

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *ET AL.*,

Plaintiffs,

vs.

CITICORP NORTH AMERICA, INC., *ET AL.*,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-1435-JKO

**PLAINTIFF'S OPPOSITION TO
CITICORP NORTH AMERICA, INC.'S MOTION TO DISMISS**

The Court should deny the motion to dismiss¹ filed by Citicorp North America, Inc. (“Citicorp”) in its capacity as administrative agent for the Amended Revolver Agreement.² As we show below, the First Amended Complaint (“FAC”) sufficiently states claims upon which relief can be granted and provides more than enough detail to permit Citicorp to respond. In particular:

- The First Amended Complaint *does* sufficiently allege the incurrence of a new obligation. As the First Amended Complaint makes abundantly clear, the

¹ Motion by Citicorp North America, Inc., In Its Capacity As Administrative Agent For The Revolving Credit Facility, To Dismiss The First Amended Adversary Complaint (Adv. Pro. D. E. No. 133) (hereafter, “Mot.”).

² We use the same terminology and definitions here as we used in the First Amended Complaint.

Amended Revolver Agreement was, in all material respects, a new loan, which Citicorp elected to extend when the Conveying Subsidiaries could no longer fulfill the terms of the January 2007 Revolver. So, too, were each of the subsequent amendments on October 25, 2007 and December 14, 2007.

- The First Amended Complaint *does* sufficiently allege that the Conveying Subsidiaries transferred interests in their property on July 31, 2007 because the Revolver lenders did not perfect their security interest in the assets of the Conveying Subsidiaries until the parties signed the Amended Security Agreement on July 31, 2007.
- The First Amended Complaint *does* sufficiently allege that the Conveying Subsidiaries incurred a new obligation for letters of credit issued before July 31, 2007, because those letters were expressly reissued under the Amended Revolver Agreement.
- The First Amended Complaint *does* sufficiently allege claims under New York fraudulent conveyance law. Florida choice-of-law rules dictate that New York law applies.
- The First Amended Complaint *does* sufficiently allege the challenged transfers in enough detail to permit Citicorp to respond. A complaint need do no more.

Rather than meet these points head on, Citibank insists that the Committee somehow seeks “to resurrect its *Rubin* argument.” Mot. 13. According to Citibank, by characterizing the July 2007 Revolver as “discretionary,” the First Amended Complaint is channeling the “scholarly criticism” of *Rubin*, advanced by Professor Steven Schwarcz in an article that was critical of *Rubin*. But that contention simply fails to reckon with the First Amended Complaint. Except for the claims under New York law—to which *Rubin* still applies—the First Amended Complaint does *not* rest on *Rubin*. Rather, as a fair reading of the First Amended Complaint confirms, Plaintiff alleges that, once the Conveying Subsidiaries could no longer honor the terms of the January 2007 Revolver, Citibank—in its unfettered discretion—abandoned the old agreement and prepared a new agreement, with new and more lenient terms. By entering into this amended agreement, the Conveying Subsidiaries incurred a *new* obligation; made a new transfer; and issued *new* letters of credit. In short, it is Citibank, not the Committee, that wishes

to re-fight the *Rubin* Wars. We prefer to address the First Amended Complaint as it is actually drafted.

ARGUMENT

THE MOTION TO DISMISS SHOULD BE DENIED

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is governed by familiar standards. The complaint need contain only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2), made applicable by Fed. Bankr. R. 7008(a). “Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. ____, 127 S. Ct. 2197, 2200 (2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, ____, 127 S. Ct. 1955, 1964 (2007)) (other citations omitted). The Court must “view the allegations of the complaint in the light most favorable to the plaintiff[s], consider the allegations of the complaint as true, and accept all reasonable inferences therefrom.” *La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 845 (11th Cir. 2004). In analyzing the sufficiency of the complaint, the Court must limit its “consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed.” *Ibid.*³ The complaint may assert a claim “alternatively or hypothetically,” and the different claims may be inconsistent with each other. Fed. R. Civ. P. 8(d)(2), (3). In any case, the “[p]leadings must be construed so as to do justice.” Fed. R. Civ. P. 8(e).

Under these well-settled principles, Citicorp’s motion to dismiss should be denied.

³ Defendant’s Motion cites several documents for the truth of matters asserted therein. See, e.g. Mot. at 4-5 (explaining reasons for amendments to the Revolver). Even if the Court may consider these documents for to construe their meaning, it may not rely on them to prove the truth of their assertions about parties’ motives. *Oxford Asset Management, Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002). In any event, we do not accept Citicorp’s factual recitation.

A. The Complaint Sufficiently Alleges That the Conveying Subsidiaries Incurred a New Obligation on July 31, 2007

Citicorp first contends that the First Amended Complaint fails to allege that the Conveying Subsidiaries incurred a new obligation in July 2007 when they entered into the Amended Revolver Agreement. In Citicorp's view, the Amended Revolver Agreement "did not subject the Conveying Subsidiaries to any new repayment, guaranty, or other obligations, but merely acknowledged and confirmed their pre-existing obligations." (Mot. at 11). But as the First Amended Complaint makes clear—and as the pertinent transaction documents confirm—every time Citicorp amended the Revolver, it did so to enable the Conveying Subsidiaries to borrow funds on new and different terms. Each amendment was therefore, in all material respects, a new incurrence of obligation.

Indeed, Citicorp well understood that fact in July 2007 when it amended the January 2007 Revolver to impose new terms and conditions. The parties expressly stated that the Amended Revolver Agreement "superseded" the January 2007 Revolver." (FAC ¶ 34). See Amendment Agreement, § 4(b) attached as Exhibit A to this Opposition. Notwithstanding any obligations the Conveying Subsidiaries may have had under the January 2007 Revolver, the parties cancelled and superseded those obligations when they entered into a new agreement.

The Amended Revolver Agreement imposed a host of important substantive changes in the relations between the parties. As Citicorp acknowledges (Mot. at 16), the January 2007 Revolver did not permit the Conveying Subsidiaries to grant the liens that supported the First and Second Lien Term Loans. In order to fund the Transeastern settlement, TOUSA therefore needed to be relieved of the conditions on the January 2007 Revolver.⁴ Citicorp agreed,

⁴ TOUSA faced increasingly urgent pressure to close the new Loans, as the Transeastern settlement agreements required TOUSA to "have consummated a financing in an amount not less than \$500 Million ... no later than July 31, 2007." Section 9 (3).

amending the Revolver to permit the incurrence of the term loan obligations. In so doing, Citicorp, which was the administrative agent for the First and Second Lien Term Loans, obtained additional liens in its favor.⁵ The Amended Revolver Agreement thereby gave Citicorp substantial additional leverage over TOUSA and the Conveying Subsidiaries. Indeed, by its terms, the Amended Revolver Agreement provided that it did not become effective until the First and Second Lien Term Loan Agreements had been signed. Amended Revolver Agreement §3.1(a)(v), (vi). Finally, the Amended Revolver Agreement altered some of the parties to the loan—some of the previous lenders refused to agree to the changes, and thus did not sign the Amended Revolver Agreement, and different lenders took their place.

In short, the Amended Revolver Agreement constitutes a new obligation in every sense of the word. But for the July amendments, TOUSA would have breached the terms of the January 2007 Revolver Agreement by entering into the Transeastern Settlement, thus permitting Citicorp to end all lending under that agreement. Instead, the parties elected to enter into a new Amended Revolver Agreement under markedly different terms and conditions. The Conveying Subsidiaries, called “Borrowers” under the Amended Revolver Agreement, “promise[d] to repay the entire unpaid principal amount of the Revolving Loans, the Swing Loans and any Reimbursement Obligation” no later than the termination date of the agreement. Section 2.6.⁶ An “obligation,” as Black’s Law Dictionary reminds us, is “a formal, binding agreement to pay a certain amount or to do a certain thing for a particular person or set of persons, especially a duty

⁵ Before July 31, 2007, Citicorp held liens to secure the “\$50 Million in draws and approximately \$227 million in letters of credit outstanding under the January 2007 Revolver.” (FAC ¶ 38). After July 31, 2007, Citicorp held liens to secure its claims under the Amended Revolver Agreement and another \$500 Million under the First and Second Lien Term Loans.

⁶ Reimbursement Obligations are defined under the Amended Revolver Agreement to mean “all matured reimbursement or repayment obligations of the Borrowers to any Issuer with respect to amounts drawn under the Letters of Credit.” Section 1.1 (“Defined Terms”).

arising from contract.”⁷ It is hard to imagine a clearer “obligation” than an agreement to repay debts. Citicorp’s suggestion that the Conveying Subsidiaries did not “incur an obligation” when they executed the Amended Revolver Agreement defies the ordinary use of language.

Citicorp’s arguments also misdirect the eye. First, relying on a passage from *Collier on Bankruptcy*, Citicorp argues that “the law is clear that in determining the date on which an obligation is incurred, the ‘moment of importance is the actual time at which the estate is diminished.’” (Mot. at 12, *citing* 5 *Collier on Bankruptcy* ¶ 548.02[2] at 548-13 (15th ed. 1998)). But that passage describes the time for determining when a *transfer* has been made, not when an *obligation* has been *incurred*.⁸ Citicorp again conflates transfers and obligations when it cites *Matter of Venice Western Motel, Ltd*, 67 B.R. 777 (Bkrcty.M.D.Fla.1986.); that case addressed the question whether the modification of a mortgage agreement was a “transfer” under §548, not whether it was an incurrence of obligation. The court held that “the execution of this Modification Agreement was, in fact, a transfer to the extent of the increase in the principal indebtedness.” 67 B.R. at 780. The court did not address the question whether the modification was *also* an incurrence of an obligation.

Citicorp also misconstrues the significance of the discretion vested in the Revolver lenders not to continue to fund the Conveying Subsidiaries after they could no longer abide by

⁷ Black’s Law Dictionary, (8th ed. 2004) at 1104. The term “obligation” is not defined in the Bankruptcy Code.

⁸ An examination of the context of the entire quotation makes clear that the Treatise is describing the time of a transfer, not of incurring an obligation:

“The purpose of postponing the commencement of the limitation period until the perfection of the transfer is to protect the estate against secret transfers that might be invulnerable to attack by the trustee if allowed to relate back to the date of original execution. It also serves the policy behind section 548 of protecting and conserving the debtor's estate for creditors, by making the moment of importance the actual time at which the estate is diminished from the creditors' viewpoint.”

5 *Collier on Bankruptcy*, 548.02 (15th Edition Rev 1998).

the terms of the existing agreement. As the First Amended Complaint makes clear, by exercising this discretion—by, in substance, tearing up the old Revolver agreement and executing a new one—the Revolver lenders were beneficiaries of a new obligation (FAC ¶80). Once the Conveying Subsidiaries chose to grant liens to secure the First and Second Lien Term Loans, the Revolver lenders could have refused to make any new loans to the Conveying Subsidiaries. But they chose instead to amend the Revolver and extend credit under new terms and conditions.

Citicorp then did the same thing in October 2007 and December 2007 when it again amended the Revolver Agreement. Citicorp acknowledges that the October 2007 amendment made significant changes to the Revolver, by, among other things, “loosening certain financial covenants,” excusing the borrowers from having to warrant their solvency, and raising the interest rates on loans made under the agreement. (Mot. at 6). The Revolver lenders no doubt learned in September, as the First Amended Complaint alleges, that the TOUSA CFO would not certify that TOUSA remained solvent. (FAC ¶ 40).⁹ The CFO’s refusal to make the certification would have cut off the Conveying Subsidiaries’ access to the Revolver, and would have entitled the Revolver lenders to demand immediate repayment of all outstanding obligations. (§§ 8.1(c), 8.2). Instead, the Revolver lenders once again modified the agreement to grant the Conveying Subsidiaries access under new terms—in effect, the lenders decided to extend credit anew. As Citicorp obliquely concedes, the Revolver lenders made the same decision in December 2007, when the lenders “extended the relaxing of financial covenants to the fourth quarter 2007.” (Mot. at 7). When the borrowers could not comply with the terms of the October 25, 2007 Amended Revolver Agreement, the Revolver lenders made another

⁹ That warranty had been added for the first time in July 2007, Amended Revolver Agreement, § 4.20. There was no such representation required under the January 2007 Revolver.

decision to extend them credit, this time under the new terms of the December 14, 2007 Amended Revolver Agreement. The First Amended Complaint alleges that both amendments were new extensions of credit under new agreements. (FAC ¶ 42).

Citicorp seems to believe that, by referring to the Revolver Lenders' "discretion," the First Amended Complaint is somehow re-invoking *Rubin v. Manufacturers Hanover Trust Co.*, 661 F. 2d 979, 990 (2d Cir. 1981), in support of the Section 548 claims. That is not so. The First Amended Complaint relies on *Rubin* only with respect to the claims arising under New York law, where that case still controls. See First Amended Complaint, Counts III, IV, and V. *Rubin* was decided in the Second Circuit, and New York has never adopted the Uniform Fraudulent Transfer Act, which rejected *Rubin*. In any event, the Amended Revolver Agreement is certainly a conveyance under New York law. *Clarkson Co. Ltd. v. Shaheen*, 533 F. Supp. 905, 930 (S.D.N.Y. 1982) (extension of time to repay loan is a conveyance under New York law). Significantly, Citicorp does not attack the counts of the First Amended Complaint that seek recovery under New York law, except to contend that New York law does not apply.¹⁰

Citicorp argues, finally, that the theory pled in the First Amended Complaint has "dangerous policy implications" because it would "expose lenders to fraudulent conveyance claims every time they failed to cut off credit when faced with a borrower's material adverse change or covenant default." (Mot. at 17). But the policy implications could as easily be placed on the other foot. Why should a lender escape responsibility when it chooses to extend credit to an entity that has violated the terms of its lending agreement? The January 2007 Revolver explicitly permitted the lenders, during any Event of Default, to terminate the Amended Revolver Agreement and declare all outstanding amounts to be "immediately due and payable"

¹⁰ We address that contention *infra* at pp. 13-17.

without “presentment, demand, protest or any notice of any kind.”¹¹ If a lender instead chooses to extend credit to an entity that has failed to live up to its obligations, why should it escape responsibility for a fraudulent conveyance? Citicorp argues that lenders should be encouraged to lend to “crippled borrowers,” but lenders should not make such loans at the expense of other creditors.

B. The Complaint Sufficiently Alleges That The Revolver Lenders Perfected Liens When They Signed The Amended Security Agreement On July 31, 2007

Citicorp next argues that the First Amended Complaint fails to allege that the Conveying Subsidiaries transferred liens to the Revolver lenders on or after July 31, 2007. Insisting that the liens were perfected “long before” the amendments on July 31, 2007, Citicorp contends that the First Amended Complaint does not allege that any transfers were made when the Revolver was amended. (Mot. at 17-18). But that is simply incorrect. The First Amended Complaint properly alleges that liens under the Amended Revolver Agreement were perfected on July 31, 2007, because it was only on that date that the parties entered into an Amended and Restated Security Agreement, without which the liens could not be perfected.

