reasonably request in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Administrative Agent hereby; and

(c) furnish to the Administrative Agent, from time to time at the Administrative Agent's request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail.

With respect to the foregoing and the grant of the security interest hereunder, each Grantor hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral; and to make all relevant filings with the United States Patent and Trademark Office, the United States Copyright Office and corresponding offices in other countries of the world in respect of the Intellectual Property Collateral. Each Grantor agrees that a carbon, photographic or other reproduction of this Security Agreement or any UCC financing statement covering the Collateral or any part thereof shall be sufficient as a UCC financing statement where permitted by Law. Each Grantor hereby authorizes the Administrative Agent to file financing statements describing as the collateral covered thereby "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the Collateral described in this Security Agreement.

ARTICLE V  
THE ADMINISTRATIVE AGENT

SECTION 5.1. Administrative Agent Appointed Attorney-in-Fact. Each Grantor hereby irrevocably appoints the Administrative Agent its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Administrative Agent's discretion, following the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument which the Administrative Agent may deem necessary or advisable to accomplish the purposes of this Security Agreement, including:

- (a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (b) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper, in connection with clause (a) above;
- (c) to file any claims or take any action or institute any proceedings which the Administrative Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Administrative Agent with respect to any of the Collateral; and
- (d) to perform the affirmative obligations of such Grantor hereunder.

Each Grantor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is irrevocable and coupled with an interest.

SECTION 5.2. Administrative Agent Has No Duty. The powers conferred on the Administrative Agent hereunder are solely to protect its interest (on behalf of the Secured Parties) in the Collateral and shall not impose any duty on it to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral or responsibility for:

- (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Investment Property, whether or not the Administrative Agent has or is deemed to have knowledge of such matters; or
- (b) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

SECTION 5.3. Reasonable Care. The Administrative Agent is required to exercise reasonable care in the custody and preservation of any of the Collateral in its possession; provided that the Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of (a) any of the Collateral in its physical possession, if it handles the custody and preservation of the Collateral in the same manner as it deals with similar property for its own account and (b) any other Collateral, if it takes such action for that purpose as each Grantor reasonably requests in writing at times other than upon the occurrence and during the continuance of any Event of Default, but failure of the Administrative Agent to comply with any such request at any time shall not in itself be deemed a failure to exercise reasonable care.

ARTICLE VI  
REMEDIES

SECTION 6.1. Certain Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and also may:

(i) take possession of any Collateral not already in its possession without demand and without legal process;

(ii) require each Grantor to, and each Grantor hereby agrees that it will, at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place to be designated by the Administrative Agent that is reasonably convenient to both parties;

(iii) enter onto the property where any Collateral is located and take possession thereof without demand and without legal process;

(iv) deliver any notice of exclusive control under any Control Agreement; and

(v) without notice except as specified below, lease, license, sell or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale shall be required by Law, at least ten days' prior written notice (unless an Event of Default pursuant to clause (f) of the definition thereof shall have occurred, in which case, no such notice shall be required) to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash Proceeds received by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral shall be applied by the Administrative Agent against, all or any part of the Obligations as set forth in Section 8.03 of the Credit Agreement.

(c) The Administrative Agent may:

(i) transfer all or any part of the Collateral into the name of the Administrative Agent or its nominee, with or without disclosing that such Collateral is subject to the Lien hereunder;

(ii) notify the parties obligated on any of the Collateral to make payment to the Administrative Agent of any amount due or to become due thereunder;

(iii) withdraw, or cause or direct the withdrawal, of all funds with respect to the Collateral Account;

(iv) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto;

(v) endorse any checks, drafts, or other writings in any Grantor's name to allow collection of the Collateral;

(vi) take control of any Proceeds of the Collateral; and

(vii) execute (in the name, place and stead of any Grantor) endorsements, assignments, stock powers and other instruments of conveyance or transfer with respect to all or any of the Collateral.

(d) Without limiting the foregoing, in respect of the Intellectual Property Collateral:

(i) upon the request of the Administrative Agent, each Grantor shall execute and deliver to the Administrative Agent an assignment or assignments of the Intellectual Property Collateral, subject (in the case of any licenses thereunder) to any valid and enforceable requirements to obtain consents from any third parties, and such other documents as are necessary or appropriate to carry out the intent and purposes hereof;

(ii) each Grantor agrees that the Administrative Agent may file applications and maintain registrations for the protection of the Intellectual Property Collateral and/or bring suit in the name of such Grantor, the Administrative Agent or any Secured Party to enforce the Intellectual Property Collateral and any licenses thereunder and, upon the request of the Administrative Agent, each Grantor shall use all commercially reasonable efforts to assist with such filing or enforcement (including the execution of relevant documents); and

(iii) in the event that the Administrative Agent elects not to make any filing or bring any suit as set forth in clause (ii), each Grantor shall, upon the request of Administrative Agent, use all commercially reasonable efforts, whether through making appropriate filings or bringing suit or otherwise, to protect,



enforce and prevent the infringement, misappropriation, dilution, unauthorized use or other violation of the Intellectual Property Collateral.

Notwithstanding the foregoing provisions of this Section 6.1, for the purposes of this Section 6.1, “Collateral” and “Intellectual Property Collateral” shall include any “intent to use” trademark application only to the extent (i) that the business of such Grantor, or portion thereof, to which that mark pertains is also included in the Collateral and (ii) that such business is ongoing and existing.

SECTION 6.2. Securities Laws. If the Administrative Agent shall determine to exercise its right to sell all or any of the Collateral that are Equity Interests pursuant to Section 6.1, each Grantor agrees that, upon request of the Administrative Agent, each Grantor will, at its own expense:

(a) execute and deliver, and cause (or, with respect to any issuer which is not a Subsidiary of such Grantor, use its best efforts to cause) each issuer of the Collateral contemplated to be sold and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary or, in the opinion of the Administrative Agent, advisable to register such Collateral under the provisions of the Securities Act of 1933, as from time to time amended (the “Securities Act”), and cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by Law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto;

(b) use its best efforts to exempt the Collateral under the state securities or “Blue Sky” laws and to obtain all necessary governmental approvals for the sale of the Collateral, as requested by the Administrative Agent;

(c) cause (or, with respect to any issuer that is not a Subsidiary of such Grantor, use its best efforts to cause) each such issuer to make available to its security holders, as soon as practicable, an earnings statement that will satisfy the provisions of Section 11(a) of the Securities Act; and

(d) do or cause to be done all such other acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable Law.

(e) Each Grantor acknowledges the impossibility of ascertaining the amount of damages that would be suffered by the Administrative Agent or the Secured Parties by reason of the failure by such Grantor to perform any of the covenants contained in this Section and consequently agrees that, if such Grantor shall fail to perform any of such covenants, it shall pay, as liquidated damages and not as a penalty, an amount equal to the value (as reasonably determined by the Administrative Agent) of such Collateral on the date the Administrative Agent shall demand compliance with this Section.

SECTION 6.3. Compliance with Restrictions. Each Grantor agrees that in any sale of any of the Collateral whenever an Event of Default shall have occurred and be continuing, the Administrative Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and such Grantor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Administrative Agent be liable nor accountable to such Grantor for any discount allowed by the reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

SECTION 6.4. Protection of Collateral. The Administrative Agent may from time to time, at its option, (a) perform any act required under this Agreement or otherwise necessary to carry out the intent and purpose of this Agreement which any Grantor fails to perform after being requested in writing so to perform (it being understood that no such request need be given after the occurrence and during the continuance of an Event of Default) and (b) take any other action which the Administrative Agent deems reasonably necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein and, in each case, the expenses of the Administrative Agent incurred in connection therewith shall be payable by such Grantor pursuant to and consistent with Section 10.04 of the Credit Agreement.

#### ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.1. Loan Document. This Security Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof. To the extent of any conflict between the terms contained in this Security Agreement and the terms contained in the Credit Agreement, the terms of the Credit Agreement shall control.

SECTION 7.2. Binding on Successors, Transferees and Assigns; Assignment. This Security Agreement shall remain in full force and effect until the Termination Date has occurred, shall be binding upon the Grantors and their successors, transferees and assigns and shall inure to the benefit of and be enforceable by each Secured Party and its successors, transferees and assigns; provided that no Grantor may (unless otherwise permitted under the terms of the Credit Agreement or this Security Agreement) assign any of its obligations hereunder without the prior written consent of all Lenders.

SECTION 7.3. Amendments, etc. No amendment to or waiver of any provision of this Security Agreement, nor consent to any departure by any Grantor from its obligations under this Security Agreement, shall in any event be effective unless the same shall be in writing and

signed by the Administrative Agent (on behalf of the Lenders or the Required Lenders, as the case may be, pursuant to Section 10.01 of the Credit Agreement) and the Grantors and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7.4. Notices. All notices and other communications provided for hereunder shall be in writing or by facsimile and addressed, delivered or transmitted to the appropriate party at the address or facsimile number of such party (in the case of any Grantor, in care of the Company) specified in the Credit Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other party. Any notice or other communication, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any such notice or other communication, if transmitted by facsimile, shall be deemed given when transmitted and electronically confirmed.

SECTION 7.5. Release of Liens. Upon (a) the Disposition of Collateral in accordance with the Credit Agreement or (b) the occurrence of the Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Collateral (in the case of clause (a)) or (ii) all Collateral (in the case of clause (b)), without delivery of any instrument or performance of any act by any party. Upon the occurrence of the Termination Date, this Agreement and all obligations of each Grantor hereunder shall automatically terminate without delivery of any instrument or performance of any act by any party. Upon the consummation of any transaction or termination permitted by the Credit Agreement, the Administrative Agent will, at the Grantors' sole expense, deliver to the Grantors, without any representations, warranties or recourse of any kind whatsoever, all Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 7.6. Additional Grantors. Upon the execution and delivery by any other Person of a supplement in the form of Annex I hereto (the "Security Agreement Supplement"), such Person shall become a "Grantor" hereunder with the same force and effect as if it were originally a party to this Security Agreement and named as a "Grantor" hereunder. The execution and delivery of such supplement shall not require the consent of any other Grantor hereunder, and the rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

SECTION 7.7. No Waiver; Remedies. In addition to, and not in limitation of Section 2.4, no failure on the part of any Secured Party to exercise, and no delay 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 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 remedies provided by Law

SECTION 7.8. Headings. The various headings of this Security Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Security Agreement or any provisions thereof.

SECTION 7.9. Severability. If any provision of this Security 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 Security 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.

SECTION 7.10. Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH GRANTOR 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 SECURITY 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 SECURITY 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 SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH GRANTOR 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 SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (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 IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE CREDIT AGREEMENT. EACH FOREIGN OBLIGOR HEREBY IRREVOCABLY APPOINTS THE COMPANY, AS ITS AUTHORIZED AGENT TO RECEIVE ON ITS BEHALF SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT AND CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY SUCH COURTS BY MAILING A COPY THEREOF, BY REGISTERED MAIL, POSTAGE PREPAID, TO SUCH AGENT AT SUCH ADDRESS, AND AGREES THAT SUCH SERVICE, TO THE FULLEST EXTENT PERMITTED BY LAW: (I) SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON IT IN ANY SUCH SUIT, ACTION OR PROCEEDING; AND (II) SHALL BE TAKEN AND HELD TO BE VALID PERSONAL SERVICE UPON AND PERSONAL DELIVERY TO IT. IF ANY AGENT APPOINTED BY ANY PERSON PARTY HERETO REFUSES TO ACCEPT SERVICE, SUCH PERSON HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL UPON RECEIPT CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN CONTAINED SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF ANY OTHER PERSON PARTY HERETO TO BRING PROCEEDINGS AGAINST SUCH PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

SECTION 7.11. 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 SECURITY 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 SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 7.12. Counterparts. This Security Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery of an executed counterpart of a signature page to this Security Agreement by facsimile or via other electronic means shall be effective as delivery of a manually executed counterpart of this Security Agreement.

SECTION 7.13. Security Agreements. Without limiting any of the rights, remedies, privileges or benefits provided hereunder to the Administrative Agent for its benefit and the ratable benefit of the other Secured Parties, each Grantor and the Administrative Agent hereby agree that the terms and provisions of this Security Agreement in respect of any Collateral

subject to the pledge or other Lien of any other Security Agreement (as defined in the Credit Agreement) are, and shall be deemed to be, supplemental and in addition to the rights, remedies, privileges and benefits provided to the Administrative Agent and the other Secured Parties under such other Security Agreement (as defined in the Credit Agreement) and under applicable Law to the extent consistent with applicable Law; provided that, in the event that the terms of this Security Agreement conflict or are inconsistent with the applicable other Security Agreement (as defined in the Credit Agreement) or applicable Law governing such other Security Agreement (as defined in the Credit Agreement), (a) to the extent that the provisions of such other Security Agreement (as defined in the Credit Agreement) or applicable foreign Law are, under applicable foreign Law, necessary for the creation, perfection or priority of the security interests in the Collateral subject to such foreign pledge agreement, the terms of such other Security Agreement (as defined in the Credit Agreement) or such applicable Law shall be controlling and (b) otherwise, the terms hereof shall be controlling.

IN WITNESS WHEREOF, each of the parties hereto has caused this Pledge and Security Agreement to be duly executed and delivered by its Responsible Officer as of the date first written above.

AMERIGON INCORPORATED

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

AMERIGON EUROPE GMBH

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

BSST LLC

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

ZT PLUS, LLC

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

*Pledge and Security Agreement*

BANK OF AMERICA, N.A.,  
as Administrative Agent

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

Name:

Title:

*Pledge and Security Agreement*



\*SCHEDULE I  
to Security Agreement

\*SCHEDULE II  
to Security Agreement

\*SCHEDULE III  
to Security Agreement

\*SCHEDULE IV  
to Security Agreement

\*SCHEDULE V  
to Security Agreement

\*SCHEDULE VI  
to Security Agreement

\*The Registrant hereby agrees to furnish supplementally a copy of any omitted schedule to the Commission upon request.

PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT, dated as of March [ ], 2011 (this "Agreement"), is made by [NAME OF GRANTOR], a \_\_\_\_\_ (the "Grantor"), in favor of BANK OF AMERICA, N.A., as the administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to a Credit Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Amerigon Incorporated, a Michigan corporation and Amerigon Europe GmbH, a German limited liability company, the various financial institutions and other Persons from time to time party thereto, as lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to and maintain Loans with the Company and Amerigon Germany;

WHEREAS, in connection with the Credit Agreement, the Grantor has executed and delivered a Pledge and Security Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to Section 4.5(e) of the Security Agreement, the Grantor is required to execute and deliver this Agreement and to grant to the Administrative Agent a continuing security interest in all of the Patent Collateral (as defined below) to secure all Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of each Secured Party, as follows:

SECTION 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Security Agreement.

SECTION 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for its benefit and the ratable benefit of each other Secured Party, a continuing security interest in all of the Grantor's right, title and interest throughout the world, whether now or hereafter existing or acquired by the Grantor, in and to the following (Patent Collateral):

(a) inventions and discoveries, whether patentable or not, all letters patent and applications for letters patent throughout the world, including all patent applications in

preparation for filing, including all reissues, divisionals, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing (“Patents”), including each Patent and Patent application referred to in Item A of Schedule I;

(b) all Patent licenses, and other agreements for the grant by or to such Grantor of any right to use any items of the type referred to in clause (a) above (each a “Patent License”), including each Patent License referred to in Item B of Schedule I, to the extent permitted by any such Patent License;

(c) the right to sue third parties for past, present and future infringements of any Patent or Patent application, and for breach or enforcement of any Patent License; and

(d) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

Notwithstanding the foregoing, Patent Collateral shall not include those items set forth in clauses (i) through (iii) of Section 2.1 of the Security Agreement.

SECTION 3. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the Patent Collateral with the United States Patent and Trademark Office and corresponding offices in other countries of the world. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Administrative Agent for its benefit and the ratable benefit of each other Secured Party under the Security Agreement. The Security Agreement (and all rights and remedies of the Administrative Agent and each Secured Party thereunder) shall remain in full force and effect in accordance with its terms.

SECTION 4. Waiver, etc. The Grantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations, this Agreement and the Security Agreement and any requirement that any Secured Party protect, secure, perfect or insure any Lien, or any property subject thereto, or exhaust any right or take any action against any Grantor or any other Person (including any other Grantor) or entity or any Collateral securing the Obligations, as the case may be. As provided below, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York.