As Citicorp concedes, the date of a transfer under Section 548(d)(1) occurs when the secured party perfects an interest in it.¹² (Mot. at 18). Except for interests in real estate,¹³

¹¹ The Agreement states, that “during the continuance of any Event of Default,” the lenders may “declare that all or any portion of the Revolving Credit Commitments be terminated, whereupon the obligation of each Lender to make any Loan and each Issuer to Issue any Letter of Credit shall immediately be decreased or terminate, as the case may be, and (b) declare the Loans, all interest thereon and all other amounts and Obligations payable under this Agreement to be forthwith due and payable.” Section 8.2.

¹² Section 548(d)(1) defines the date of a transfer as “when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee.” The court looks to state law to determine when an interest is

however, a secured party cannot perfect an interest in collateral until it has executed a security agreement that covers the collateral. *In re Modafferi*, 45 B.R. 370, 371 (Bankr. S.D.N.Y. 1985). (“Unless the grant of a security interest is contained in the security agreement, there is no security interest.”) *Recchio v. Manufacturers & Traders Trust Co.* 35 A.D.2d 769, 316 N.Y.S.2d 915 (N.Y.A.D. 1970). (“Section 9-203 of the Uniform Commercial Code provides that unless the secured party is in possession of the collateral, his security interest, absent a writing, is not enforceable.”)¹⁴

It therefore follows that the lenders’ security interest in collateral of the Conveying Subsidiaries could not attach until the security agreement came into existence—and that happened when the parties signed the Amended Revolver Agreement and its Amended Security Agreement on July 31, 2007. The Amended and Restated Security Agreement, executed on July 31, 2007, amended and restated the existing Security Agreement to “add additional property of the Grantors as collateral to secure” obligations under the agreement, secure obligations under a revised guaranty, and to modify other terms. (Amended Security Agreement, attached as Exhibit B, p. 2). While the filing of financing statements is, as Citicorp insists, necessary to perfect a lien (Mot. at 18), the process is not complete until the parties have executed a security agreement

perfected. *In Re Emerald Oil Co.*, 807 F. 2d 1234, 1237(5th Cir. 1987) (“For purposes of Sec. 548(d)(1), state law on time of perfection controls.”)

¹³ Citicorp notes that liens on real property are “‘so perfected’ when they are recorded.” (Mot. at 18) (citing cases under Florida law). The Security Agreement for the Amended Revolver Agreement appears not to include real property in the definition of collateral under the agreement, but to include only Contracts for Sale and Land Sale Contracts. Section 2.

¹⁴ The route to this conclusion requires a trip through the UCC. A secured party can perfect an interest in collateral other than real estate only by satisfying UCC §9-308 (1), which provides that “[a] security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken.” Under settled law, a lien “attaches” only when the parties have agreed that it attaches. UCC § 9-203(1). *In re King-Porter Co.*, 446 F.2d 722, 726 (5th Cir. 1971) (A security interest attaches when it meets “the three required elements for attachment: (1) an agreement that it attach, (2) value given by the secured party, and (3) the debtor must have rights in the collateral.”).

creating the security interest. *Goldberg Stillman Co., P.C. v. Bardey*, 277 A.D.2d 62, 717 N.Y.S.2d 8 (N.Y.A.D. 1 Dept. 2000) (“Without a valid security agreement there can be no security interest.”) Here, the parties took that final necessary step on July 31, 2007, not the earlier dates on which UCC financing statements may or may not have been filed.¹⁵ And, for draws made under the October 25, 2007 Amended Revolver Agreement and the December 14, 2007 Amended Revolver Agreement, the date of those transfers is the date on which the agreements were signed. As the First Amended Complaint alleges exactly that, it sufficiently alleges the dates of the transfers of liens under the Revolver.

C. The Complaint Sufficiently Alleges That the Committee May Avoid Transfers Made To Secure Letters Of Credit Issued On and After July 31, 2007

Citicorp also argues that the First Amended Complaint fails to allege a basis to avoid obligations arising from the letters of credit.¹⁶ Citicorp contends that the letters of credit issued

¹⁵ Although Citicorp implies that it had filed all applicable UCC financing statements (Mot. at 18), there are no allegations to this effect in the First Amended Complaint. Furthermore, it is hard to square that assertion with the requirement stated in the Amended Revolver Agreement that the Conveying Subsidiaries provide “UCC financing statements in appropriate form for filing under the UCC... as may be necessary or appropriate ... to perfect the Liens created” under the July 31 agreements. Amended Revolver Agreement Section 3.1(b)(i). After all, if the pertinent financing statements were already on file, it is hard to see why the parties felt the need to require such a filing in the future.

What’s more, the parties appear to have made a wave of new UCC filings after executing the July 31, 2007 agreements. We conducted a search of applicable UCC filings on November 11, 2008 and learned that a UCC financing statement for the Revolver was filed concerning every Conveying Subsidiary on August 1 or August 2, 2007. The Court may take judicial notice of these filings under Fed. R. Ev. 201(b)(2). *La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 842 (11th Cir. 2004) (proper to take judicial notice of certain facts in ruling on motion to dismiss.)

¹⁶ Draws under the Revolver after July 31, 2007 were used for working capital and to repay borrowings for letters of credit drawn after that date. Citicorp does not challenge the allegations of the First Amended Complaint that pertain to the draws for working capital (FAC ¶ 43). However, Citicorp does argue that the First Amended Complaint improperly seeks to recover for draws on the Revolver that were used to repay borrowings for letters of credit initially issued

before July 31 were transferred on the date they were issued, and the letters of credit issued after July 31 are deemed to be have been transferred pursuant to an antecedent security agreement. (Mot. at 19). That is not so. The Amended Security Agreement, executed on July 31, treated all letters of credit as secured by pledges that were executed on that date.

Citicorp's argument about the letters of credits suffers from the same fallacy as its contention about liens—the erroneous contention that the transfers occurred on some unspecified date before July 31, 2007. In fact, the key date for determining the transfer is the date on which the parties signed the Amended Revolver Agreement and the Amended Security Agreement, which allowed the lenders to perfect their security interests in the assets pledged to secure *all* the letters of credit. Each letter of credit that was outstanding on July 31, 2007 was expressly re-issued under the Amended Revolver Agreement. Amended Revolver Agreement 2.4(a) (“Each Existing Letter of Credit is *deemed to be a Letter of Credit issued hereunder for all purposes of this Agreement and the other Loan Documents.*”) (emphasis supplied). As Citicorp concedes (Mot. at 19), the date of the pledge is the date of the transfer. *In the Matter of Compton Corp*, 831 F.2d 586,589 (5th Cir. 1988) (“When a debtor pledges its assets to secure a letter of credit, a transfer of debtor's property has occurred” under 11 U.S.C. §547.). As the lenders could not perfect their security interests until the agreement was signed, the Conveying Subsidiaries' property was not transferred until July 31, 2007—which is just what the First Amended Complaint alleges. (FAC ¶ 80).

before July 31, 2007 drawn on after July 31, 2007. Citigroup contends that such an allegation would contravene the Court's ruling that obligations are incurred when a letter of credit is issued, not when it is drawn upon or repaid. (Mot. at 19). The First Amended Complaint seeks recovery of such draws, but only under New York fraudulent conveyance law which, consistent with *Rubin*, recognizes each such draw as a transfer. The Court did not rule on the application of New York law in this context.

D. The First Amended Complaint Sufficiently Alleges Claims Under New York's Fraudulent Conveyance Law.

Contrary to Citicorp's assertions, New York law governs the Committee's fraudulent conveyance claims concerning the Revolver under Counts III, IV and V. The parties chose New York law in the Amended Revolver Agreement,¹⁷ and New York has the most significant relationship to the contract. Citicorp's suggestion that the Committee's New York law claims should be dismissed on choice-of-law grounds is therefore entirely misplaced.

To begin with, Citicorp's argument skips over the critical first step in choice-of-law analysis, which is to determine *what* choice-of-law rule applies. Citicorp simply offers up a set of inconsistent alternatives (locus of the property; most significant relationship), without any analysis of which one is actually correct. Mot. at 21. In point of fact, none of them is.

The proper choice-of-law rule here is Florida's rule for contract actions. For "proceedings pursuant to the grant of jurisdiction under 28 U.S.C. § 1334 covering civil actions related to bankruptcy proceedings, federal courts employ the forum state's choice of law doctrines where the underlying rights and obligations are defined by state law." *Mukamal v. Bakes*, 383 B.R. 798, 815 (S.D. Fla. 2007); see also *Woods-Tucker Leasing Corp. of Ga. v. Hutechnson-Ingram Dev. Co.*, 642 F.2d 744, 748-49 & n.8 (5th Cir. 1981) (declining to adopt a per se rule for all bankruptcy-related matters, but noting that certain issues should be resolved under the forum state's rules). And Florida, the forum state here, has recently clarified that a fraudulent conveyance suit is a contract action, not a tort action as Citicorp erroneously claims. See *Beta Real Corp. v. Graham*, 839 So.2d 890, 891 (Fla. Dist. Ct. App. 2003) (adopting the reasoning of *FDIC v. S. Praver & Co.*, 829 F. Supp. 453, 456 (D. Me. 1993)) (concluding that

¹⁷ The Amended Revolver Agreement provides that "This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York." Section 10.11

fraudulent conveyance suits are “in the nature of contract rather than tort”); see also *Mukamal*, 383 B.R. at 815 (first step under Florida choice-of-law rules is to characterize the type of suit at issue).

Florida’s choice-of-law rule for contract actions dictates that the Revolver Agreement’s selection of New York law controls here. Florida’s rule defers under almost all circumstances to a contractual choice-of-law provision, including in cases (like this one) that question the very validity of the contract. See, e.g., *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So.2d 306, 308–313 (Fla. 2000) (Delaware law applied to claim that contract was fraudulently procured, where choice-of-law clause specified that agreement “shall be governed and construed in accordance with the laws of Delaware”); *Bricenco v. Sprint Spectrum, L.P.*, 911 So.2d 176, 179 (Fla. Dist. Ct. App. 2005) (Kansas law applied to claim that contract was unconscionable, where choice-of-law clause specified application of Kansas law). The only narrow circumstance under which such a provision will not be honored is when the opposing party affirmatively demonstrates that its application would contravene some “strong public policy” of Florida. *Mazzoni Farms*, 761 So. 2d at 311. Citicorp has not even attempted to meet that burden here, which would require much more than merely showing that New York’s fraudulent conveyance law differs from Florida’s. See *id.* at 312.

In any event, even beyond its failure to apply the proper choice-of-law rule, Citicorp’s attempt to avoid the application of New York law fails on its own terms. For starters, Citicorp incorrectly suggests that the applicable law is the law of the jurisdiction “where the property is located.” Mot. at 21. Unlike the cases Citicorp cites to support that proposition, however, this case does not concern real property. Compare *DeVaughn v. Hutchinson*, 165 U.S. 566, 570 (1897); *Bombardier Capital, Inc. v. Richfield Housing Ctr., Inc.*, 1994 WL 118294, at *2

(N.D.N.Y. Mar. 21, 1994). As noted by a case on which Citicorp itself relies, the location of disputed property as a general matter is just one factor that courts (applying the choice-of-law rules of various jurisdictions) consider in determining what law governs a fraudulent conveyance suit. See *In re Best Prods. Co., Inc.*, 168 B.R. 35, 52 (Bankr. S.D.N.Y. 1994). That factor should receive minimal weight where, as here, the property at issue (*e.g.*, interests in contracts) is both intangible and has contacts with numerous jurisdictions.¹⁸ See Thomas H. Day, *Solution for Conflict of Laws Governing Fraudulent Transfers*, 48 BUS. LAW. 889, 902–04 (1993) (discussing why a focus on the locus of the property is inapt, difficult to apply, and likely to produce an arbitrary result).

Citicorp stands on somewhat firmer footing when it notes that a number of courts, applying law other than Florida's, have applied an interest-balancing test for determining choice-of-law in fraudulent conveyance actions. See, *e.g.*, *ASARCO LLC v. Americas Mining Corp.*, 382 B.R. 49, 62 (S.D. Tex. 2007); *In re Int'l Loan Network, Inc.*, 160 B.R. 1, 17 (Bankr. D.D.C. 1993); *In re O.P.M. Leasing Servs., Inc.*, 40 B.R. 380, 391–92 (Bankr. S.D.N.Y. 1984). And, indeed, that would be the test in Florida as well if fraudulent conveyance actions were considered torts. See, *e.g.*, *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So2d 1160, 1163 (Fla. 2006). But even if that test were applicable here, it would dictate the application of New York law.

In determining which jurisdiction has the “most significant relationship” to the parties’ dispute, courts look to a number of factors, including the place of the injury, the place where the conduct causing the injury occurred, the location of the parties, and the place where the parties’ relationship is centered. See Restatement (Second) of Conflict of Laws §145. Because of the

¹⁸ For example, TOUSA has substantial homebuilding operations in Florida, as well as Texas, Nevada, Arizona, Colorado, Tennessee, Virginia, and a number of Middle Atlantic states.

varied locations of the property and the numerous creditors, the first three factors are largely inconclusive here. Compare *ASARCO*, 382 B.R., at 61–62 (finding the first two factors inconclusive under similar circumstances); compare also *In re Best Prods. Co.*, 168 B.R. at 51–53 (finding the choice of law in a case involving contacts with multiple states to be a close and difficult question). There is no ambiguity, however, as to the fourth factor: the parties to the Revolver Agreement made clear that their relationship is centered in New York by specifying that New York law should apply to any disputes arising out of the agreement. Thus, should the court determine that interest-balancing is the way to resolve the choice-of-law question, it should follow the clear directive of the parties to the agreement and apply New York law.

Respecting the contracting parties' wishes on this matter is eminently sensible for several reasons. First, the choice-of-law clause exists for precisely the purpose to which the court would be putting it: to simplify what would otherwise be a very difficult choice-of-law question. The parties were well aware that their agreement touched on any number of different jurisdictions; they clarified matters by specifying New York as the legal locus of their relationship. Second, application of the choice-of-law provision promotes a number of interests that choice-of-law rules as a general matter seek to advance: "protection of justified expectations," "certainty, predictability and uniformity of result," and "ease in the determination and application of the law to be applied." Restatement (Second) of Conflict of Laws §6(2)(d), (f), (g). Third, it would be inequitable to allow Citicorp to evade a choice-of-law provision that it freely agreed to (and, more than likely, insisted upon) when it modified the Revolver. Citicorp sought the assurance and protection of New York law when it negotiated this agreement; it cannot have it both ways and insist on the application of some other law when it thinks New York law unfavorable. Tellingly, Citicorp fails to suggest what law *other* than New York law should apply here,

demonstrating that all it really cares about is getting out from under the terms of its own agreement.

Since even Citicorp cannot suggest a viable alternative, the most sensible course is to apply the choice-of-law clause in the Amended Revolver Agreement. If, however, the Court were to decide that the choice-of-law clause does not control the result here, it should nevertheless deny Citicorp's motion to dismiss. As the foregoing discussion demonstrates, without the clause, the choice-of-law question would be a very difficult one. And it would, moreover, be one that depends on a variety of facts—*e.g.*, where various acts took place, the contacts of various parties with, and the relationship of property to, various jurisdictions—that have yet to be developed. At a minimum, therefore, the Court should reserve the matter for summary judgment and allow the Committee to conduct discovery and present evidence on these matters. See, *e.g.*, *Gibb v. Scott*, 958 F.2d 814, 817 (8th Cir. 1992) (concluding that choice-of-law question should be decided on summary judgment, rather than motion to dismiss stage, so that parties would have opportunity to present evidence); see also *Grupo Televisa, S.A. v. Telemundo Comm'ns Group, Inc.*, 485 F.3d 1233, 1235, 1239 (11th Cir. 2007) (reviewing choice-of-law issue that district court deferred to summary judgment with substantial deference to district court's factual determinations).

E. The First Amended Complaint Alleges Sufficient Detail about the Transfers Arising from the Amended Revolver Agreement

Citicorp briefly resurrects its argument that the First Amended Complaint fails to allege sufficient detail about “the dates and amounts of each alleged transfer, and the instruments by which the conveyances were made.” (Mot. at 10). That argument demands more of the First Amended Complaint than the law requires.

The First Amended Complaint identifies the parties to the transfers (the Debtors and the Lenders under the Amended Revolver Agreement), and the specific agreements (and the dates of those agreements) pursuant to which the transfers occurred. The First Amended Complaint also alleges that approximately \$50 Million in draws and \$227 Million in letters of credit were outstanding under the January 2007 Revolver as of July 31, 2007 and a total of \$316 Million as of the petition date. (¶ 32 n. 7, 38,).

Even under authority cited by the defendant, the allegations in the First Amended Complaint suffice to warrant denial of Citicorp's motion. For example, under *Perkins v. Crown Fin., LLC, (In re Int'l Mgmt. Assocs., LLC)*, No. 06-6421, 2007 Bankr. LEXIS 1566, *6-7 (Bankr. N.D. Ga. Mar. 6, 2007), on which defendant relies (Mot. at 10),¹⁹ the court denied a motion to dismiss where the complaint set out "the parties, an approximate date, the source of the payment, and the transaction." *Ibid.* Here, the First Amended Complaint does exactly that. It "sets forth the claims with sufficient detail to permit [defendant] to answer and defend." *Id.* at *6. It suffices to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *United States v. Baxter Int'l, Inc.* 345 F.3d 886, 881 (11th Cir. 2003) (citation omitted). Indeed, Citicorp evidently understood this theory well enough to file 13 pages of challenges to the allegations in the First Amended Complaint.

Citicorp contends that it is "startling" that the complaint lacks details about the dates and amounts of the transfers, where plaintiff has received more than a million pages of discovery material (Mot. at 10 n.3). But a complaint need only give *notice* of the basis for a claim; it need

¹⁹ Defendant cites *Perkins* for the proposition that "plaintiffs asserting claims under Section 548 must plead 'the dates and amounts of each alleged transfer, and the instruments by which the conveyances were made.'" Mot. at 13. The quoted passage, though, refers to the holding in another case, *Kipperman v. Onex Corp.*, Civ. Action No. 1:05-CV-1242-JOF (N.D. Ga. 2006), that the *Perkins* court *rejected* as inapposite. 2007 Bankr. Lexis 1566, *7-8.

only plead “enough fact to raise a reasonable expectation that discovery will reveal evidence” of the fraudulent conveyances. *Bell Atlantic v Twombly*, 550 U.S. 544, ___ 127 S. Ct. 1955, 1965 (2007). Plaintiff continues to review the entries contained in the Debtors’ accounting database—to which Citicorp has access that is equivalent to ours—to pin down the details of these draws on the revolver. In any event, Citicorp is the administrative agent for the Revolver and presumably knows perfectly well the dates and amounts of loans that it made to its own customers. The First Amended Complaint provides more than enough detail here.

CONCLUSION

Citicorp’s motion to dismiss should be denied.

Dated: November 18, 2008

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications in this Court set forth in Local Rule 2090-1(A)

/s/ Patricia A. Redmond

PATRICIA A. REDMOND
(Florida Bar No. 303739)
DAVID C. POLLACK
(FLORIDA BAR NO. 362972)
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*Local Counsel to the Fraudulent Conveyance
Adversary Proceeding Counsel for the Official
Committee of Unsecured Creditors of TOUSA,
Inc., et al.*

I HEREBY CERTIFY that the undersigned attorneys are appearing *pro hac vice* in this matter pursuant to court order dated July 10, 2008 [D.E. 1360, 1362, 1363 in Ch. 11 No. 08-10928]

/s/ Lawrence S. Robbins

LAWRENCE S. ROBBINS *pro hac vice*
(D.C. Bar No. 420260)
ALAN D. STRASSER *pro hac vice*
(D.C. Bar No. 967885)
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*Fraudulent Conveyance Adversary
Proceeding Counsel for the Official
Committee of Unsecured Creditors of
TOUSA, Inc., et al.*

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2008, a true and correct copy of the foregoing document has been sent via email to the following:

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UNITED STATES TRUSTEE

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Steven.D.Schneiderman@usdoj.gov

/s/ Michael L. Waldman

Michael L. Waldman

EXHIBIT A

AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT, dated as of July 31, 2007 (this "Amendment"), among TOUSA, INC., a Delaware corporation (the "Administrative Borrower"), each subsidiary of the Administrative Borrower listed on the signature pages hereof as a "Subsidiary Borrower" and any other subsidiary of the Administrative Borrower which hereafter becomes a Subsidiary Borrower (each, a "Subsidiary Borrower" (as defined in the First Amended and Restated Credit Agreement (as defined below)) and collectively, the "Subsidiary Borrowers"; together with the Administrative Borrower, each, a "Borrower" and collectively, the "Borrowers"), the Lenders (as defined in the First Amended and Restated Credit Agreement), the Issuers (as defined in the First Amended and Restated Credit Agreement) and CITICORP NORTH AMERICA, INC. ("CNAI"), as administrative agent for the Lenders and the Issuers (in such capacity and including any successor or permitted assign, the "Administrative Agent"), with respect to the Credit Agreement dated as of March 9, 2006 (as amended by Amendment No. 1 to Credit Agreement dated as of October 23, 2006 and Amendment No. 2 dated as of December 20, 2006, as amended and restated as of January 30, 2007 and as otherwise amended, supplemented or modified from time to time through the date immediately prior to the Amendment Effective Date (as defined below) and as in effect immediately prior to the Amendment Effective Date (as defined below), the "First Amended and Restated Credit Agreement") entered into by and among the Loan Parties (as defined in the First Amended and Restated Credit Agreement), CNAI as Administrative Agent and Swing Loan Lender, each lender from time to time party thereto (and the lending institutions and other Persons with a Commitment under the Second Amended and Restated Revolving Credit Agreement (as defined below), the "Lenders"), DEUTSCHE BANK SECURITIES INC. as Syndication Agent, JPMORGAN CHASE BANK, N.A. and WACHOVIA CAPITAL MARKETS, LLC as Co-Documentation Agents and CITIGROUP GLOBAL MARKETS INC. and DEUTSCHE BANK SECURITIES INC. as Joint Lead Arrangers and Joint Book Managers. Terms not otherwise defined herein for which meanings are provided in the Second Amended and Restated Revolving Credit Agreement (as defined below) shall have such meanings when used in this Amendment.

W I T N E S S E T H:

WHEREAS, the parties wish to amend and restate the First Amended and Restated Credit Agreement in its entirety on the terms set forth in the Second Amended and Restated Revolving Credit Agreement as set forth on Annex I hereto; and

WHEREAS, the parties hereto intend that (i) all Loans, Letters of Credit or other extensions of credit outstanding under the First Amended and Restated Credit Agreement (each as defined in the First Amended and Restated Credit Agreement) shall continue as Loans, Letters of Credit or other extensions of credit, as applicable, under the Second Amended and Restated Revolving Credit Agreement, (ii) all amounts owing by the Borrowers under the First Amended and Restated Credit Agreement to any Person in respect of accrued and unpaid interest and fees on the Loans, Commitments and Letters of Credit (each as defined in the First Amended and Restated Credit Agreement) shall continue to be due and owing on such Loans, Commitments and Letters of Credit under the Second Amended and Restated Revolving Credit Agreement and (iii) any Person entitled to the benefits of Section 2.13(c) or 10.4 of the First Amended and Restated Credit Agreement shall continue to be entitled to the benefits of the corresponding provisions of the Second Amended and Restated Revolving Credit Agreement. Upon the effectiveness of this Amendment and the Second Amended and Restated Revolving Credit Agreement, each Loan Document (other than the First Amended and Restated Credit Agreement and each other Loan Document that is being amended and restated or otherwise modified in connection therewith) that was in effect immediately prior to the Amendment Effective Date shall continue to be effective.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto hereby agree as follows:

SECTION 1. Amendment and Restatement of First Amended and Restated Credit Agreement

On the Amendment Effective Date, the First Amended and Restated Credit Agreement shall be and is hereby amended and restated to read in its entirety as set forth in Annex I hereto (as set forth in such Annex I, the "Second Amended and Restated Revolving Credit Agreement"), and as so amended and restated is hereby ratified, approved and confirmed in each and every respect. The rights and obligations of the parties to the First Amended and Restated Credit Agreement with respect to the period prior to the Amendment Effective Date shall not be affected by such amendment and restatement. By executing this Amendment each Lender party hereto hereby (x) consents and agrees to the amendments and modifications (i) to the First Amended and Restated Credit Agreement contained in this Amendment and in the Second Amended and Restated Revolving Credit Agreement, (ii) to the other Loan Documents (as defined in the First Amended and Restated Credit Agreement) contained in the corresponding Loan Documents (as defined in the Second Amended and Restated Revolving Credit Agreement) and (y) authorizes the Administrative Agent to execute and deliver the Second Amended and Restated Revolving Credit Agreement, the Intercreditor Agreement and each other Loan Document executed in connection with or required by the Second Amended and Restated Revolving Credit Agreement, including any amendments or modifications of Loan Documents (as defined in the First Amendment and Restated Credit Agreement).

SECTION 2. Conditions Precedent to Effectiveness

This Amendment shall become effective when each of the conditions set forth below shall have been satisfied or waived (the first date as of which each such condition has been satisfied being herein called the "Amendment Effective Date"):

(a) *Executed Counterparts.* The Administrative Agent shall have received this Amendment, duly executed by the Borrowers, the Administrative Agent and the Requisite Lenders (as defined in the First Amended and Restated Credit Agreement).

(b) *Fees.* There shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, all fees due and payable on or before the Effective Date (including all such fees described in any fee letter referred to in Section 2.11(c) of the Second Amended and Restated Revolving Credit Agreement and all reasonable fees and expenses of counsel for which invoices in reasonable detail have been presented at least one Business Day prior to the Effective Date), and all invoiced expenses due and payable on or before the Effective Date.

(c) *Conditions in Second Amended and Restated Revolving Credit Agreement.* The conditions set forth in Section 3.1 and Section 3.2 of the Second Amended and Restated Revolving Credit Agreement shall have been satisfied (unless waived by the Requisite Lenders or unless the time for satisfaction thereof has been extended by the Administrative Agent).

SECTION 3. Acknowledgments

(a) Each Loan Party hereby (i) expressly acknowledges the terms of the Second Amended and Restated Revolving Credit Agreement, (ii) ratifies and affirms after giving effect to this Amendment its obligations under the Loan Documents (as defined in the First Amended and Restated

Revolving Credit Agreement) as amended, amended and restated or modified in connection with the Second Amended and Restated Revolving Credit Agreement and executed by such Loan Party, (iii) acknowledges, renews and extends its continued liability under all such Loan Documents and agrees such Loan Documents (as defined in the First Amended and Restated Revolving Credit Agreement) as amended, amended and restated or modified in connection with the Second Amended and Restated Revolving Credit Agreement remain in full force and effect and (iv) agrees that each of the Amended and Restated Security Agreement and Amended and Restated Equity Pledge secures all obligations of the Loan Parties under the Loan Documents.

(b) Each Loan Party hereby reaffirms, as of the Amendment Effective Date, (i) the covenants and agreements contained in each Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to this Amendment and the transactions contemplated thereby, and (ii) its Guaranty, if any, of payment of the Obligations pursuant to the Guaranties and its grant of Liens on the Collateral to secure the Obligations pursuant to the Collateral Documents.

SECTION 4. Reference to the Effect on the Loan Documents

(a) As of the Amendment Effective Date, each reference in the Loan Documents to the "*Credit Agreement*" or words of like import (including, without limitation, by means of words like "*thereunder*," "*thereof*" and words of like import) shall mean and be a reference to the Second Amended and Restated Revolving Credit Agreement as amended hereby, and this Amendment and the Second Amended and Restated Revolving Credit Agreement shall be read together and construed as a single instrument. As of the Amendment Effective Date, each reference in the Loan Documents to the "*Obligations*" shall mean and be a reference to the "*Obligations*" (as defined in the Second Amended and Restated Revolving Credit Agreement). As of the Amendment Effective Date, each reference to the "*Loan Documents*" or "*Collateral Documents*", as applicable, shall mean and be a reference, as applicable to the "*Loan Documents*" (as defined in the Second Amended and Restated Revolving Credit Agreement) or "*Collateral Documents*" (as defined in the Second Amended and Restated Revolving Credit Agreement).

(b) Except as expressly amended hereby, all of the terms and provisions of the First Amended and Restated Credit Agreement and all other Loan Documents (as defined in the First Amended and Restated Revolving Credit Agreement) are and shall remain in full force and effect and are hereby ratified and confirmed until, with respect to the First Amended and Restated Credit Agreement, such is superseded by the Second Amended and Restated Revolving Credit Agreement and each other Loan Document that is being amended and restated or otherwise modified in connection therewith.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders, the Borrowers or the Administrative Agent under any of the Loan Documents, nor constitute a waiver or amendment of any other provision of any of the Loan Documents.

(d) This Amendment is a Loan Document.

SECTION 5. Execution in Counterparts

This Amendment may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be de-

tached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Amendment by facsimile, .pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof. A set of the copies of this Amendment signed by all parties shall be lodged with the Administrative Borrower and the Administrative Agent.