SECTION 5. Release of Liens; Termination of Agreement. Upon (a) the Disposition of Patent Collateral in accordance with the Credit Agreement or (b) the occurrence of the Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Patent Collateral (in the case of clause (a)) or (ii) all Patent Collateral (in the case of clause (b)), without delivery of any instrument or performance of any act by any party. Upon the occurrence of the Termination Date, this Agreement and all obligations of each Grantor hereunder shall automatically terminate without delivery of any instrument or performance of any act by any party. A Grantor shall automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of the Company and any of its Subsidiaries. Upon

any such Disposition, other permitted transaction or termination, the Administrative Agent will, at the Grantors' sole expense, deliver to the Grantors, without any representations, warranties or recourse of any kind whatsoever, all Patent Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 6. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Patent Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 7. Loan Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

SECTION 8. Governing Law, Entire Agreement, etc. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 9. Counterparts. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or via other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered by its Responsible Officer as of the date first written above.

[NAME OF GRANTOR]

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

BANK OF AMERICA, N.A.,  
as Administrative Agent

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

SCHEDULE I  
to Patent Security Agreement

Item A. Patents

<u>Country</u>	<u>Patent No.</u>	<u>Issued Patents Issue Date</u>	<u>Inventor(s)</u>	<u>Title</u>
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Pending Patent Applications

<u>Country</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor(s)</u>	<u>Title</u>
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Patent Applications In Preparation

<u>Country</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Inventor(s)</u>	<u>Title</u>
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Item B. Patent Licenses

<u>Country or Territory</u>	<u>Patent</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
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TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of March [ ], 2011 (this "Agreement"), is made by [NAME OF GRANTOR], a \_\_\_\_\_ (the "Grantor"), in favor of BANK OF AMERICA, N.A., as the administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to a Credit Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Amerigon Incorporated, a Michigan corporation and Amerigon Europe GmbH, a German limited liability company, the various financial institutions and other Persons from time to time party thereto, as lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to and maintain Loans with the Company and Amerigon Germany;

WHEREAS, in connection with the Credit Agreement, the Grantor has executed and delivered a Pledge and Security Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to Section 4.5(e) of the Security Agreement, the Grantor is required to execute and deliver this Agreement and to grant to the Administrative Agent a continuing security interest in all of the Trademark Collateral (as defined below) to secure all Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of each Secured Party, as follows:

SECTION 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Security Agreement.

SECTION 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for its benefit and the ratable benefit of each other Secured Party, a continuing security interest in all of the Grantor's right, title and interest throughout the world, whether now or hereafter existing or acquired by the Grantor, in and to the following (the "Trademark Collateral"):

(a) (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos and other source or business identifiers, and all goodwill of the business associated therewith, now existing or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office and corresponding offices in other countries of the world or otherwise, and all common-Law rights relating to the foregoing, and (ii) the right to obtain all reissues, extensions or renewals of the foregoing (collectively referred to as "Trademarks"), including those Trademarks referred to in Item A of Schedule I;

(b) all Trademark licenses and other agreements for the grant by or to such Grantor of any right to use any Trademark (each a "Trademark License"), including each Trademark License referred to in Item B of Schedule I, to the extent permitted by such Trademark License;

(c) all of the goodwill of the business connected with the use of, and symbolized by the Trademarks described in clause (a) and, to the extent applicable, clause (b);

(d) the right to sue third parties for past, present and future infringements or dilution of the Trademarks described in clause (a) and, to the extent applicable, clause (b) or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark License; and

(e) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

Notwithstanding the foregoing, Trademark Collateral shall not include those items set forth in clauses (i) through (iii) of Section 2.1 of the Security Agreement.

SECTION 3. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the Trademark Collateral with the United States Patent and Trademark Office and corresponding offices in other countries of the world. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Administrative Agent for its benefit and the ratable benefit of each other Secured Party under the Security Agreement. The Security Agreement (and all rights and remedies of the Administrative Agent and each Secured Party thereunder) shall remain in full force and effect in accordance with its terms.

SECTION 4. Waiver, etc. The Grantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations, this Agreement and the Security Agreement and any requirement that any Secured Party protect, secure, perfect or insure any Lien, or any property subject thereto, or exhaust any right or take any action against any Grantor or any other Person (including any other Grantor) or entity or any Collateral securing the



Obligations, as the case may be. As provided below, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York.

SECTION 5. Release of Liens; Termination of Agreement. Upon (a) the Disposition of Trademark Collateral in accordance with the Credit Agreement or (b) the occurrence of the Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Trademark Collateral (in the case of clause (a)) or (ii) all Trademark Collateral (in the case of clause (b)), without delivery of any instrument or performance of any act by any party. Upon the occurrence of the Termination Date, this Agreement and all obligations of each Grantor hereunder shall automatically terminate without delivery of any instrument or performance of any act by any party. A Grantor shall automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of the Company and any of its Subsidiaries. Upon any such Disposition, other permitted transaction or termination, the Administrative Agent will, at the Grantors' sole expense, deliver to the Grantors, without any representations, warranties or recourse of any kind whatsoever, all Trademark Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 6. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 7. Loan Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

SECTION 8. Governing Law, Entire Agreement, etc. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 9. Counterparts. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or via other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered by Responsible Officer as of the date first written above.

[NAME OF GRANTOR]

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

BANK OF AMERICA, N.A.,  
as Administrative Agent

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

Item A. Trademarks

Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>
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Pending Trademark Applications

<u>Country</u>	<u>Trademark</u>	<u>Serial No.</u>	<u>Filing Date</u>
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Trademark Applications In Preparation

<u>Country</u>	<u>Trademark</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Products/ Services</u>
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Item B. Trademark Licenses

<u>Country or Territory</u>	<u>Trademark</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
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COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT, dated as of March [\_\_\_], 2011 (this "Agreement"), is made by [NAME OF GRANTOR], a \_\_\_\_\_ (the "Grantor"), in favor of BANK OF AMERICA, N.A., as the administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to a Credit Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Amerigon Incorporated, a Michigan corporation and Amerigon Europe GmbH, a German limited liability company, the various financial institutions and other Persons from time to time party thereto, as lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to and maintain Loans with the Company and Amerigon Germany;

WHEREAS, in connection with the Credit Agreement, the Grantor has executed and delivered a Pledge and Security Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to Section 4.5(e) of the Security Agreement, the Grantor is required to execute and deliver this Agreement and to grant to the Administrative Agent a continuing security interest in all of the Copyright Collateral (as defined below) to secure all Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of each Secured Party, as follows:

SECTION 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Security Agreement.

SECTION 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for its benefit and the ratable benefit of each other Secured Party, a continuing security interest in all of the Grantor's right, title and interest throughout the world, whether now or hereafter existing or acquired by the Grantor, in and to the following (the "Copyright Collateral"):

(a) all copyrights, registered or unregistered and whether published or unpublished, now or hereafter in force including copyrights registered in the United States Copyright Office and corresponding offices in other countries of the world, and registrations and recordings thereof and all applications for registration thereof, whether pending or in preparation and all extensions and renewals of the foregoing (“Copyrights”), including the Copyrights which are the subject of a registration or application referred to in Item A of Schedule I;

(b) all express or implied Copyright licenses and other agreements for the grant by or to such Grantor of any right to use any items of the type referred to in clause (a) above (each a “Copyright License”), including each Copyright License referred to in Item B of Schedule I, to the extent permitted by such Copyright License;

(c) the right to sue for past, present and future infringements of any of the Copyrights owned by such Grantor, and for breach or enforcement of any Copyright License and all extensions and renewals of any thereof; and

(d) all proceeds of, and rights associated with, the foregoing (including Proceeds, licenses, royalties, income, payments, claims, damages and proceeds of infringement suits).

Notwithstanding the foregoing, Copyright Collateral shall not include those items set forth in clauses (i) through (iii) of Section 2.1 of the Security Agreement.

SECTION 3. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the Copyright Collateral with the United States Copyright Office and corresponding offices in other countries of the world. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Administrative Agent for its benefit and the ratable benefit of each other Secured Party under the Security Agreement. The Security Agreement (and all rights and remedies of the Administrative Agent and each Secured Party thereunder) shall remain in full force and effect in accordance with its terms.

SECTION 4. Waiver, etc. The Grantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations, this Agreement and the Security Agreement and any requirement that any Secured Party protect, secure, perfect or insure any Lien, or any property subject thereto, or exhaust any right or take any action against any Grantor or any other Person (including any other Grantor) or entity or any Collateral securing the Obligations, as the case may be. As provided below, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York

SECTION 5. Release of Liens; Termination of Agreement. Upon (a) the Disposition of Copyright Collateral in accordance with the Credit Agreement or (b) the occurrence of the Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Copyright Collateral (in the case of clause (a)) or (ii) all Copyright Collateral (in the case of clause (b)), without delivery of any instrument or performance of any act by any party. Upon the occurrence of the Termination Date, this Agreement and all obligations of each Grantor hereunder shall automatically terminate without delivery of any instrument or

performance of any act by any party. A Grantor shall automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary of the Company and any of its Subsidiaries. Upon any such Disposition, other permitted transaction or termination, the Administrative Agent will, at the Grantors' sole expense, deliver to the Grantors, without any representations, warranties or recourse of any kind whatsoever, all Copyright Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

SECTION 6. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 7. Loan Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

SECTION 8. Governing Law, Entire Agreement, etc. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 9. Counterparts. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or via other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered by its Responsible Officer as of the date first written above.

[NAME OF GRANTOR]

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

BANK OF AMERICA, N.A.,  
as Administrative Agent

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

Item A. Copyrights/Mask Works

Registered Copyrights/Mask Works

<u>Country</u>	<u>Registration No</u>	<u>Registration Date</u>	<u>Author(s)</u>	<u>Title</u>
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Copyright/Mask Work Pending Registration Applications

<u>Country</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Author(s)</u>	<u>Title</u>
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Copyright/Mask Work Registration Applications In Preparation

<u>Country</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Author(s)</u>	<u>Title</u>
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Item B. Copyright/Mask Work Licenses(including an indication of exclusive Licenses for U.S. registered Copyrights)

<u>Country or Territory</u>	<u>Copyright</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
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SUPPLEMENT TO  
PLEDGE AND SECURITY AGREEMENT

This SUPPLEMENT, dated as of \_\_\_\_\_, \_\_\_\_\_ (this "Supplement"), is to the Pledge and Security Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Security Agreement"), among the Grantors (such term, and other terms used in this Supplement, to have the meanings set forth in Article I of the Security Agreement) from time to time party thereto, in favor of BANK OF AMERICA, N.A., as the administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to a Credit Agreement, dated as of March 30, 2011 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Amerigon Incorporated, a Michigan corporation and Amerigon Europe GmbH, a German limited liability company, the various financial institutions and other Persons from time to time party thereto, as lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to and maintain Loans with the Company and Amerigon Germany;

WHEREAS, pursuant to the provisions of Section 7.6 of the Security Agreement, each of the undersigned is becoming a Grantor under the Security Agreement; and

WHEREAS, each of the undersigned desires to become a "Grantor" under the Security Agreement in order to induce the Lenders to continue to make Loans under the Credit Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the undersigned agrees, for the benefit of each Secured Party, as follows.

SECTION 1. Party to Security Agreement, etc. In accordance with the terms of the Security Agreement, by its signature below each of the undersigned hereby irrevocably agrees to become a Grantor under the Security Agreement with the same force and effect as if it were an original signatory thereto and each of the undersigned hereby (a) creates and grants to the Administrative Agent, its successors and assigns, a security interest in all of the undersigned's right, title and interest in and to the Collateral), (b) agrees to be bound by and comply with all of the terms and provisions of the Security Agreement applicable to it as a Grantor and (c) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct as of the date hereof, unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such

earlier date. In furtherance of the foregoing, each reference to a "Grantor" and/or "Grantors" in the Security Agreement shall be deemed to include each of the undersigned.

SECTION 2. Representations. Each of the undersigned Grantor hereby represents and warrants that this Supplement has been duly authorized, executed and delivered by it and that this Supplement and the Security Agreement constitute the legal, valid and binding obligation of each of the undersigned, enforceable against it in accordance with its terms.

SECTION 3. Full Force of Security Agreement. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect in accordance with its terms.

SECTION 4. Incorporation. The provisions of Sections 7.7 thru 7.12, inclusive, of the Security Agreement are incorporated into this Supplement as if fully set forth herein, *mutatis mutandi*; provided that (a) references to any Grantor shall be deemed to be references to the undersigned and (b) references to the Security Agreement shall be deemed to be references to this Supplement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Supplement to be duly executed and delivered by its Responsible Officer as of the date first written above.

[NAME OF ADDITIONAL SUBSIDIARY]

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

[NAME OF ADDITIONAL SUBSIDIARY]

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

**ACCEPTED AND AGREED FOR ITSELF AND ON  
BEHALF OF THE SECURED PARTIES:**

BANK OF AMERICA, N.A.,  
as Administrative Agent

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

## PARENT GUARANTY

This PARENT GUARANTY, dated as of March 30, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Guaranty"), is made by each signatory party hereto and set forth on Schedule I attached hereto and each other signatory from time to time a party hereto (each individually, a "Guarantor" and collectively, the "Guarantors") in favor of BANC OF AMERICA SECURITIES LIMITED, in its capacity as the administrative agent (the "Administrative Agent") for each of the Lender Parties.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, dated as of March 30, 2011 (the "Credit Agreement"), 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 thereto (collectively, the "Lenders" and individually, a "Lender"), Bank of America, N.A., as swing line lender and L/C issuer and the Administrative Agent, as administrative agent, the Lenders have agreed to make Credit Extensions to and maintain Loans with the Borrowers; and

WHEREAS, as a condition precedent to the making of the Credit Extensions and the maintenance of the Loans under the Credit Agreement, each Guarantor is required to execute and deliver this Guaranty.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make Credit Extensions or maintain loans to the Borrowers, each Guarantor jointly and severally agrees, for the benefit of each Lender Party, as follows:

ARTICLE I  
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms when used in this Guaranty, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Administrative Agent" is defined in the preamble.

"Borrower" and "Borrowers" are defined in the first recital.

"Credit Agreement" is defined in the first recital.

"Guarantor" and "Guarantors" are defined in the preamble.

"Guaranteed Obligations" is defined in Section 2.1(a).

"Guaranty" is defined in the preamble.

*WET Parent Guaranty*

“Lender” and “Lenders” are defined in the first recital.

“Termination Date” means the date on which all Guaranteed Obligations have been indefeasibly paid in full in cash, all Letters of Credit have been terminated or expired (or Cash Collateralized), all Guaranteed Hedge Agreements have been terminated or have been otherwise provided for on terms reasonably satisfactory to the parties thereto, and all Commitments shall have been terminated.

SECTION 1.2. Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Guaranty, including its preamble and recitals, have the meanings provided in the Credit Agreement and shall be interpreted in accordance with Article I of the Credit Agreement.

## ARTICLE II GUARANTY PROVISIONS

SECTION 2.1. Guaranty. Each Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably, as primary obligor and not merely as surety:

(a) guarantees the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations of the Borrowers (such Obligations, the “Guaranteed Obligations”) now or hereafter existing, whether for principal, interest (including interest accruing at the then applicable rate provided in the Credit Agreement after the occurrence and continuance of any Default, whether or not a claim for post-filing or post-petition interest is allowed under applicable Law following the institution of a proceeding under any Debtor Relief Law), reasonable out-of-pocket fees, reimbursement obligations with respect to letters of credit or otherwise, reasonable out-of-pocket expenses, indemnities, or otherwise (including all such amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. §502(b) and §506(b) or any similar provision under any other Debtor Relief Law the effect of which is to automatically prohibit a creditor from enforcing its rights against a debtor or its assets); and

(b) indemnifies and holds harmless each Lender Party for any and all reasonable out-of-pocket costs and expenses (including reasonable out-of-pocket attorneys’ fees and expenses) incurred by such Lender Party in enforcing any rights under this Guaranty;

provided that (i) each Guarantor shall only be liable under this Guaranty for the maximum amount of such liability that can be hereby incurred without rendering this Guaranty, as it relates to such Guarantor, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount and (ii) the foregoing clause (i) is intended solely to preserve the rights of the Lender Parties to the maximum extent not subject to avoidance under applicable Law, and no Guarantor or any other Person shall have any right or claim under this paragraph with respect to such maximum amount, except to the extent necessary

so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable Law. Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the maximum amount of liability that can be incurred by each Guarantor without impairing this Guaranty or affecting the rights and remedies of the Lender Parties hereunder; provided that nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond the maximum amount of liability that can be incurred by such Guarantor.

This Guaranty constitutes a guaranty of payment when due and not of collection, and each Guarantor specifically agrees that it shall not be necessary or required that any Lender Party exercise any right, assert any claim or demand or enforce any remedy whatsoever against any Loan Party or any other Person before or as a condition to the obligations of such Guarantor hereunder.

SECTION 2.2. Payments Set Aside. To the extent that any payment by or on behalf of any Guarantor is made to the Administrative Agent, the L/C Issuer or any Lender in respect of the Guaranteed Obligations 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 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.