SECTION 6. Governing Law

THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. Section Titles

The section titles contained in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement among the parties hereto, except when used to reference a section. Any reference to the number of a clause, subclause or subsection hereof or in any other Loan Document immediately followed by a reference in parenthesis to the title of the section hereof or such other Loan Document containing such clause, subclause or subsection is a reference to such clause, subclause or subsection and not to the entire section; *provided, however*, that, in case of direct conflict between the reference to the title and the reference to the number of such section hereof or such other Loan Document, the reference to the title shall govern absent manifest error. If any reference to the number of a section (but not to any clause, subclause or subsection hereof or thereof) of this Amendment or any other Loan Document is followed immediately by a reference in parenthesis to the title of a section hereof or any other Loan Document, the title reference shall govern in case of direct conflict absent manifest error.

SECTION 8. Notices

All communications and notices hereunder shall be given as provided in the Second Amended and Restated Revolving Credit Agreement.

SECTION 9. Severability

The fact that any term or provision of this Amendment is held invalid, illegal or unenforceable as to any person in any situation in any jurisdiction shall not affect the validity, enforceability or legality of the remaining terms or provisions hereof or the validity, enforceability or legality of such offending term or provision in any other situation or jurisdiction or as applied to any person.

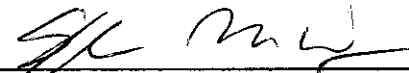
SECTION 10. Successors

The terms of this Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

[SIGNATURE PAGES FOLLOW]

ADMINISTRATIVE BORROWER:


TOUSA, INC.,
as the Administrative Borrower

By: 
Name: Stephen Wagman
Title: Executive Vice President

SUBSIDIARY BORROWERS:


ENGLE HOMES RESIDENTIAL CONSTRUCTION, L.L.C.
ENGLE HOMES COMMERCIAL CONSTRUCTION, LLC
ENGLE SIERRA VERDE P4, LLC
ENGLE/JAMES LLC
LB/TE #1, LLC
LORTON SOUTH CONDOMINIUM, LLC
MCKAY LANDING LLC
NEWMARK HOMES PURCHASING, L.P.
NEWMARK HOMES, L.L.C.
NEWMARK HOMES, L.P.
PREFERRED BUILDERS REALTY, INC.
REFLECTION KEY, LLC
SILVERLAKE INTERESTS, L.C.
TOI, LLC
TOUSA/WEST HOLDINGS, INC.
TOUSA ASSOCIATES SERVICES COMPANY
TOUSA HOMES ARIZONA, LLC
TOUSA HOMES COLORADO, LLC
TOUSA HOMES FLORIDA, L.P.
TOUSA HOMES INVESTMENT #1, INC
TOUSA HOMES INVESTMENT #2, INC.
TOUSA HOMES INVESTMENT #2, LLC
TOUSA HOMES MID-ATLANTIC HOLDING, LLC
TOUSA HOMES MID-ATLANTIC, LLC
TOUSA HOMES NEVADA, LLC
TOUSA HOMES, INC.
TOUSA HOMES, L.P.
TOUSA INVESTMENT #2, INC.
TOUSA MID-ATLANTIC INVESTMENT, LLC
TOUSA REALTY, INC.
~~TOUSA VENTURES, LLC~~
TOUSA, LLC

By: _____



Name: Stephen Wagman
Title: Executive Vice President

[Amendment Agreement]

NEWMARK HOMES BUSINESS TRUST

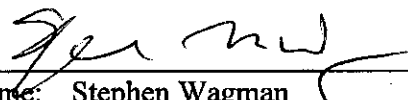
By: 
Name: Paul Berkowitz
Title: Co-Managing Trustee of the Trust

By: _____
Name: Stephen Wagman
Title: Co-Managing Trustee of the Trust

By: 
Name: Russell Devendorf
Title: Co-Managing Trustee of the Trust

NEWMARK HOMES BUSINESS TRUST

By: _____
Name: Paul Berkowitz
Title: Co-Managing Trustee of the Trust

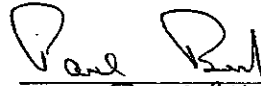
By:  _____
Name: Stephen Wagman
Title: Co-Managing Trustee of the Trust

By: _____
Name: Russell Devendorf
Title: Co-Managing Trustee of the Trust

ENGLE HOMES DELAWARE, INC.

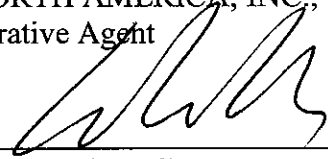
TOUSA DELAWARE, INC.

TOUSA FUNDING, LLC

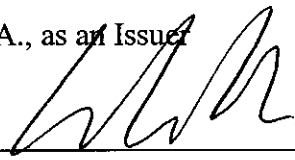
By: 
Name: Paul Benbowitz
Title: President

[Amendment Agreement]

CITICORP NORTH AMERICA, INC.,
as Administrative Agent


By: 
Name: Svetoslav Nikov
Title: Vice President

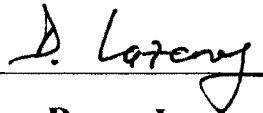
CITIBANK, N.A., as an Issuer

By: 
Name: Svetoslav Nikov
Title: Vice President

[Amendment Agreement]

Deutsche Bank Trust Company Americas,
as a Lender

By: 
Name: **Mark B. Cohen**
Title: **Managing Director**

By: 
Name: **Dusan Lazarov**
Title: **Vice President**

[Amendment Agreement]

Wachovia Bank, N.A.,
as a Lender

By: R. Scott Holzapple
Name: R. Scott Holzapple
Title: Senior Vice President

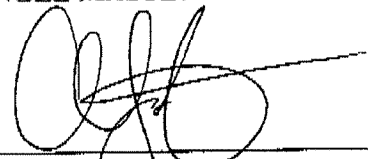
[Amendment Agreement]

Guaranty Bank
as a Lender

By: Dan Killian
Name: Dan Killian
Title: Senior Vice President

[Amendment Agreement]

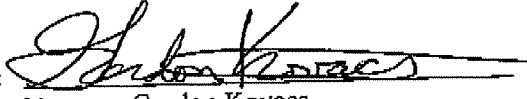
QUADRANGLE MASTER FUNDING LTD



By: _____


Name: Christopher Santana
Title: Managing Principal, Quadrangle
Debt Recovery Advisors LP, its
investment advisor

Washington Mutual,
as a Lender

By: 
Name: Gordon Kovacs
Title: Senior Vice President

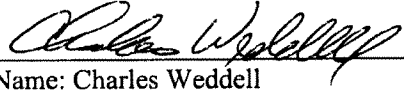
[Amendment Agreement]

PNC Bank, National Association,
as a Lender

By: 
Name: Douglas G. Paul
Title: Senior Vice President

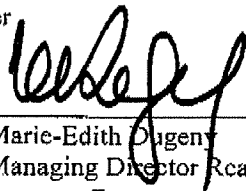
[Amendment Agreement]


COMERICA BANK,
as a Lender

By: 
Name: Charles Weddell
Title: Vice President

[Amendment Agreement]

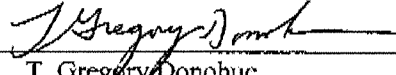
NATIXIS,
as a Lender

By: 
Name: Marie-Edith Dugeny
Title: Managing Director Rcal Estate Finance

By: 
Name: Timothée Delpont
Title: Associate Real Estate Finance

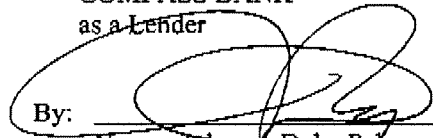
[Amendment Agreement]

Sovereign Bank, as a Lender

By: 
Name: T. Gregory Donohue
Title: Senior Vice President

[Amendment Agreement]


COMPASS BANK
as a Lender

By: 
Name: Johanna Duke Paley
Title: Senior Vice President

NATURE SAVER™ FAX MEMO 01616		Date	07/30/07	# of Pages	1
To	JOSEPH GIANNINI		From	JO PALEY	
Co./Dept.	CHANDLER PARK		Co.	COMPASS BANK	
Phone #			Phone #	205 257 3851	
Fax #	646 710 1137		Fax #		

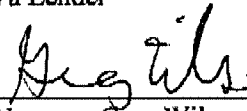
[Amendment Agreement]

RAYMOND JAMES BANK, FSB,
as a Lender

By: 
Name: William J. Hindman
Title: Vice President

[Amendment Agreement]

U.S. Bank National Association,
as a Lender

By: 
Name: Greg Wilson
Title: VP

[Amendment Agreement]

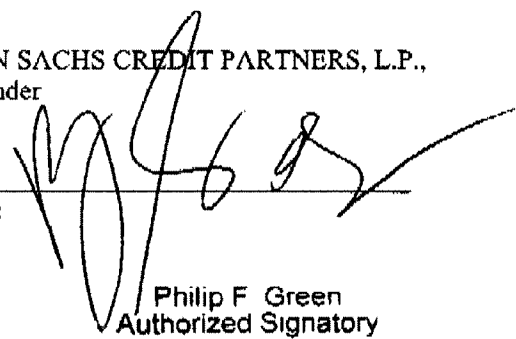
DWS, SVP
as a Lender

By: NATIONAL CITY BANK
Name: DAVID W. OLENIK
Title: SVP

[Amendment Agreement]

GOLDMAN SACHS CREDIT PARTNERS, L.P.,
as a Lender

By: _____
Name:
Title:



Philip F Green
Authorized Signatory

[Amendment Agreement]

CITIBANK, N.A. ,
as a Lender

By: 

Name:
Title: THOMAS A NEVILLE
Attorney-In-Fact

[Amendment Agreement]

Grand Central Asset Trust, SAN Series

as a Lender

By: _____



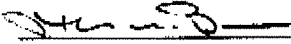
Name:

Title:

**Pam Gwin
Attorney-in-fact**

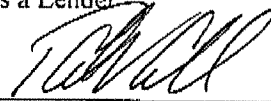
[Amendment Agreement]

BANK OF AMERICA, N.A.,
as a Lender

By: 
Name: Jonathan M. Barnes
Title: Vice President

[Amendment Agreement]

QUATTRO SPECIAL SITUATIONS, LLC,
as a Lender

By: 
Name: Patrick Criscillo
Title: CFO

[Amendment Agreement]

EXHIBIT B

AMENDED AND RESTATED SECURITY AGREEMENT
(Revolving Credit Agreement)

among

TOUSA, INC.
(f/k/a Technical Olympic USA, Inc.)

and certain of its Subsidiaries,

and

CITICORP NORTH AMERICA, INC.,
as Administrative Agent

Dated as of July 31, 2007

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINED TERMS	2
1.1 Definitions	2
1.2 Other Definitional Provisions	5
SECTION 2. GRANT OF SECURITY INTEREST	5
SECTION 3. REPRESENTATIONS AND WARRANTIES.....	7
3.1 Title; No Other Liens	7
3.2 Perfected First Priority Liens	8
3.3 Jurisdiction of Organization; Chief Executive Office.....	8
3.4 Contracts for Sale.....	8
3.5 Accounts and Chattel Paper	9
3.6 Filing Requirements.....	9
3.7 Chattel Paper, Instruments and Other Investment Property	9
3.8 Letters of Credit	10
SECTION 4. COVENANTS	10
4.1 Maintenance of Perfected Security Interest; Further Documentation	10
4.2 Changes in Locations, Name, etc.....	10
4.3 Notices	11
4.4 Contracts for Sale.....	11
4.5 Securities Accounts.....	11
4.6 Proceeds of Collateral.....	12
4.7 Further Identification of Collateral	12
4.8 Receivables	12
4.9 Inventory and Equipment.....	12
4.10 Instruments, Securities, Chattel Paper, Documents and Pledged Deposits	13
4.11 Uncertificated Securities and Certain Other Investment Property	13
4.12 Registration of Pledged Securities and other Investment Property	14
4.13 Exercise of Rights in Pledged Securities and other Investment Property	14
4.14 Letter-of-Credit Rights	14
4.15 Intellectual Property.....	15
4.16 Commercial Tort Claims	15
SECTION 5. REMEDIAL PROVISIONS; LIMITATION	15
5.1 Grantors Remain Liable, etc	15
5.2 Application of Proceeds.....	16
5.3 Code and Other Remedies	16
5.4 Deficiency.....	17
5.5 Proceeds to be Turned Over to the Administrative Agent	18
SECTION 6. ACTIONS AFTER EVENT OF DEFAULT	18
6.1 General Authority of the Administrative Agent over the Collateral	18
6.2 Judicial Proceedings and Insolvency Events.....	18
6.3 Right to Appoint a Receiver	18
6.4 Remedies Not Exclusive.....	19
6.5 Waiver and Estoppel.....	19
6.6 Limitation on Administrative Agent’s Duty in Respect of Collateral.....	20
6.7 License.....	20

6.8	Collection of Receivables	20
6.9	Compromises and Collection of Collateral.....	21
SECTION 7.	THE ADMINISTRATIVE AGENT	21
7.1	Administrative Agent’s Appointment as Attorney-in-Fact, etc	21
7.2	Duty of Administrative Agent	23
7.3	Filing of Financing Statements	23
7.4	Authority of Administrative Agent.....	24
7.5	Exculpatory Provisions.....	24
7.6	Delegation of Duties	25
7.7	Reliance by Administrative Agent.....	25
7.8	Limitations on Duties of Administrative Agent.....	26
7.9	Moneys to be Held in Trust	26
7.10	Resignation of the Administrative Agent; Appointment of Successor	27
7.11	Merger of the Administrative Agent.....	27
7.12	Co-Administrative Agent; Separate Administrative Agent.....	27
7.13	Treatment of Payee or Indorsee by Administrative Agent; Representatives of Issuers and Lenders.....	29
7.14	Stamp and Other Similar Taxes	29
7.15	Filing Fees, Excise Taxes, Etc	29
7.16	Indemnification.....	29
SECTION 8.	MISCELLANEOUS	29
8.1	Notices	29
8.2	Amendments, etc	30
8.3	No Waiver by Course of Conduct; Cumulative Remedies	30
8.4	Enforcement Expenses.....	30
8.5	Successors and Assigns	30
8.6	Counterparts.....	30
8.7	Severability	30
8.8	Section Headings	31
8.9	Integration.....	31
8.10	GOVERNING LAW.....	31
8.11	Submission to Jurisdiction; Service of Process.....	31
8.12	WAIVER OF JURY TRIAL.....	31
8.13	Releases.....	31
8.14	Additional Grantors	33
8.15	Reinstatement	33
8.16	Continuing Security Interest	33
8.17	Intercreditor Agreement.....	33

Schedules

- Schedule 1 - Perfection Matters
- Schedule 2 - Jurisdictions of Organization and Chief Executive Offices
- Schedule 3 - [Reserved]
- Schedule 4 - Joint Ventures, Etc. (Excluded Collateral)
- Schedule 5 - Equipment and Intellectual Property
- Schedule 6 - Commercial Tort Claims
- Schedule 7 - Chattel Paper, Instruments and Other Investment Property
- Schedule 8 - Letters of Credit

Exhibits

- Exhibit A - Form of Assumption Agreement

AMENDED AND RESTATED SECURITY AGREEMENT
(Revolving Credit Agreement)

AMENDED AND RESTATED SECURITY AGREEMENT, dated as of July 31, 2007, among TOUSA, INC. (f/k/a Technical Olympic USA, Inc.), a Delaware corporation (the "**Administrative Borrower**"), and each of its subsidiaries signatories hereto (the Administrative Borrower and such subsidiaries, together with any other entity that may become a party hereto as provided herein, the "**Grantors**"), in favor of CITICORP NORTH AMERICA, INC., a Delaware corporation, as administrative agent under the Revolving Credit Agreement referred to below (in such capacity, the "**Administrative Agent**") for its benefit and for the ratable benefit of the Issuers and the Lenders.