SECTION 2.3. Guaranty Absolute, etc. This Guaranty shall in all respects be a continuing, absolute, unconditional and irrevocable guaranty of payment, and shall remain in full force and effect until, subject to Section 2.2, the Termination Date has occurred. The liability of each Guarantor is continuing and relates to any Guaranteed Obligation including that arising under successive transactions which shall either continue the Guaranteed Obligations or from time to time renew such Guaranteed Obligations after they have been satisfied. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of each applicable Loan Document under which they arise, regardless of any Law or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Lender Party with respect thereto. The liability of each Guarantor under this Guaranty shall be joint and several, absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of any Loan Document;

(b) the failure of any Lender Party (i) to assert any claim or demand or to enforce any right or remedy against any other Loan Party or any other Person (including any other guarantor) under the provisions of any Loan Document or otherwise, or (ii) to exercise any right or remedy against any other guarantor (including any other Guarantor) of any Guaranteed Obligations;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Guaranteed Obligations, or any other extension, compromise or renewal of any Guaranteed Obligation, by operation of law or otherwise; and to the fullest extent permitted by applicable Law, each Guarantor waives any defense arising out of any such extension, compromise or renewal even though such extension, compromise or renewal may operate, pursuant to applicable Law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Loan Party or any security;

(d) any reduction, limitation, impairment or termination of any Guaranteed Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise or any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Guaranteed Obligations or otherwise and shall not be subject to (and each Guarantor hereby waives any right to or claim of) any of the foregoing;

(e) any amendment to, any rescission, waiver, or other modification of, or any consent to or departure from, any of the terms of any Loan Document;

(f) any addition, exchange or release of any Person that is (or will become) a guarantor (including a Guarantor hereunder) of the Guaranteed Obligations, or any amendment to or waiver or release of or addition to, or consent to or departure from, any other guaranty held by any Lender Party securing any of the Guaranteed Obligations;

(g) any change in the corporate existence, structure or ownership of the Borrowers or any other guarantor of or other Person liable for any of the Guaranteed Obligations;

(h) any insolvency, bankruptcy, reorganization or other similar proceeding under any Debtor Relief Law affecting any Loan Party or its assets or any resulting release or discharge of any obligation of any Loan Party; or

(i) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, any Loan Party, any surety or any guarantor.

SECTION 2.4. 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 any Guarantor against any and all of the obligations of such Guarantor now or hereafter existing under this Guaranty 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 Guaranty or any other Loan Document and although such obligations of such Guarantor 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. The rights of each Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender 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.

SECTION 2.5. Waiver, etc. Each Guarantor hereby irrevocably waives promptness, diligence, presentment, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that any Lender Party exhaust any right or take any action against any Loan Party or any other Person (including any other guarantor) or entity, as the case may be.

SECTION 2.6. Postponement of Subrogation, etc. Each Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under this Guaranty or any other Loan Document to which it is a party nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from any Loan Party, in respect of any payment made under any Loan Document or otherwise, until following the Termination Date. Any amount paid to such Guarantor on account of any such subrogation rights prior to the Termination Date shall be held in trust for the benefit of the Lender Parties and shall immediately be paid and turned over to the Administrative Agent for the benefit of the Lender Parties in the exact form received by such Guarantor (duly endorsed in favor of the Administrative Agent, if required), to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with Section 2.7; provided that if such Guarantor has made payment to the Lender Parties of all or any part of the Guaranteed Obligations and the Termination Date has occurred, then at such Guarantor's request, the Administrative Agent (on behalf of the Lender Parties) will, at the expense of such Guarantor, execute and deliver to such Guarantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment. In furtherance of the foregoing, at all times prior to the Termination Date, such Guarantor shall refrain from taking any action or commencing any proceeding against any Loan Party (or its successors or assigns, whether in connection with any proceeding under any Debtor Relief Law or otherwise) to recover any amounts in respect of payments made under this Guaranty to any Lender Party.

SECTION 2.7. Payments; Application. Each Guarantor hereby agrees with each Lender Party as follows:

(a) that all payments made by such Guarantor hereunder will be made in Euro or the Euro Equivalent of the Alternative Currency in which the Guaranteed Obligations are denominated to the Administrative Agent, without setoff, counterclaim or other defense and in accordance with Sections 2.12 and 3.01 of the Credit Agreement, free and clear of and without deduction for any Taxes, each Guarantor hereby agreeing to comply with and be bound by the provisions of Sections 2.12 and 3.01 of the Credit Agreement in respect of all payments made by it hereunder and the provisions of which Sections are hereby incorporated into and made a part of this Guaranty by this reference as if set forth



herein; provided that references to the “Borrower” in such Sections shall be deemed to be references to each Guarantor, and references to “this Agreement” in such Sections shall be deemed to be references to this Guaranty; and

(b) that all payments made hereunder shall be applied upon receipt as set forth in Section 8.03 of the Credit Agreement.

SECTION 2.8. Stay of Acceleration. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any other Loan Party, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Administrative Agent.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

SECTION 3.1. Representations. In order to induce the Lender Parties to enter into the Credit Agreement and make and maintain Credit Extensions thereunder and enter into Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements, each Guarantor represents and warrants to each Lender Party as set forth below.

(a) The representations and warranties contained in Article V of the Credit Agreement, insofar as they are applicable to any Guarantor and its properties, are true and correct, each such representation and warranty set forth in such Article (insofar as applicable as aforesaid) and all other terms of the Credit Agreement to which reference is made therein, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by reference as though specifically set forth in this Article III.

(b) Each Guarantor has knowledge of each other Loan Party’s financial condition and affairs and has adequate means to obtain from the German Borrower and each such other Loan Party on an ongoing basis information relating thereto and to such other Loan Party’s ability to pay and perform the Guaranteed Obligations, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect. Each Guarantor acknowledges and agrees that the Lender Parties shall have no obligation to investigate the financial condition or affairs of any Loan Party for the benefit of such Guarantor nor to advise such Guarantor of any fact respecting, or any change in, the financial condition or affairs of any Loan Party that might become known to any Lender Party at any time, whether or not such Lender Party knows or believes or has reason to know or believe that any such fact or change is unknown to such Guarantor, or might (or does) materially increase the risk of such Guarantor as guarantor, or might (or would) affect the willingness of such Guarantor to continue as a guarantor of the Guaranteed Obligations.

(c) It is in the best interests of each Guarantor to execute this Guaranty inasmuch as such Guarantor will derive substantial direct and indirect benefits from the Credit Extensions made to the Borrowers by the Lenders pursuant to the Credit

Agreement, and each Guarantor agrees that the Lender Parties are relying on this representation in agreeing to make Credit Extensions to the Borrowers.

ARTICLE IV  
COVENANTS, ETC.

SECTION 4.1. Covenants. Each Guarantor covenants and agrees that, at all times prior to the Termination Date, it will perform, comply with and be bound by all of the agreements, covenants and obligations contained in the Credit Agreement (including Articles VI and VII of the Credit Agreement) which are applicable to such Guarantor or its properties, each such agreement, covenant and obligation contained in the Credit Agreement and all other terms of the Credit Agreement to which reference is made in this Article IV, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by this reference as though specifically set forth in this Article IV.

ARTICLE V  
REMEDIES

SECTION 5.1. Remedies. If any Guarantor fails to fulfill its duty to pay all Guaranteed Obligations guaranteed by it hereunder, the Administrative Agent and the Lender Parties shall have all of the remedies of a creditor under all applicable Law, including the remedies set forth in Section 8.02 of the Credit Agreement.

ARTICLE VI  
MISCELLANEOUS PROVISIONS

SECTION 6.1. Loan Document. This Guaranty is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof. To the extent of any conflict between the terms contained in this Guaranty and the terms contained in the Credit Agreement, the terms of the Credit Agreement shall control.

SECTION 6.2. Binding on Successors, Transferees and Assigns; Assignment. This Guaranty shall remain in full force and effect until, subject to Section 2.2, the Termination Date has occurred, shall be jointly and severally binding upon each Guarantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by each Lender Party and its successors, transferees and assigns; provided that no Guarantor may (unless otherwise permitted under the terms of the Credit Agreement) assign any of its obligations hereunder without the prior written consent of all Lenders (and any attempted such assignment without such consent shall be null and void).

SECTION 6.3. Amendments, etc. No amendment to or waiver of any provision of this Guaranty, nor consent to any departure by any Guarantor from its obligations under this Guaranty, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent (on behalf of the Lenders or the Required Lenders, as the case may be, pursuant to, and in accordance with, Section 10.01 of the Credit Agreement) and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 6.4. Notices. All notices and other communications provided for hereunder shall be in writing or by facsimile or other electronic transmission and addressed, delivered or transmitted to the appropriate party at the address or facsimile number of such party (in the case of any Guarantor, in care of the German Borrower) specified in the Credit Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other party. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any such notice, if transmitted by facsimile or other electronic transmission, shall be deemed given when the confirmation of transmission thereof is received by the transmitter.

SECTION 6.5. Additional Guarantors. Upon the execution and delivery by any other Person of a supplement in the form of Annex I hereto, such Person shall become a "Guarantor" hereunder with the same force and effect as if it were originally a party to this Guaranty and named as a "Guarantor" hereunder. The execution and delivery of such supplement shall not require the consent of any other Guarantor hereunder, and the rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor as a party to this Guaranty.

SECTION 6.6. Termination of Agreement; Release of Guarantor. Upon the occurrence of the Termination Date, this Guaranty and all obligations of each Guarantor hereunder shall terminate automatically (subject to Sections 2.2, 6.9, 6.10 and each other provision of this Guaranty that by its terms expressly survives termination), without delivery of any instrument or performance of any act by any party.

SECTION 6.7. No Waiver; Remedies. In addition to, and not in limitation of, Sections 2.3 and 2.5, no failure on the part of any Lender Party to exercise, and no delay 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 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 remedies provided by Law.

SECTION 6.8. Section Captions. Section captions used in this Guaranty are for convenience of reference only, and shall not affect the construction of this Guaranty.

SECTION 6.9. Indemnification by the Guarantors. Each Guarantor shall indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable out-of-pocket fees, charges and disbursements of any counsel for any 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 Guaranty, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or 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 Guaranty and the other Loan Documents, (ii) any Loan, Letter of Credit or Guaranteed Hedge Agreement 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 any Loan Party, or any Environmental Liability related in any way to any Loan Party, 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 Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the expiration or cancellation of any Letter of Credit, the closing out and termination of any Guaranteed Hedge Agreement and the repayment, satisfaction or discharge of all the Guaranteed Obligations.

SECTION 6.10. Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Guarantor shall assert, and each Guarantor 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 Guaranty, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan, Letter of Credit or Guaranteed Hedge Agreement or the use of the proceeds thereof. No Indemnitee 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 Guaranty 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. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the expiration or cancellation of any Letter of Credit, the closing out and termination of any Guaranteed Hedge Agreement and the repayment, satisfaction or discharge of all the Guaranteed Obligations.

SECTION 6.11. Severability. If any provision of this Guaranty 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 Guaranty 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.

SECTION 6.12. Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE COUNTY OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR 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 GUARANTY 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 GUARANTY OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT AGAINST ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH GUARANTOR 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 GUARANTY 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 IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE CREDIT AGREEMENT. EACH GUARANTOR HEREBY IRREVOCABLY APPOINTS THE GERMAN BORROWER AS ITS AUTHORIZED AGENT TO RECEIVE ON ITS BEHALF SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT. NOTHING IN THIS GUARANTY WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 6.13. 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 GUARANTY 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 GUARANTY AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 6.14. Counterparts; Effectiveness. This Guaranty may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Guaranty by facsimile or via other electronic means shall be effective as delivery of a manually executed counterpart of this Guaranty. Except as set forth in Section 4.01 of the Credit Agreement, this Guaranty shall become effective when it shall have been executed by the Guarantors

SECTION 6.15. ENTIRE AGREEMENT. THIS GUARANTY AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES WITH RESPECT TO SUCH SUBJECT MATTER. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES.

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be duly executed and delivered as of the date first written above.

AMERIGON INCORPORATED

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

Name: Daniel R. Coker

Title: President and Chief Executive Officer

AMERIGON EUROPE GMBH

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

Name:

Title:

*WET Parent Guaranty*

ACCEPTED AND AGREED FOR ITSELF  
AND ON BEHALF OF THE LENDER PARTIES:

BANC OF AMERICA SECURITIES LIMITED,  
as Administrative Agent

By: \_\_\_\_\_  
Name: Charlene Wright-Jones  
Title: Vice President

*WET Parent Guaranty*



Guarantors

- (1) Amerigon Incorporated, a Michigan corporation
- (2) Amerigon Europe GmbH, a German limited liability company

*Schedule I to WET Parent Guaranty*

THIS SUPPLEMENT, dated as of \_\_\_\_\_, 201\_\_ (this "Supplement"), is to the Parent Guaranty, dated as of March 30, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Guaranty"), among the Guarantors (such capitalized term, and other terms used in this Supplement, to have the meanings set forth in Article I of the Guaranty) from time to time party thereto, in favor of BANC OF AMERICA SECURITIES LIMITED, as administrative agent (together with its successor(s) thereto in such capacity, the "Administrative Agent") for each of the Lender Parties.

WITNESSETH:

WHEREAS, pursuant to the provisions of Section 6.5 of the Guaranty, each of the undersigned is becoming a Guarantor under the Guaranty; and

WHEREAS, each of the undersigned desires to become a "Guarantor" under the Guaranty in order to induce the Lender Parties to continue to make Credit Extensions or maintain Loans under the Credit Agreement.

NOW, THEREFORE, in consideration of the premises, and for other consideration (the receipt and sufficiency of which is hereby acknowledged), each of the undersigned agrees, for the benefit of each Lender Party, as follows:

SECTION 1. Party to Guaranty, etc. In accordance with the terms of the Guaranty, by its signature below, each of the undersigned hereby irrevocably agrees to become a Guarantor under the Guaranty with the same force and effect as if it were an original signatory thereto and each of the undersigned hereby (a) agrees to be bound by and comply with all of the terms and provisions of the Guaranty applicable to it as a Guarantor and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder, including such representations and warranties set forth in Article III of the Guaranty, are true and correct as of the date hereof, and further represents and warrants that this Supplement has been duly authorized, executed and delivered by it and that this Supplement and the Guaranty constitute the legal, valid and binding obligation of each of the undersigned, enforceable against it in accordance with its terms. In furtherance of the foregoing, each reference to a "Guarantor" and/or "Guarantors" in the Guaranty shall be deemed to include each of the undersigned.

SECTION 2. Waiver, Agreements, etc. Each of the undersigned hereby irrevocably waives promptness, diligence, presentment, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations, this Supplement and the Guaranty and any requirement that any Lender Party exhaust any right or take any action against any Loan Party or any other Person (including any other Guarantor), as the case may be.

SECTION 3. Full Force of Guaranty. Except as expressly supplemented hereby, the Guaranty shall remain in full force and effect in accordance with its terms.

*Annex I to WET Parent Guaranty*

SECTION 4. Incorporation. The provisions of Sections 6.7 thru 6.15, inclusive, of the Guaranty are incorporated into this Supplement as if fully set forth herein, *mutatis mutandi*; provided that (a) references to any Guarantor shall be deemed to be references to the undersigned and (b) references to the Guaranty shall be deemed to be references to this Supplement.

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be duly executed and delivered as of the date first written above.

[NAME OF ADDITIONAL GUARANTOR]

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

ACCEPTED AND AGREED FOR ITSELF  
AND ON BEHALF OF THE LENDER PARTIES:

BANC OF AMERICA SECURITIES LIMITED,  
as Administrative Agent

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

*Annex I to WET Parent Guaranty*

March 30, 2011

Kingsbrook Opportunities Master Fund LP  
Each other Person set forth on Schedule I  
party to the Securities Purchase Agreement

c/o Kingsbrook Partners LP  
590 Madison Avenue, 27<sup>th</sup> Floor  
New York, New York 10022

RE: Credit Agreement, dated March 30, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Amerigon Incorporated, a Michigan corporation (the "Company") and Amerigon Europe GmbH, a German limited liability company, as borrowers, each lender from time to time party thereto and Bank of America, N.A., as administrative agent, swing line lender and L/C issuer (the "Senior Agent")

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement described above. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Credit Agreement. This letter agreement (this "Preferred Equity Subordination Agreement") is the Preferred Equity Subordination Agreement referred to in the Credit Agreement.