WITNESSETH:

WHEREAS, on March 9, 2006, the Administrative Borrower entered into that certain Credit Agreement (the "**Original Revolving Credit Agreement**") among the Persons party thereto as Issuers, the financial institutions and other entities party thereto as Lenders, Citicorp North America, Inc., as Administrative Agent, and certain other financial institutions in other agent capacities;

WHEREAS, on March 9, 2006, each of the Grantors party thereto entered into that certain Guaranty (the "**Original Revolver Guaranty**") in favor of the Administrative Agent, the Issuers, the Lenders and each other holder of an Obligation (as defined in the Original Revolving Credit Agreement);

WHEREAS, on October 23, 2006, the Administrative Borrower, the Grantors party thereto, the Issuers party thereto, the Lenders party thereto and Citicorp North America, Inc., as Administrative Agent, entered into that certain Amendment No. 1 to Credit Agreement, which, among other things, amended certain terms of the Original Revolving Credit Agreement and required the Grantors party thereto to provide certain collateral to secure the Obligations under the Original Revolving Credit Agreement, as so amended;

WHEREAS, on October 23, 2006, the Grantors party thereto entered into that certain Security Agreement in favor of Citicorp North America, as Administrative Agent (as amended by Amendment No. 1 to Security Agreement dated as of January 30, 2007, the "**Original Security Agreement**");

WHEREAS, on January 30, 2007, the Administrative Borrower and the Grantors party thereto entered into that certain Amended and Restated Credit Agreement (the "**January 2007 Revolving Credit Agreement**") among the Persons party thereto as Issuers, the financial institutions and other entities party thereto as Lenders, Citicorp North America, Inc., as Administrative Agent, and certain other financial institutions in other agent capacities;

WHEREAS, on the date hereof, the Grantors are entering into that certain Second Amended and Restated Revolving Credit Agreement (the "**Revolving Credit Agreement**") by and among the Persons party thereto as Issuers, the financial institutions and other entities party thereto as Lenders, and the Administrative Agent, pursuant to which the January 2007 Revolving Credit Agreement is being amended and restated in its entirety;

WHEREAS, on the date hereof, the Grantors (other than the Administrative Borrower) are entering into that certain Amended and Restated Guaranty (the “*Revolver Guaranty*”) in favor of the Administrative Agent, the Issuers, the Lenders and each other holder of an Obligation (as defined in the Revolving Credit Agreement), pursuant to which the Original Revolver Guaranty is being amended and restated in its entirety; and

WHEREAS, it is a condition precedent to the effectiveness of the Revolving Credit Agreement that the Grantors enter into this Agreement, pursuant to which the Original Security Agreement is being amended and restated to among other things, add additional property of the Grantors as collateral to secure the Obligations and the obligations under the Revolver Guaranty, it being the intent of the parties hereto that the security interests and Liens granted under and pursuant to the Original Security Agreement shall continue in full force and effect;

NOW, THEREFORE, in consideration of the premises herein contained and to induce the Administrative Agent, the Issuers and the Lenders to enter into the Revolving Credit Agreement and to induce the Issuers and the Lenders to make their respective extensions of credit to the Borrowers under the Revolving Credit Agreement, the Grantors hereby agree with the Administrative Agent, for its benefit and for the ratable benefit of the Issuers and the Lenders, as follows:

SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Revolving Credit Agreement and used herein shall have the meanings given to them in the Revolving Credit Agreement.

(b) The following terms shall have the following meanings:

“*Agreement*” means this Amended and Restated Security Agreement, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

“*Borrower Obligations*” means, without duplication, (a) the Loans, (b) the Letter of Credit Obligations, (c) all amounts owing to any Person (other than the Administrative Borrower or any of its Affiliates) under Secured Hedging Contracts up to a principal amount equal to the difference between (i) the Borrowing Base then in effect without reduction pursuant to clause (ii) of the definition thereof, minus (ii) the aggregate amount of Revolving Credit Outstandings and outstanding First Lien Term Loans, and (d) all other amounts owing by the Borrowers to the Administrative Agent, any Issuer, any Lender, any Affiliate of any of them or any Indemnitee, of every type and description, present or future, arising under the Revolving Credit Agreement or any other Loan Document, whether direct or indirect, including all letter of credit and other fees, interest (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrowers, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), charges, expenses, attorneys’ fees and disbursements and other sums chargeable to the Borrowers under the Revolving Credit Agreement or any other Loan Document.

“**Cash Collateral Agreement**” means that certain Cash Collateral Agreement dated as of the date hereof by and between EH/Transeastern, LLC, TE/TOUSA Senior, LLC, as assignors, and Deutsche Bank Trust Company Americas, as assignee.

“**Collateral**” has the meaning specified in Section 2.

“**Commercial Tort Claims**” means the commercial tort claims, as defined in the New York UCC, of any Grantor, including each commercial tort claim specifically described in Schedule 6, as amended from time to time.

“**Copyrights**” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all U.S. registered copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing.

“**First Lien Term Loan Collateral Documents**” means the “Collateral Documents”, as such term is defined in the First Lien Term Loan Credit Agreement.

“**Guarantor**” means each Grantor that is a Restricted Subsidiary of the Administrative Borrower and party to the Revolver Guaranty.

“**Guarantor Obligations**” means the guarantee obligations of the Guarantors under or in connection with the Revolver Guaranty and all other amounts owing by the Guarantors to the Administrative Agent, any Issuer, any Lender, any Affiliate of any of them or any Indemnitee, of every type and description, present or future, arising under the Revolver Guaranty, whether direct or indirect, including all fees, interest (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrowers, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), charges, expenses, attorneys’ fees and disbursements and other sums chargeable to the Guarantors under the Revolver Guaranty.

“**Land Sale Contracts**” means Unimproved Land Contracts.

“**Licenses**” means, with respect to any Person, all of such Person’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

“**Linked Deposit Accounts**” means the following Deposit Accounts maintained by Wachovia Bank National Association: (a) Account No. 200003341735 in the name of Engle

Homes Delaware, Inc.; (b) Account No. 2000012137765 in the name of TOUSA Delaware Inc.; and (c) Account No. 2000029799620 in the name of TOUSA Funding, LLC.

“**New York UCC**” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“**Obligations**” means the Borrower Obligations and the Guarantor Obligations.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel reasonably satisfactory to the Administrative Agent.

“**Patents**” means with respect to any Person, all of such Person’s right, title, and interest in and to: (a) any and all U.S. registered patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing.

“**Pledged Deposits**” means all time deposits of money (other than Deposit Accounts and Instruments), whether or not evidenced by certificates, which a Grantor may from time to time designate as pledged to the Administrative Agent or to any Lender or Issuer as security for any Obligation, and all rights to receive interest on said deposits.

“**Receivables**” means the Collateral consisting of Accounts and any other rights or claims to receive money which are Collateral consisting of General Intangibles or which are otherwise included as Collateral.

“**Second Lien Collateral Documents**” means the “Collateral Documents”, as such term is defined in the Second Lien Credit Agreement.

“**Security**” has the meaning set forth in Article 8 of the New York UCC.

“**Stock Rights**” means any securities, dividends or other distributions and any other right or property which any Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which any Grantor now has or hereafter acquires any right, issued by an issuer of such securities.

“**Trademarks**” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all U.S. registered trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income,

royalties, damages, and payments now or hereafter due or payable with respect thereto, including damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing.

“*Transeastern Deposit Account*” means that certain Deposit Account maintained by Deutsche Bank AG New York Branch and established pursuant to the Cash Collateral Agreement.

“*Unimproved Land Contracts*” means a sale and purchase agreement for Unimproved Land between (a) the Administrative Borrower or any of its Restricted Subsidiaries and (b) an unrelated third party purchaser.

“*U.S. Bank Accounts*” means the following custodial accounts maintained by U.S. Bank: (a) Account No. 6728003659 in the name of Engle Homes Delaware, Inc.; (b) Account No. 6728020649 in the name of TOUSA Delaware Inc.; and (c) Account No. 6728020426 in the name of TOUSA Funding, LLC.

1.2 Other Definitional Provisions. (a) The terms “Accounts”, “Chattel Paper”, “Deposit Accounts”, “Documents”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-Credit Rights”, “Proceeds”, “Securities Accounts” and “Supporting Obligations” have the respective meanings set forth in the New York UCC.

(b) The rules of construction set forth in Sections 1.2, 1.3 and 1.4 of the Revolving Credit Agreement shall apply to this Agreement.

SECTION 2. GRANT OF SECURITY INTEREST

Each Grantor hereby pledges to the Administrative Agent for its benefit and for the ratable benefit of the Issuers and Lenders, and hereby grants to the Administrative Agent, for its benefit and for the ratable benefit of the Issuers and Lenders, a security interest in, all of such Grantors’ right, title and interest in, to and under the following property, whether now existing or at any time hereafter acquired (collectively, the “*Collateral*”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor’s Obligations:

(a) all Contracts for Sale and Land Sale Contracts to which such Grantor is or is to become a party, including:

(i) all rights of such Grantor to receive monies due and to become due under or pursuant to such Contracts for Sale and Land Sale Contracts;

(ii) all rights of such Grantor under or in respect of any escrow, settlement or similar agreement entered into by such Grantor in connection with such

Contracts for Sale and Land Sale Contracts, including all rights of such Grantor to receive monies pursuant to any such escrow, settlement or similar agreement;

(iii) all claims of such Grantor for damages arising out of or for breach of or default under such Contracts for Sale and Land Sale Contracts; and

(iv) all rights of such Grantor to terminate, amend, supplement, modify or waive performance under such Contracts for Sale, to compel performance and otherwise to exercise all remedies thereunder;

(b) to the extent not covered by clause (a) of this Section 2, all Accounts arising from or relating to Contracts for Sale and Land Sale Contracts to which such Grantor is or is to become a party;

(c) to the extent not covered by clause (a) of this Section 2, all General Intangibles arising from or relating to Contracts for Sale and Land Sale Contracts to which such Grantor is or is to become a party;

(d) all Securities Accounts now or hereafter maintained by such Grantor;

(e) all Accounts not otherwise included in clause (b) of this Section 2, now or hereafter maintained by such Grantor;

(f) all General Intangibles not otherwise included in clause (c) of this Section 2, now owned or hereafter acquired by such Grantor;

(g) all Chattel Paper, Commercial Tort Claims described on Schedule 6 as amended from time to time, Documents, Equipment, Fixtures, Goods, Instruments, Inventory, Investment Property, letters of credit, Letter-of-Credit Rights, Licenses and Pledged Deposits now owned or hereafter acquired by such Grantor;

(h) all Copyrights, Patents and Trademarks now owned or hereafter acquired by such Grantor;

(i) all books and records pertaining to the foregoing, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto; and

(j) all Proceeds (including Stock Rights), insurance proceeds and products thereof, Supporting Obligations and products of any and all of the foregoing and all other collateral security and guarantees given by any Person with respect to the foregoing, including Proceeds of Contracts for Sale and Land Sale Contracts constituting Escrow Proceeds Receivables and any other escrowed funds relating to Contracts for Sale and Land Sale Contracts;

provided, however, that notwithstanding any of the other provisions set forth in this Section 2, this Agreement shall not constitute a grant of security in, without duplication, (i) any Contract

for Sale, Land Sale Contract or other General Intangible to the extent that such grant of a security interest is prohibited by, constitutes a breach or default under, results in the termination of, or requires any consent not obtained under, such Contract for Sale, Land Sale Contract or General Intangible, as applicable, except to the extent the relevant term in such Contract for Sale, Land Sale Contract or General Intangible, as applicable, providing for such prohibition, breach, default or termination or requiring such consent is ineffective under any applicable law, provided that the proceeds therefrom shall not be excluded from the Collateral to the extent that the assignment of such proceeds is not prohibited, (ii) rights under governmental licenses and authorizations to the extent and for so long as the grant of a security interest therein is prohibited by law, (iii) any intent-to-use trademark or service mark application prior to the filing of a statement of use or amendment to allege use, or any other intellectual property, to the extent that applicable law or regulation prohibits the creation of a security interest or would otherwise result in the loss of rights from the creation of such security interest or from the assignment of such rights upon the occurrence and continuance of an Event of Default, (iv) any Mortgaged Property or any property of a Grantor in respect of which a Lien is granted pursuant to the Equity Pledge Agreement or any Pledge Agreement, (v) any of the Joint Ventures and other Persons set forth on Schedule 4, (vi) any rights or property acquired under or in connection with a lease, contract, healthcare insurance receivable, property rights agreement or license, where the grant of a security interest in such rights or property shall constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of the applicable Grantor therein or (B) a breach or termination pursuant to the terms of, or a default under, such lease, contract, healthcare insurance receivable, property rights agreement or license, as the case may be (in each case, other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity), provided that the proceeds therefrom shall not be excluded from the Collateral to the extent that the assignment of such proceeds is not prohibited, (vii) property owned by any Grantor on the Effective Date or thereafter acquired that is subject to a Lien securing a purchase money obligation or Capital Lease Obligation expressly permitted to be incurred pursuant to the provisions of the Revolving Credit Agreement if the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money obligation or Capital Lease Obligation) validly prohibits the creation of any other Lien on such property, and (viii) so long as the Termination Date (as defined in the Cash Collateral Agreement) has not occurred, the Transeastern Deposit Account and cash on deposit therein.

SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent to enter into the Revolving Credit Agreement, and to induce the Issuers and the Lenders to make their respective extensions of credit to the Borrowers under the Revolving Credit Agreement, each Grantor hereby represents and warrants to the Administrative Agent, each Issuer and each Lender that:

3.1 Title; No Other Liens. Such Grantor owns and has good title to each of the Collateral free and clear of any and all Liens and options in favor of or claims of any other Person, except for Liens expressly permitted under Section 7.1 of the Revolving Credit Agreement (“*Permitted Liens*”). No effective security agreement, financing statement or other

public notice with respect to all or any part of the Collateral is on file or of record in any public office except such as have been filed in favor of the Administrative Agent, the First Lien Term Loan Administrative Agent and the Second Lien Administrative Agent, except as relates to Permitted Liens.

3.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement create legal and valid first priority Liens on all the Collateral in favor of the Administrative Agent for its benefit and for the ratable benefit of the Issuers and the Lenders; and upon completion of the filings, payment of all recordation fees, and completion of the other actions specified on Schedule 1 (which in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly executed form unless otherwise expressly provided in the Revolving Credit Agreement or any other Loan Document), such Liens constitute first priority perfected and continuing Liens on the Collateral, securing the Obligations, enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and by general equitable principles (whether enforcement is sought by proceedings in equity or at law)) against the applicable Grantor and all third parties, and having priority over all other Liens, including Liens created in favor of the Second Lien Administrative Agent and for the benefit of the Second Lien Secured Parties, on the Collateral except in the case of (a) Liens permitted by clauses (a), (c), (d), (e) and (f) of Section 7.1 of the Revolving Credit Agreement, to the extent any such Liens would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law and Customary Permitted Liens to the extent having priority by provisions of applicable law and (b) without limiting the obligations of the Grantors hereunder, Liens perfected only by control, possession or notation (including possession or notation of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain control, possession of or notation on such Collateral.

3.3 Jurisdiction of Organization; Chief Executive Office. On the date hereof, such Grantor's jurisdiction of organization, name as it appears in and identification number, if any from the official filings in its jurisdiction of organization, and the location of such Grantor's chief executive office are specified on Schedule 2. Such Grantor's jurisdiction of organization is the only jurisdiction in which such Grantor is a "registered organization" (as such term is used in Section 9-307 of the New York UCC). Except as disclosed in Schedule 2, during the one year ending on the date hereof, such Grantor has not changed its name, location, chief executive office, type of organization, jurisdiction of organization or organizational identification number from the information set forth on Schedule 2.

3.4 Contracts for Sale.

(a) Such Grantor lawfully holds rights and interests in each Contract for Sale and Land Sale Contract to which it is a party, has the power and authority to grant a security interest in such Contract for Sale and Land Sale Contract and has not executed any other document or instrument that could reasonably be expected to prevent or limit the Administrative Agent from operating under or realizing the benefits of the terms, conditions and provisions of

this Agreement, other than Contracts for Sale and Land Sale Contracts the purchase price in respect of which does not exceed \$5,000,000 in the aggregate.

(b) Neither applicable law nor any provision of any Contract for Sale or Land Sale Contract to which such Grantor is a party restricts or prohibits such Grantor from assigning, transferring or granting a security interest in such Grantor's right, title or interest in any such Contract for Sale and Land Sale Contract, and none of the execution, delivery or the performance of this Agreement will violate any applicable law, result in a breach by such Grantor of any of the terms of any such Contract for Sale and Land Sale Contract or give rise to any right of the counterparty or counterparties to any such Contract for Sale or Land Sale Contract to terminate such Contract for Sale or Land Sale Contract, other than Contracts for Sale and Land Sale Contracts the purchase price in respect of which does not exceed \$5,000,000 in the aggregate.

(c) Such Grantor is not in default under any Contract for Sale or Land Sale Contract to which it is a party, and to such Grantor's knowledge, other than Contracts for Sale and Land Sale Contracts the purchase price in respect of which does not exceed \$5,000,000 in the aggregate, no other party to any such Contract for Sale or Land Sale Contract is in default thereunder.

3.5 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Accounts and Chattel Paper owned by each Grantor are and will be (when taken as a whole) correctly stated in all material respects in all records of such Grantor relating thereto and in all invoices and reports with respect thereto furnished to the Administrative Agent by such Grantor from time to time. As of the time when each Account or each item of Chattel Paper arises, such Grantor shall be deemed to have represented and warranted that, to the knowledge of a Responsible Officer of such Grantor, such Account or Chattel Paper with a value in excess of \$500,000, as the case may be, and all records relating thereto, are genuine and in all material respects what they purport to be.

3.6 Filing Requirements. As of the Effective Date, none of the Collateral owned by such Grantor is of a type for which security interests or Liens may be perfected by filing under any federal statute except (a) aircraft and any aircraft/engines, ships, railcars and other vehicles governed by federal statute described in Part A of Schedule 5 and (b) the Patents, Trademarks and Copyrights held by such Grantor and described in Part B of Schedule 5.

3.7 Chattel Paper, Instruments and Other Investment Property. Schedule 7 sets forth a complete and accurate list of the Chattel Paper, Instruments, Collateral consisting of Securities and other Collateral consisting of Investment Property required to be delivered pursuant to Section 4.10(a). Each Grantor is the direct and beneficial owner of the Chattel Paper and each Instrument, Security and other type of Investment Property listed on Schedule 7 as being owned by it. Each Grantor further represents and warrants that the Collateral consisting of shares of stock in a corporation or ownership interests in a partnership or limited liability company have been (to the extent such concepts are relevant with respect to such Securities) duly and validly issued, are fully paid and non-assessable and constitute the percentage of the issued and outstanding shares of stock (or other equity interests) of the respective issuers thereof indicated on Schedule 7.

3.8 Letters of Credit. Schedule 8 sets forth a complete and accurate list of all letters of credit issued in favor of each Grantor, as beneficiary thereunder, as of the Effective Date, required to be delivered pursuant to Section 4.14(a).

SECTION 4. COVENANTS

Each Grantor covenants and agrees with the Administrative Agent for its benefit and for the ratable benefit of the Issuers and the Lenders that, from and after the date hereof and as long as any Obligations (other than contingent indemnification obligations) or the Revolving Credit Commitments (as defined in the Revolving Credit Agreement) remain outstanding:

4.1 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain each security interest created by this Agreement as a perfected security interest in accordance with Section 3.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, other than Patents, Trademarks or Copyrights which are not material to the business of such Grantor and which, in such Grantor's commercially reasonable business judgment, such Grantor elects to abandon.

(b) Such Grantor shall not sell, license, lease, transfer or otherwise dispose of any of the Collateral, or contract to do so, except (a) with respect to Proceeds of a Contract for Sale or Land Sale Contract, as expressly permitted under the terms of such Contract for Sale or Land Sale Contract and (b) with respect to any other Collateral, to the extent not prohibited by the Revolving Credit Agreement.

(c) Except as expressly provided in the Revolving Credit Agreement, upon reasonable request of the Administrative Agent, at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, any and all such further instruments and documents and take such further actions as may be required by applicable law or as necessary to perfect and protect any security interest purported to be granted by such Grantor hereunder and obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Securities Accounts and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, in each case, to the extent required hereunder.

4.2 Changes in Locations, Name, etc. Such Grantor will not, except after not less than 30 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of all additional authenticated financing statements and other documents necessary to maintain the validity, perfection and priority of the security interests provided for herein:

(a) change its jurisdiction of organization or the location of its chief executive office from, or take any action to become a "registered organization" (as used in Section 9-307 of the New York UCC) in any jurisdiction other than, that referred to on Schedule 2; or

(b) change its name.

4.3 Notices. Such Grantor will advise the Administrative Agent promptly, in reasonable detail, of (a) any Lien (other than security interests created hereby or by any other Loan Document, the First Lien Term Loan Collateral Documents, the Second Lien Collateral Documents or any other Permitted Lien) on any of the Collateral and (b) of the occurrence of any other event that could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

4.4 Contracts for Sale.

(a) Subject to Section 5.1(c), such Grantor shall perform and observe, in a timely manner and in all other material respects, all of the covenants, conditions, obligations and agreements of such Grantor under each Contract for Sale and Land Sale Contract to which it is a party and shall suffer or permit no delinquency on its part to exist thereunder in any material respect.

(b) Subject to Section 5.1(c), such Grantor shall use its commercially reasonable efforts to enforce or secure the performance in all material respects of each and every obligation, covenant, condition and agreement to be performed by the counterparty or counterparties to each Contract for Sale and Land Sale Contract to which such Grantor is a party.

(c) Except as expressly provided in the Revolving Credit Agreement, in connection with each sale consummated under a Contract for Sale and Land Sale Contract to which such Grantor is a party, such Grantor shall direct the relevant title company, title agent or escrow agent to transfer proceeds payable to such Grantor (including any related Escrow Proceeds Receivables) directly to a Designated Account.

4.5 Securities Accounts. Except as expressly provided in the Revolving Credit Agreement, no Grantor shall maintain or establish any Securities Account with any financial institution unless such Grantor, the Administrative Agent and such financial institution shall have entered into an agreement which provides the Administrative Agent with “control” (as such term is defined under the New York UCC) with respect to such Securities Account or the Administrative Agent otherwise has “control” (within the meaning of the Uniform Commercial Code of any applicable jurisdiction) of such Securities Account; provided that the provisions of this Section 4.5 shall not apply to (i) any U.S. Bank Account so long as (x) such U.S. Bank Account continues to be a custodial account and does not constitute a Securities Account and (y) the custodian of such U.S. Bank Account remains under written instruction by an authorized officer of the customer of such U.S. Bank Account to automatically transfer any cash that is deposited in such U.S. Bank Account to a Linked Deposit Account (or such other Deposit Account as to which the Administrative Agent shall have entered into an agreement which provides the Administrative Agent with “control” (as such term is defined under the New York UCC) or the Administrative Agent otherwise has “control” (within the meaning of the Uniform Commercial Code of any applicable jurisdiction) with respect to such Deposit Account) and (ii) any Securities Account maintained with the Administrative Agent over which the Administrative Agent has, by operation of law, obtained “control” (as such term is defined under the New York UCC).

4.6 Proceeds of Collateral. Except as expressly provided in the Revolving Credit Agreement, each Grantor shall cause all or any part of Proceeds constituting Collateral to be deposited directly into a Designated Account, and shall not invest any funds on deposit in a Designated Account in, or transfer any such funds to, any Securities Account unless (a) such Grantor, the Administrative Agent and the financial institution that maintains such Securities Account shall have entered into an agreement which provides the Administrative Agent with “control” (as such term is defined under the New York UCC) with respect to such Securities Account or the Administrative Agent otherwise has “control” (within the meaning of the Uniform Commercial Code of any applicable jurisdiction) of such Securities Account and (b) the Administrative Agent shall have received an Opinion of Counsel in form and substance reasonably satisfactory to it with respect to the creation and perfection of the security interest in such Securities Account.

4.7 Further Identification of Collateral. Each Grantor shall furnish to the Administrative Agent, requests, statements and schedules further identifying the Collateral as the Administrative Agent may reasonably request and in such reasonable detail as the Administrative Agent may specify.

4.8 Receivables.

(a) Except as otherwise provided in this Agreement (including Section 4.4(b)) or otherwise determined in such Grantor’s commercially reasonable business judgment, each Grantor will collect and enforce, at such Grantor’s sole expense, all amounts due or hereafter due to such Grantor under the Receivables owned by such Grantor in the ordinary course of business and as otherwise permitted under the Revolving Credit Agreement.

(b) Each Grantor will deliver to the Administrative Agent promptly upon its reasonable request after the occurrence and during the continuance of an Event of Default duplicate invoices with respect to each Account owned by such Grantor bearing such language of assignment as the Administrative Agent shall specify.

4.9 Inventory and Equipment.

(a) Each Grantor will do all things reasonably necessary to maintain, preserve, protect and keep the Inventory and the Equipment owned by such Grantor in satisfactory repair, working order and saleable condition (ordinary wear and tear, casualty and condemnation excepted) and make all reasonably necessary repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) With respect to any location of Collateral consisting of Inventory valued in excess of \$1,000,000 that is leased by such Grantor or at which such Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment, such Grantor, at the Administrative Agent’s reasonable request during the continuance of an Event of Default, shall use commercially reasonable efforts to deliver landlord waivers, bailment agreements, warehouse receipts, financing statements or other documents reasonably satisfactory to the

Administrative Agent to protect the Administrative Agent's and the Issuers' and the Lenders' security interest in such Inventory and provide the Administrative Agent with access to such Collateral upon the occurrence of a Default.

4.10 Instruments, Securities, Chattel Paper, Documents and Pledged Deposits.

Each Grantor will (a) deliver to the Administrative Agent promptly upon execution of this Agreement, if any of the following then exist: (i) the originals of all Chattel Paper valued in excess of \$500,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent, (ii) with respect to Collateral consisting of any Security valued in excess of \$500,000, a certificate evidencing such Security (together with an undated stock power covering such certificate duly executed in blank by such Grantor), (iii) the originals of all Instruments evidencing Indebtedness of the Administrative Borrower or any of its Subsidiaries to a Grantor ("**Intercompany Indebtedness**") in excess of \$1,000,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent, it being understood and agreed that all Intercompany Indebtedness in excess of \$1,000,000 shall be evidenced by an Instrument, and (iv) the originals of all Instruments evidencing Indebtedness (other than Intercompany Indebtedness) in excess of \$500,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent; (b) hold in trust for the Administrative Agent upon receipt and promptly thereafter deliver to the Administrative Agent (i) the originals of all Chattel Paper valued in excess of \$500,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent, (ii) with respect to Collateral consisting of any Security valued in excess of \$500,000, a certificate evidencing such Security (together with an undated stock power covering such certificate duly executed in blank by such Grantor), (iii) the originals of all Instruments evidencing Intercompany Indebtedness in excess of \$1,000,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent, and (iv) the originals of all Instruments evidencing Indebtedness (other than Intercompany Indebtedness) in excess of \$500,000 duly indorsed in a manner reasonably satisfactory to the Administrative Agent; (c) upon the designation of any Pledged Deposits (as set forth in the definition thereof), deliver to the Administrative Agent such Pledged Deposits which are evidenced by certificates included in the Collateral endorsed in blank, marked with such legends and collaterally assigned as the Administrative Agent shall specify; and (d) after the occurrence and during the continuance of an Event of Default, promptly deliver to the Administrative Agent (and thereafter hold in trust for the Administrative Agent upon receipt and promptly deliver to the Administrative Agent) any Document in excess of \$1,000,000 evidencing or constituting Collateral.

4.11 Uncertificated Securities and Certain Other Investment Property.

Each Grantor will permit the Administrative Agent from time to time, after the occurrence and during the continuance of an Event of Default, to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property not represented by certificates and which constitute Collateral owned by such Grantor to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Administrative Agent granted pursuant to this Agreement. Each Grantor will use all commercially reasonable efforts, upon the request of the Administrative Agent upon the occurrence and during the continuance of an Event of Default, with respect to Investment Property constituting Collateral owned by such Grantor

held with a financial intermediary (other than Securities Accounts, which are governed by Section 4.5), to cause such financial intermediary to enter into a control agreement with the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent.