By signing below, each of the Persons set forth on Schedule I attached hereto (each such Person, an "Investor Party") hereby agrees with the Senior Agent that, notwithstanding anything to the contrary contained in the Securities Purchase Agreement, dated as of March 30, 2011 (the "Securities Purchase Agreement"), by and among the Company and the Investor Parties and the other Transaction Documents (under and as defined in the Securities Purchase Agreement and collectively with the Securities Purchase Agreement, the "Investor Documents") and until the date on which all Obligations under the Credit Agreement and the other Loan Documents (collectively, the "Senior Obligations") have been paid in full in cash, all Letters of Credit have been terminated or expired (or Cash Collateralized), all Secured Hedge Agreements have been terminated or have been otherwise provided for on terms reasonably satisfactory to the parties thereto, and all Commitments shall have been terminated (such date, the "Termination Date"):

- (a) Each Investor Party hereby, expressly and in all respects, subordinates and makes junior and inferior all obligations of the Company to make payments, including Restricted Payments, in cash under the Investor Documents to the payment and, except as expressly provided herein, enforcement of the Senior Obligations.
- (b) No payment, including Restricted Payments, agreed or required to be made in cash to any Investor Party under the Securities Purchase Agreement shall be made in cash to any such Investor Party unless, both immediately prior to and immediately after giving effect to such payment in cash, (i) no Default under

Section 8.01(a) or Event of Default (any such Default or Event of Default, a “Specified Default”) under the Credit Agreement exists or would result from any such payment in cash and (ii) the Company is and will be in pro forma compliance with the Fixed Charge Coverage Ratio required under Section 7.11 of the Credit Agreement. Any payment which is not made in cash due to this clause (b) may be accrued and paid in cash on and at such later date as the requirements of this clause (b) are satisfied. Nothing in this Preferred Equity Subordination Agreement shall prohibit the Company from making payments, including Restricted Payments, under the Investor Documents (A) solely in the form of common stock or other common Equity Interests of the Company or (B) in respect of reasonable out-of-pocket costs and expenses of the Investor Parties in an amount not to exceed \$100,000 in any fiscal year in accordance with the terms of the Investor Documents; provided that such limitation shall not apply to the payment by the Company of the portion of the Acquisition Transaction Expenses related to the costs and expenses of the Investor Parties incurred in connection with the Preferred Equity Documents.

- (c) Following the receipt by the Investor Parties of written notice from the Senior Agent of the occurrence of any Specified Default and until such Specified Default is cured or waived in writing, no Investor Party shall (i) commence, or cause to be commenced, or join with any creditor or other Person, other than the Senior Agent, in commencing any proceeding under any Debtor Relief Law against the Company or (ii) bring suit or institute any other actions or proceedings to enforce its rights or interests in respect of the obligations of the Company owing to such Investor Party under the Investor Documents; provided that any Investor Party may (A) accelerate the obligations of the Company under the Investor Documents upon the occurrence of a “Triggering Event” under and as defined in the Investor Documents, (B) commence any legal action necessary to toll the running of any applicable statute of limitations or (C) bring suit or institute any other action to enforce the obligations of the Company under the Investor Documents to (1) issue common Equity Interests to the Investor Parties in accordance with the terms of the Investor Documents, (2) enforce the obligations of the Company under the Investor Documents other than to make payments in cash in respect of the Preferred Equity Investment, (3) enforce the obligations of the Company under the Investor Documents to make payments in cash, solely to the extent that such cash payments are then due and owing in respect of the Preferred Equity Investment if, at the time of such enforcement (x) the conditions to the Company’s ability to make such payment in cash in accordance with clause (b) above have been met (without giving effect to any Event of Default arising under the Credit Agreement solely as a result of the failure of the Company to make such payment in cash) and (y) the Company has failed to make such payment in cash or (4) enforce any and all obligations of the Company under the Investor Documents upon the acceleration of the Senior Obligations by the Senior Agent or any of the Secured Parties.

- (d) In the event that, notwithstanding the provisions of this Preferred Equity Subordination Agreement, any payment, including Restricted Payments, shall be received in cash by any Investor Party in contravention of the express terms of this Preferred Equity Subordination Agreement, such cash payments shall be held in express trust for the benefit of the Senior Agent for the benefit of the Secured Parties and shall be paid over or delivered to the Senior Agent for the benefit of the Secured Parties for application to the payment, in full, of all Senior Obligations remaining unpaid.
- (e) Subject to clause (f) below, neither the Senior Agent nor any Secured Party shall have any liability to any Investor Party or any Affiliate thereof for any action which the Senior Agent or any such Secured Party takes or omits to take with respect to the Company, any other Loan Party, any Collateral or any Loan Document, including without limitation, (i) actions or inactions with respect to the creation, perfection or continuation of Liens on the Collateral and other security for the Senior Obligations, (ii) actions or inactions with respect to the occurrence of any Default or Event of Default, (iii) actions or inactions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Collateral, (iv) actions or inactions with respect to the collection of any claim for all or any part of the Senior Obligations from any account debtor, guarantor or any other party, (v) any other actions or inactions with respect to the enforcement of the Loan Documents or the valuation, use, protection or disposition of the Collateral or any other security for the Senior Obligations and (vi) the election of the Senior Agent or any such Secured Party, in any proceeding instituted under any Debtor Relief Law, including any proceeding for the application of Section 1111(b) under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").
- (f) No amendment, restatement, supplement or other modification or waiver of the Credit Agreement or any other Loan Document shall limit the rights of the Senior Agent or any Secured Party hereunder; provided that the Senior Agent and the Lenders shall not, without the prior written consent of the requisite Investor Parties under the Investor Documents, amend, restate, supplement or otherwise modify or waive any of the terms or provisions of the Credit Agreement or any other Loan Document if the effect of such amendment, restatement, supplement or other modification or waiver would be to cause or permit the aggregate principal amount of the Senior Obligations to exceed \$150,000,000, or (ii) prohibit or restrict (A) the ability of the Company to make payments, including Restricted Payments, in respect of the Preferred Equity Investment in accordance with the terms of this Preferred Equity Subordination Agreement, or (B) the ability of the Company and the Investor Parties to amend, modify or otherwise waive the provisions of the Investor Documents, in each case, in a manner that is more restrictive than the prohibitions and restrictions as in effect on the date hereof contained in the Credit Agreement and the other Loan Documents.

- (g) No amendment shall be made to the Preferred Equity Documents, (which, solely for purposes of this clause (g) shall include the Organization Documents of the Company), that would (i) increase the dividend rate payable in cash in respect of the Preferred Equity Investment, (ii) shorten the maturity of the Preferred Equity Investment to the extent that payments thereof would be required to be paid in cash, (iii) increase the amount of the Preferred Equity Investment, other than (A) increases in the stated values of the Preferred Equity Investment contemplated by the Preferred Equity Documents as in effect on the Closing Date and (B) increases that do not increase the amount of payments in cash payable by the Company under the Preferred Equity Documents as in effect on the Closing Date, (iv) add or make more restrictive the covenants, agreements, or events of default or other trigger events under the Preferred Equity Documents as in effect on the Closing Date or (v) that otherwise would adversely affect, in any material respect, the rights and remedies of the Administrative Agent or other Secured Parties under the Credit Agreement or the other Loan Documents.

To induce the Senior Agent and the Lenders to enter into the Credit Agreement and the other Loan Documents, each Investor Party hereby (a) acknowledges that the amounts due or to become due under the Investor Documents are not secured by any Lien in any asset of the Company or any other Loan Party or any of their respective Subsidiaries and agrees not to take or receive any such Lien (other than as a result of the enforcement of any judgment obtained against the Company in accordance with the terms of clause (c) of this Preferred Equity Subordination Agreement) without the prior written consent of the Senior Agent, and (b) represents, warrants and agrees with the Senior Agent that (i) each such Investor Party is, as of the date hereof, the lawful payee of all amounts due or to become due under the Investor Documents and (ii) without the prior written consent of the Senior Agent, no such Investor Party will assign, transfer or pledge to any other Person (including, without limitation, any Affiliate of any such Investor Party) any of the such Investor Party's rights under the Investor Documents, unless such Person shall have agreed to execute a joinder to become party to this Preferred Equity Subordination Agreement in the form attached as Annex I hereto.

This Preferred Equity Subordination Agreement shall remain in full force and effect and enforceable pursuant to its terms as a subordination agreement in accordance with Section 510(a) of the Bankruptcy Code, and all references herein to the Company, any other Loan Party or any of their respective Subsidiaries shall be deemed to apply to such entity as debtor in possession and to any trustee in bankruptcy for the estate of such entity. The provisions of this Preferred Equity Subordination Agreement shall further continue to be effective or be reinstated and the Senior Obligations shall not be deemed to be paid in full in cash, as the case may be, if at any time any payment of any of the Senior Obligations are rescinded or must otherwise be returned by the holder thereof upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

Notwithstanding anything herein to the contrary, the Liens securing any Senior Obligation shall at all times be senior and prior in all respects to any Lien securing any asset of the Company in favor of any Investor Party obtained by any such Investor Party in connection with any judgment permitted to be obtained in accordance with clause (c) of this Preferred Equity Subordination



Agreement, and any such Lien securing any asset of the Company in favor of any Investor Party obtained by any such Investor Party in connection with any judgment permitted to be obtained in accordance with clause (c) of this Preferred Equity Subordination Agreement shall at all times be junior in all respects to the Liens on any Collateral securing the Senior Obligations.

The senior priority of the Liens securing Senior Obligations and the rights and obligations of the parties hereto shall remain in full force and effect irrespective of: (i) how such Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise); (ii) the time, manner, or order of the grant, attachment, or perfection of such Lien; (iii) any conflicting provision of any applicable UCC or other applicable law; (iv) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or any Loan Document, any Investor Document or this Preferred Equity Subordination Agreement; (v) the modification of the Senior Obligations or the obligations owing to the Investor Parties; (vi) the modification of any Loan Document, any Investor Document or this Preferred Equity Subordination Agreement; (vii) the subordination of any Lien on the Collateral securing the Senior Obligations to any Lien securing another obligation of the Company or any other Person that is permitted under the Loan Documents as in effect on the date hereof; (viii) the exchange of a security interest in any Collateral for a security interest in other collateral; (ix) the commencement of any proceeding under any Debtor Relief Law; or (x) any other circumstance whatsoever, including a circumstance that might be a defense available to, or a discharge of, the Company in respect of the Senior Obligations or any obligation owing to any Investor Party or any holder of any such obligation.

This Preferred Equity Subordination Agreement shall be governed by, and construed in accordance with, the laws of the State of New York and shall inure to the benefit of, and be binding upon, the Senior Agent, the Secured Parties and their respective successors and assigns and inure to the benefit of, and be binding upon, the Company, each Investor Party and their respective successors and assigns. The parties hereto hereby (a) consent to the exclusive personal jurisdiction of the courts of the State of New York or the federal courts located in the Borough of Manhattan in New York City in connection with any controversy related to this Preferred Equity Subordination Agreement; (b) waive any argument that venue in any such forum is not convenient; (c) agree that any litigation initiated by the Senior Agent, the Company or any Investor Party in connection with this Preferred Equity Subordination Agreement may be venued in any state or federal court located in the State of New York; and (d) agree that a judgment in any such suit, action or proceeding, after all appeals have been concluded, or the time for filing such appeal has lapsed, shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION AT LAW OR IN EQUITY OR IN ANY OTHER PROCEEDING BASED ON OR PERTAINING TO THIS PREFERRED EQUITY SUBORDINATION AGREEMENT OR ANY LOAN DOCUMENT.

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Sincerely,

**BANK OF AMERICA, N.A.**  
as Senior Agent

By: \_\_\_\_\_  
Name: Charlene Wright-Jones  
Title: Vice President

[Preferred Equity Subordination Agreement - Signature Page]

Acknowledged and agreed as of the date first written above:

**AMERIGON INCORPORATED,**  
as the Company

By: \_\_\_\_\_  
Name: Daniel R. Coker  
Title: President and Chief Financial Officer

[Preferred Equity Subordination Agreement - Signature Page]

Acknowledged and agreed as of the date first written above:

**KINGSBROOK OPPORTUNITIES MASTER FUND LP,**  
as an Investor Party

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

[Preferred Equity Subordination Agreement - Signature Page]

Acknowledged and agreed as of the date first written above:

\_\_\_\_\_  
as an Investor Party

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

[Preferred Equity Subordination Agreement - Signature Page]

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**Schedule I**

**Investor Parties**

The Registrant hereby agrees to furnish supplementally a copy of any omitted exhibit of schedule to the Commission upon request.

Annex I

Form of Joinder

JOINDER TO PREFERRED EQUITY SUBORDINATION AGREEMENT

THIS JOINDER dated as of [ \_\_\_\_\_ ] (this "Joinder") is executed by the undersigned (an "New Investor Party"), which hereby agrees as follows:

1. All capitalized terms used herein and not defined in this Joinder shall have the meanings provided in that certain Preferred Equity Subordination Agreement (the "Preferred Equity Subordination Agreement"), dated as of March 30, 2011 by and among Amerigon Incorporated, a Michigan corporation, the Investor Parties from time to time party thereto and Bank of America, N.A., as administrative agent for the lenders.
2. As required by the Preferred Equity Subordination Agreement, the New Investor Party is executing this Joinder to become a party to the Preferred Equity Subordination Agreement.
3. Each and every term, condition, representation, warranty, waiver, agreement to subordinate and other provision of the Preferred Equity Subordination Agreement, by this reference, is incorporated herein as if set forth herein in full and each of the undersigned agrees to fully and timely perform each and every obligation of an Investor Party under such Preferred Equity Subordination Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder as of the date first written above.

ADDITIONAL INVESTOR:

[ \_\_\_\_\_ ]

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

**FOURTH AMENDMENT TO THE  
AMERIGON INCORPORATED 2006 EQUITY INCENTIVE PLAN**

Section 5 of the Plan is hereby amended to read in its entirety as follows:

5. Maximum Number of Shares Subject to Plan: The maximum number of shares of stock which may be issued pursuant to Awards granted under the Plan or with respect to which Awards may be granted under the Plan shall not exceed in the aggregate 3,600,000 shares of Common Stock of the Corporation (subject to adjustments as provided in this Paragraph 5) (the "Share Limit"). Notwithstanding the foregoing, (i) from and after April 1, 2009, the maximum number of shares of stock that may be issued pursuant to Awards in the form of restricted stock, restricted stock units, performance shares or other stock-based awards granted under the Plan shall not exceed 150,000 shares of Common Stock of the Corporation (subject to adjustments as provided in this Paragraph 5) (the "Full Value Share Limit"), and (ii) from and after March 30, 2011, the maximum number of shares of stock that may be issued pursuant to Awards granted under the Plan after March 30, 2011 shall not exceed in the aggregate 159,751 shares of Common Stock of the Corporation plus the amount of any Forfeited Shares that become available for reissuance after March 30, 2011, whether or not such Forfeited Shares were issued before, on or after March 30, 2011 (the "Post-2010 Share Limit") (it being acknowledged that, as of the date of this Fourth Amendment to the Amerigon Incorporated 2006 Equity Incentive Plan, Awards granted under the Plan prior to March 30, 2011 totaled 2,040,249 and the sum of this amount and the Post-2010 Share Limit is 2,200,000). Any shares that are delivered by the Corporation, and any awards or grants that are made by, or become obligations of, the Corporation through the assumption by the Corporation or a Subsidiary of, or in substitution for, outstanding awards or grants previously made by an acquired company, shall not be counted against the number of shares available under the Plan. If any shares covered by an Award or to which an Award relates are forfeited, or if an Award otherwise terminates without the delivery of shares or of other consideration, then the shares covered by such Award, or to which such Award relates, or the number of shares otherwise counted against the aggregate number of shares available under the Plan with respect to such Award, to the extent of any such forfeiture or termination ("Forfeited Shares"), shall again be, or shall become, available for granting Awards under the Plan.

The maximum number of shares with respect to which Awards may be granted to any Participant during the term of the Plan shall not exceed the Share Limit, the Full Value Share Limit and the Post-2010 Share Limit, as applicable. All shares with respect to which an Award is granted shall be counted for purposes of this per-person share limitation, regardless of whether the Participant did not realize the benefit of the Award as a result of forfeiture, cancellation, expiration, termination or other event.



The number of shares with respect to each outstanding Award, the option price with respect to outstanding stock options, the grant value with respect to outstanding stock appreciation rights, the aggregate number of shares available at any time under the Plan, the maximum number of shares with respect to which Awards may be made to an individual Participant during the term of the Plan and the number of shares automatically awarded to outside directors as described in Paragraph 9 shall be subject to such adjustment as the Committee, in its Discretion, deems appropriate to reflect such events as stock dividends, stock splits, recapitalizations, mergers, consolidations or reorganizations of or by the Corporation; provided, however, that (i) no fractional shares shall be issued pursuant to the Plan, (ii) no Awards may be granted under the Plan with respect to fractional shares, (iii) any fractional shares resulting from such adjustments shall be eliminated from any outstanding Award, and (iv) the Committee shall not make any adjustments to such shares that would cause the amount of shares issued to exceed the Post-2010 Share Limit.