4.12 Registration of Pledged Securities and other Investment Property. Each Grantor will permit any registerable Collateral owned by such Grantor to be registered in the name of the Administrative Agent or its nominee at any time following the occurrence and during the continuance of an Event of Default and without any further consent of such Grantor. After any and all Events of Default have been cured or waived in accordance with Section 10.1 of the Revolving Credit Agreement, each applicable Grantor shall automatically have the right to have such registerable Collateral reregistered in the name of such Grantor.

4.13 Exercise of Rights in Pledged Securities and other Investment Property. Each Grantor will permit the Administrative Agent or its nominee at any time after the occurrence and continuance of an Event of Default, with prior notice, to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Collateral owned by such Grantor or any part thereof (to the extent permitted by applicable law and applicable organizational documents), and to receive all dividends and interest in respect of such Collateral. Unless and until the Administrative Borrower receives prior notice from the Administrative Agent after the occurrence and during the continuance of an Event of Default, (a) each Grantor shall be entitled to exercise all voting and other consensual rights pertaining to the Collateral for any purpose that does not violate the terms of this Agreement, the Revolving Credit Agreement and the other Loan Documents; provided, however, that no Grantor will be entitled to exercise any such right if the result thereof could materially and adversely affect the rights and remedies of the Administrative Agent or the Issuers or the Lenders under this Agreement, the Revolving Credit Agreement or any other Loan Document or the ability to exercise the same, and (b) each Grantor shall be entitled to receive and retain all dividends or interest in respect of such Collateral to the extent and only to the extent that such dividends or interest are not prohibited by the terms and conditions of the Revolving Credit Agreement, the other Loan Documents and applicable laws, other than any dividends or interest resulting from a subdivision, combination or reclassification or received in exchange for Collateral, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets. After any and all Events of Default have been cured or waived in accordance with Section 10.1 of the Revolving Credit Agreement, each Grantor shall automatically have the right to (i) exercise the voting, managerial and other consensual rights and powers that it would otherwise be entitled to pursuant to this Section 4.13, and (ii) receive the payments, proceeds, dividends, distributions, monies, compensation, property, assets, instruments or rights which it would be authorized to receive and retain pursuant to this Agreement. Upon the request of any Grantor, within five (5) Business Days after such cure or waiver, the Administrative Agent shall repay and deliver to such Grantor all cash and monies that such Grantor is entitled to retain that was not applied in accordance with Section 2.12 of the Revolving Credit Agreement.

4.14 Letter-of-Credit Rights. Each Grantor will (a) promptly upon the execution of this Agreement use its commercially reasonable efforts to cause each issuer of a letter of credit to such Grantor valued in excess of \$1,000,000 (if any then exist) and (b) after the date of this Agreement and upon the Administrative Agent's reasonable request, use its

commercially reasonable efforts to cause each issuer of a letter of credit to such Grantor valued in excess of \$1,000,000, in each case, to consent to the assignment of proceeds of such letter of credit in order to give the Administrative Agent control of the Letter-of-Credit Rights to such letter of credit.

4.15 Intellectual Property.

(a) If, after the date hereof, any Grantor obtains rights to, or applies for or seeks registration of, any new Patent, Trademark or Copyright in addition to the Patents, Trademarks and Copyrights described in Part B of Schedule 5, which are all of such Grantor's Patents, Trademarks and Copyrights as of the date hereof, then within 30 days following the fiscal quarter during which such event occurred, the Administrative Borrower shall give the Administrative Agent notice of such newly acquired or registered Patent, Trademark or Copyright. Each Grantor agrees promptly upon request by the Administrative Agent to execute and deliver to the Administrative Agent any supplement to this Agreement or any other document reasonably requested by the Administrative Agent to evidence a security interest in such intellectual property in a form appropriate for recording in the applicable federal office. Each Grantor also hereby authorizes the Administrative Agent to modify this Agreement with three (3) Business Days' prior notice to such Grantor (i) by amending Part B of Schedule 5 to include any future Patents, Trademarks and/or Copyrights of which the Administrative Agent receives notification from such Grantor pursuant hereto and (ii) by recording, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing in Part B of Schedule 5 a description of such future Patents, Trademarks and/or Copyrights or any other document reasonably requested by the Administrative Agent containing a description of such future Patents, Trademarks and/or Copyrights.

(b) In the event a Grantor abandons any Patent, Trademark or Copyright as contemplated by Section 4.1(a), the Administrative Borrower shall, within 30 days following the fiscal quarter during which such abandonment occurred, notify the Administrative Agent of the abandonment thereof.

4.16 Commercial Tort Claims. If, after the date hereof, a Responsible Officer of any Grantor identifies the existence of a commercial tort claim in excess of \$500,000 belonging to such Grantor that has arisen in the course of such Grantor's business, in addition to the commercial tort claims in excess of \$500,000 described in Schedule 6, which are all of such Grantor's commercial tort claims in excess of \$500,000 as of the date hereof, then such Grantor shall give the Administrative Agent notice thereof not less frequently than quarterly. Each Grantor agrees promptly upon written request by the Administrative Agent to execute and deliver to the Administrative Agent any supplement to this Security Agreement or any other document reasonably requested by the Administrative Agent to evidence the grant of a security interest therein in favor of the Administrative Agent.

SECTION 5. REMEDIAL PROVISIONS; LIMITATION

5.1 Grantors Remain Liable, etc. (a) Anything herein to the contrary notwithstanding, unless the obligations are expressly assumed by the Administrative Agent, each Grantor shall remain liable under each Contract of Sale and each Land Sale Contract to which it

is a party to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of such Contract for Sale or Land Sale Contract and such Land Sale Contract. Unless the obligations are expressly assumed by the Administrative Agent, the Administrative Agent shall not have any obligation or liability under any Contract for Sale or Land Sale Contract by reason of or arising out of this Agreement or the receipt by the Administrative Agent of any payment relating thereto, nor shall the Administrative Agent be obligated in any manner to perform any of the obligations of such Grantor under or pursuant to any such Contract for Sale or Land Sale Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Each Grantor hereby irrevocably directs the counterparty or counterparties to any Contract for Sale and Land Sale Contract to which such Grantor is a party, to the extent permitted by such Contract for Sale or Land Sale Contract, as applicable, and under any recognition or other agreement executed by such counterparty or counterparties, upon written demand from the Administrative Agent, to recognize and accept the Administrative Agent as the holder of such Contract for Sale and Land Sale Contract for any and all purposes as fully as it would recognize and accept such Grantor and the performance of such Grantor thereunder; provided that the Administrative Agent may only make such demands during the continuance of an Event of Default. Following an Event of Default and during the continuance thereof, each such counterparty or counterparties to the Contracts for Sale or Land Sale Contracts upon written notice from the Administrative Agent of the occurrence and continuance of an Event of Default (which shall only be given with one Business Day's prior notice to such Grantor), shall be and is hereby authorized by the Grantor party to such Contracts of Sale or such Land Sale Contracts to perform under their respective Contracts for Sale or Land Sale Contracts for the benefit of the Administrative Agent in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred or is continuing.

(c) Notwithstanding anything to the contrary contained herein, but subject to Section 4.6, for so long as no Event of Default shall have occurred and be continuing, each Grantor may take or refrain from taking any and all actions in the ordinary course of business with respect to each Contract for Sale and Land Sale Contract to which it is a party including exercising all of its rights and privileges under each such Contract for Sale or Land Sale Contract. Each Grantor's foregoing right shall immediately be suspended upon and during the continuance of any such Event of Default.

5.2 Application of Proceeds. All or any part of Proceeds constituting Collateral shall be applied in accordance with Section 2.12 of the Revolving Credit Agreement and in accordance with the Intercreditor Agreement.

5.3 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement, in the other Collateral Documents and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a

secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, to the extent permitted by applicable law, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (to the extent permitted by applicable law, all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith (i) collect, receive, appropriate and realize upon the Collateral, or any part thereof, (ii) transfer all or any part of the Collateral into the Administrative Agent's name or the name of its nominee or nominees and/or (iii) forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. If an Event of Default shall have occurred and shall be continuing, each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere, and promptly to execute and deliver to the Administrative Agent such instruments or other documents as may be necessary or advisable to enable the Administrative Agent or its agent or representative to obtain possession of all or any part of the Collateral the possession of which the Administrative Agent shall at the time be entitled to hereunder. The Administrative Agent shall also be entitled, so long as an Event of Default shall have occurred and be continuing, to occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is assembled or located for a reasonable period to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor for such occupation and to otherwise exercise any and all rights and remedies of any Grantor under or in connection with the Collateral, or otherwise in respect of the Collateral. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 5.3, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent hereunder, including reasonable attorneys' fees and disbursements, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the New York UCC and after compliance by the Administrative Agent with the terms of the Intercreditor Agreement, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent arising out of the exercise by the Administrative Agent of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

5.4 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations

and the fees and disbursements of any attorneys employed by the Administrative Agent to collect such deficiency.

5.5 Proceeds to be Turned Over to the Administrative Agent. If an Event of Default shall occur and be continuing, all Proceeds with respect to Collateral received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Administrative Agent (for its benefit and for the ratable benefit of the Issuers and the Lenders), segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be deposited in a Designated Account in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds with respect to Collateral while held in a Designated Account (or by such Grantor in trust for the Administrative Agent (for its benefit and for the ratable benefit of the Issuers and the Lenders)) shall continue to be held as collateral security for all the Obligations until any and all Events of Default have been cured or waived in accordance with Section 10.1 of the Revolving Credit Agreement, and shall not constitute payment thereof until applied as provided in Section 5.2.

SECTION 6. ACTIONS AFTER EVENT OF DEFAULT

6.1 General Authority of the Administrative Agent over the Collateral. Each Grantor and, by its acceptance of the benefits hereof, each Issuer and Lender, hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in its or his own name, from time to time in the Administrative Agent's discretion so long as an Event of Default has occurred and is continuing, to take any and all actions and to execute any and all documents and instruments which may be necessary or advisable to carry out the terms of this Agreement and accomplish the purposes hereof.

6.2 Judicial Proceedings and Insolvency Events. If an Event of Default has occurred and is continuing, the Administrative Agent (i) shall have the right and power to institute, maintain, defend and participate in such suits and proceedings as it may deem appropriate to protect and enforce the rights vested in it by this Agreement and its interests and the interests of the Issuers and the Lenders, (ii) may, either after entry, or without entry, proceed by suit or suits at law or in equity to enforce such rights and to foreclose upon the Collateral and to sell all or, from time to time, any of the Collateral under the judgment or decree of a court of competent jurisdiction and (iii) may, on behalf of itself and the Issuers and the Lenders, file claims concerning, stipulate or consent to, any matter concerning, and otherwise represent its interests and the interests of the Issuers and the Lenders concerning, the Collateral.

6.3 Right to Appoint a Receiver. If an Event of Default has occurred and is continuing, upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Administrative Agent under this Agreement, the Administrative Agent shall, to the extent permitted by law, with notice to the Administrative Borrower but without notice to any party claiming through the Grantors, without regard to the solvency or insolvency at the time of any Person then liable for the payment of any of the Obligations, without regard to the then value of the Collateral, and without requiring any bond from any complainant in such proceedings, be entitled as a matter of right to the appointment of a receiver or receivers of the

Collateral, or any part thereof, and of the rents, issues, tolls, profits, royalties, revenues and other income thereof, pending such proceedings, with such powers as the court making such appointment shall confer, and to the entry of an order directing that the rents, issues, tolls, profits, royalties, revenues and other income of the property constituting the whole or any part of the Collateral be segregated, sequestered and impounded for the benefit of the Administrative Agent and the Issuers and the Lenders, and each Grantor irrevocably consents to the appointments of such receiver or receivers and to the entry of such order; provided that, notwithstanding the appointment of any receiver, the Administrative Agent shall be entitled to retain possession and control of all cash and Cash Equivalents held by or deposited with it pursuant to any Loan Document.

6.4 Remedies Not Exclusive.

(a) No remedy conferred upon or reserved to the Administrative Agent herein is intended to be exclusive of any other remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission by the Administrative Agent to exercise any right, remedy or power hereunder or under any other Loan Document shall impair any such right, remedy or power or shall be construed to be a waiver thereof, and every right, power and remedy given by this Agreement to the Administrative Agent may be exercised from time to time and as often as may be deemed expedient by the Administrative Agent.

(c) If the Administrative Agent shall have proceeded to enforce any right, remedy or power under this Agreement and the proceeding for the enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Administrative Agent, then the Grantors, the Administrative Agent, the Issuers and the Lenders shall, subject to any determination in such proceeding, severally and respectively be restored to their former positions and rights hereunder or thereunder with respect to the Collateral and in all other respects, and thereafter all rights, remedies and powers of the Administrative Agent shall continue as though no such proceeding had been taken.

(d) All rights of action and of asserting claims upon or under this Agreement may be enforced by the Administrative Agent without the possession of any Loan Document or instrument evidencing any Obligation or the production thereof at any trial or other proceeding relative thereto, and any suit or proceeding instituted by the Administrative Agent shall be, subject to Section 7, brought in its name as Administrative Agent and any recovery of judgment shall be held as part of the Collateral.

6.5 Waiver and Estoppel.

(a) Each Grantor agrees, to the extent it may lawfully do so, that it will not at any time in any manner whatsoever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, turnover or redemption law, or any law permitting it to direct the order in which the Collateral shall be sold, now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance or enforcement of this Agreement or any

other Loan Document and hereby waives all benefit or advantage of all such laws and covenants that it will not hinder, delay or impede the execution of any power granted to the Administrative Agent in this Agreement or in any other Loan Document but will suffer and permit the execution of every such power as though no such law were in force.

(b) Each Grantor, to the extent it may lawfully do so, on behalf of itself and all who may claim through or under it, including any and all subsequent creditors, vendees, assignees and lienors, waives and releases all rights to demand or to have any marshaling of the Collateral upon any sale, whether made under any power of sale granted herein or pursuant to judicial proceedings or upon any foreclosure or any enforcement of this Agreement or any other Loan Document and consents and agrees that all the Collateral may at any such sale be offered and sold as an entirety.

(c) Each Grantor waives, to the extent permitted by applicable law, presentment, demand, protest and any notice of any kind (except notices explicitly required hereunder, under any other Loan Document or under the New York UCC) in connection with this Agreement and any other Loan Document and any action taken by the Administrative Agent with respect to the Collateral.

6.6 Limitation on Administrative Agent's Duty in Respect of Collateral. Beyond its duties as to the custody thereof expressly provided in Section 7.2 and to account to the Issuers, the Lenders and the Grantors for moneys and other property received by it hereunder, the Administrative Agent shall not have any duty to the Grantors or to the Issuers or the Lenders as to any Collateral in its possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

6.7 License. The Administrative Agent is hereby granted a license or other right to use, exercisable only following the occurrence and during the continuance of an Event of Default, without charge, each Grantor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, such Grantor's rights under all licenses and all franchise agreements shall inure to the Administrative Agent's benefit. In addition, each Grantor hereby irrevocably agrees that the Administrative Agent may, following the occurrence and during the continuance of an Event of Default, sell any of such Grantor's Inventory directly to any Person, including Persons who have previously purchased such Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Agreement, may sell Inventory which bears any trademark owned by or licensed to such Grantor and any Inventory that is covered by any copyright owned by or licensed to such Grantor and the Administrative Agent may finish any work in process and affix any trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

6.8 Collection of Receivables. The Administrative Agent may at any time after the occurrence and during the continuance of an Event of Default, by giving each Grantor

prior written notice, elect to require that the Receivables that constitute Collateral be paid directly to the Administrative Agent for the ratable benefit of the Issuers and the Lenders. In such event, each Grantor shall, and shall permit the Administrative Agent to, after one Business Day's notice to such Grantor, notify the account debtors or obligors under the Receivables owned by such Grantor and that constitute Collateral of the Administrative Agent's interest therein and direct such account debtors or obligors to make payment of all amounts then or thereafter due under such Receivables directly to the Administrative Agent during the continuance of such Event of Default. Upon receipt of any such notice from the Administrative Agent, each Grantor shall thereafter hold in trust for the Administrative Agent, on behalf of the Issuers and the Lenders, all amounts and proceeds received by it with respect to the Receivables and immediately and at all times thereafter deliver to the Administrative Agent all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. The Administrative Agent shall hold and apply funds so received as provided by the terms of Section 5.2.

6.9 Compromises and Collection of Collateral. Each Grantor and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that such Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating such a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to such Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, with one Business Day's prior notice to the Administrative Borrower compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its reasonable discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts in good faith based on information known to it at the time it takes any such action, it being understood that unless and until an Event of Default has occurred and is continuing, the Grantors shall be permitted to exercise the foregoing rights with respect to Receivables.

SECTION 7. THE ADMINISTRATIVE AGENT

7.1 Administrative Agent's Appointment as Attorney-in-Fact, etc. (a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement and the other Collateral Documents, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and the other Collateral Documents, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

- (i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other

instruments for the payment of moneys due under or with respect to any Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due with respect to the Collateral whenever payable;

(ii) with one Business Day's prior notice to such Grantor, pay or discharge taxes and Liens levied or placed on or threatened against the Collateral;

(iii) execute, in connection with any sale provided for in Section 5.3, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iv) (1) with one Business Day's prior notice to such Grantor direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct (including, with respect to Receivables, in accordance with Sections 6.8 and 6.9); (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (4) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (5) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; and (6) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which may be required by applicable law or which the Issuers and the Lenders deem necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's, the Issuers' and the Lenders' security interests therein and to effect the intent of this Agreement and the other Collateral Documents, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may, upon not less than 5 Business Days' notice to such Grantor, perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per

annum equal to the rate per annum at which interest is then payable under the Revolving Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent within 10 days of written demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement and each other Loan Document is terminated and the security interests created hereby and thereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any Issuer, any Lender nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the Issuers and the Lenders hereunder are solely to protect the Administrative Agent's, the Issuers' and the Lenders' interests in the Collateral and shall not impose any duty upon the Administrative Agent, any Issuer or any Lender to exercise any such powers. The Administrative Agent, the Issuers and the Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor or any other Issuer or Lender for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

7.3 Filing of Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral (including amendments to financing statements and including continuation statements) without the signature of such Grantor (to the extent permitted by applicable law) in such form and in such offices as necessary to perfect the security interests of the Administrative Agent under this Agreement and under each other Collateral Document. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes the Collateral in any other manner as the Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing, with respect to any Grantor's financing statement, such property as "all assets" or "all or substantially all personal property and fixtures." Notwithstanding the foregoing, in no event shall the Administrative Agent have any obligation to monitor the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral or to prepare or file any Uniform Commercial Code financing statement or continuation statement. Each Grantor hereby ratifies its authorization for the Administrative Agent to have filed any initial financing statements, amendments thereto or continuation

statements if filed prior to the date of this Agreement in connection with the Original Security Agreement.

7.4 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement and the other Collateral Documents with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement or any other Collateral Document shall, as between the Administrative Agent and the Issuers and the Lenders, be governed by the Loan Documents and by such other agreements with respect thereto as may exist from time to time among the Administrative Agent and the Issuers and the Lenders, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Issuers and the Lenders with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.5 Exculpatory Provisions.

(a) The Administrative Agent shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations or warranties in any Loan Document which are made by the Grantors. The Administrative Agent makes no representations as to, nor shall it be responsible for, the existence, genuineness, value or condition of any of the Collateral or any part thereof, the title of the Grantors thereto or the security afforded or intended to be afforded by this Agreement and the other Collateral Documents, or the validity, execution (except its execution), enforceability, legality or sufficiency of this Agreement or the other Collateral Documents or the Obligations or the validity, perfection, priority or enforceability of the liens or security interests in any of the Collateral created or intended to be created by this Agreement or the other Collateral Documents, or the validity or sufficiency of the Collateral, or insuring the Collateral or the payment of taxes, charges, assessments or liens upon the Collateral or otherwise as to the maintenance of the Collateral, and the Administrative Agent shall incur no liability or responsibility in respect of any such matters. The Administrative Agent shall have no responsibility for preparing, recording, filing, re-recording or re-filing any financing statement, continuation statement or other instrument in any public office at any time.

(b) The Administrative Agent shall not be required to ascertain or inquire as to the performance by the Grantors of any of the covenants or agreements contained herein, or in the other Collateral Documents.

(c) The Administrative Agent shall be under no obligation or duty to take any action under this Agreement or any other Loan Document or otherwise if taking such action (i) would subject the Administrative Agent to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require the Administrative Agent to qualify to do business in any jurisdiction where it is not then so qualified, unless the Administrative Agent shall receive security or indemnity satisfactory to it against such tax (or equivalent liability), or any liability

resulting from such qualification, in each case as results from the taking of such action under this Agreement or any other Loan Document.

(d) The Administrative Agent shall have the same rights with respect to any Obligation held by it as any Issuer or Lender and may exercise such rights as though it were not the Administrative Agent hereunder, and it and its Affiliates may accept deposits from, lend money to, provide services to and generally engage in any kind of banking or trust business with, any of the Grantors as if it were not the Administrative Agent.

(e) None of the Administrative Agent, any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Collateral Documents, except for its, his, her or their own gross negligence or willful misconduct.

(f) The permissive right of the Administrative Agent to take any action under this Agreement or any other Collateral Document shall not be construed as a duty to so act.

7.6 Delegation of Duties. The Administrative Agent may execute any of the trusts or powers hereof and perform any duty hereunder or under any other Loan Document either directly or by or through agents or attorneys-in-fact. The Administrative Agent shall be entitled to advice of counsel concerning all matters pertaining to such trusts, powers and duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it without gross negligence or willful misconduct.

7.7 Reliance by Administrative Agent.

(a) Whenever in the administration of this Agreement, or any other Collateral Document the Administrative Agent shall deem it necessary or desirable that a factual matter be proved or established in connection with the Administrative Agent taking, suffering or omitting any action hereunder or thereunder, such matter (unless other evidence in respect thereof is herein specifically prescribed) may be deemed to be conclusively proved or established by a certificate of a Responsible Officer of the Administrative Borrower delivered to the Administrative Agent, and the Administrative Agent shall be entitled to take or refrain from taking any action in reliance thereon.

(b) The Administrative Agent may, at the reasonable expense of the Grantors, consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in accordance therewith. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate of a Responsible Officer of the Administrative Borrower or representations made by a Responsible Officer of the Administrative Borrower in a writing delivered to the Administrative Agent.

(c) The Administrative Agent may conclusively rely upon, and shall be fully protected in acting upon or failing to act as a consequence of, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or

document which it believes in good faith is genuine and has been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties. In the absence of its own gross negligence or willful misconduct, the Administrative Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any such certificates, opinions or other information and need not investigate any fact or matter stated therein.

(d) The Administrative Agent shall not be under any obligation to exercise any of the rights or powers vested in the Administrative Agent by this Agreement or by any other Loan Document, unless the Administrative Agent shall have been provided adequate security and indemnity against the costs, expenses and liabilities which may be incurred by the Administrative Agent, its agents and its counsel in the exercise of any such right or power or in compliance with such request or direction, including such reasonable advances as may be requested by the Administrative Agent.

7.8 Limitations on Duties of Administrative Agent.

(a) The Administrative Agent shall be obligated to perform such duties and only such duties as are specifically set forth in this Agreement, or any other Loan Document, and no implied covenants or obligations shall be read into this Agreement or any other Loan Document against the Administrative Agent. If and so long as an Event of Default has occurred and is continuing, the Administrative Agent may exercise the rights and powers vested in the Administrative Agent by this Agreement or any other Loan Document. Subject to Section 7.5, the Administrative Agent shall not be liable with respect to any action taken or omitted to be taken.

(b) Except as herein otherwise expressly provided, the Administrative Agent shall not be under any obligation to take any action that is discretionary under the provisions of this Agreement or of any other Loan Document, except upon the written request of the Issuers and the Lenders pursuant to the terms of the Revolving Credit Agreement.

(c) No provision of this Agreement, or any other Loan Document shall be deemed to impose any duty or obligation on the Administrative Agent to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Administrative Agent shall be unqualified or incompetent, to perform any such act or acts or to exercise any such right, power, duty or obligation or if such performance or exercise would constitute doing business by the Administrative Agent in such jurisdiction or impose a tax on the Administrative Agent by reason thereof or to risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder.

7.9 Moneys to be Held in Trust. All moneys received by the Administrative Agent under or pursuant to any provision of this Agreement, or any other Loan Document (except Administrative Agent fees) shall be held in trust for the purposes for which they were paid or are held. The Administrative Agent shall not be liable for interest on any money or assets received by it except as the Administrative Agent may agree in writing. Assets held in

trust by the Administrative Agent need not be segregated from other assets except to the extent required by law.

7.10 Resignation of the Administrative Agent; Appointment of Successor. The Administrative Agent may at any time, resign and be discharged of the responsibilities hereby created, and in such event a successor Administrative Agent shall be appointed hereunder, in each case, in accordance with Section 9.6 of the Revolving Credit Agreement, the provisions of which are hereby deemed incorporated herein.

7.11 Merger of the Administrative Agent. Any corporation into which the Administrative Agent may be merged, or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Administrative Agent shall be a party, shall be Administrative Agent under this Agreement without the execution or filing of any paper or any further act on the part of the parties hereto.

7.12 Co-Administrative Agent; Separate Administrative Agent.

(a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or to avoid any violation of law or imposition on the Administrative Agent of taxes by such jurisdiction not otherwise imposed on the Administrative Agent, or the Administrative Agent shall be advised by Opinion of Counsel that it is necessary or prudent in the interest of the Issuers, the Lenders or the Administrative Agent shall deem it desirable for its own protection in the performance of its duties hereunder, the Administrative Agent and each of the Grantors shall execute and deliver all instruments and agreements necessary or proper to constitute another financial institution, bank or trust company, or one or more persons approved by the Administrative Agent and the Grantors, either to act as Administrative Agent or co-Administrative Agents of all or any of the Collateral under this Agreement, jointly with the Administrative Agent originally named herein or therein or any successor Administrative Agent, or to act as separate Administrative Agent or Administrative Agents of any of the Collateral. If any of the Grantors shall not have joined in the execution of such instruments and agreements within 10 days after it receives a written request from the Administrative Agent to do so, or if an Event of Default has occurred and is continuing, the Administrative Agent may act under the foregoing provisions of this Section 7.12(a) without the concurrence of such Grantors and execute and deliver such instruments and agreements on behalf of such Grantors. Each of the Grantors hereby appoints the Administrative Agent as its agent and attorney to act for it under the foregoing provisions of this Section 7.12(a) in either of such contingencies.

(b) Every separate Administrative Agent and every co-Administrative Agent, other than any successor Administrative Agent appointed pursuant to Section 7.10, shall, to the extent permitted by law, be appointed and act and be such, subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred upon the Administrative Agent in respect of the custody, control and management of moneys, papers or securities shall be exercised solely by the Administrative Agent or any agent appointed by the Administrative Agent;

(ii) all rights, powers, duties and obligations conferred or imposed upon the Administrative Agent hereunder shall be conferred or imposed and exercised or performed by the Administrative Agent and such separate Administrative Agent or separate Administrative Agents or co-Administrative Agent or co-Administrative Agents, jointly, as shall be provided in the instrument appointing such separate Administrative Agent or separate Administrative Agents or co-Administrative Agent or co-Administrative Agents, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Administrative Agent shall be incompetent or unqualified to perform such act or acts, or unless the performance of such act or acts would result in the imposition of any tax on the Administrative Agent which would not be imposed absent such joint act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such separate Administrative Agent or separate Administrative Agents or co-Administrative Agent or co-Administrative Agents;

(iii) no power given hereby to, or which it is provided herein or therein may be exercised by, any such co-Administrative Agent or co-Administrative Agents or separate Administrative Agent or separate Administrative Agents shall be exercised hereunder or thereunder by such co-Administrative Agent or co-Administrative Agents or separate Administrative Agent or separate Administrative Agents except jointly with, or with the consent in writing of, the Administrative Agent, anything contained herein to the contrary notwithstanding;

(iv) no Administrative Agent hereunder shall be personally liable by reason of any act or omission of any other Administrative Agent hereunder; and

(v) the Administrative Borrower and the Administrative Agent, at any time by an instrument in writing executed by them jointly, may accept the resignation of or remove (for any reason or no reason at all) any such separate Administrative Agent or co-Administrative Agent and, in that case by an instrument in writing executed by them jointly, may appoint a successor to such separate Administrative Agent or co-Administrative Agent, as the case may be, anything contained herein to the contrary notwithstanding. If the Administrative Borrower shall not have joined in the execution of any such instrument within 10 days after it receives a written request from the Administrative Agent to do so, or if an Event of Default has occurred and is continuing, the Administrative Agent shall have the power to accept the resignation of or remove any such separate Administrative Agent or co-Administrative Agent and to appoint a successor without the concurrence of the Administrative Borrower, the Administrative Borrower hereby appointing the Administrative Agent its agent and attorney to act for it in such connection in such contingency. If the Administrative Agent shall have appointed a separate Administrative Agent or separate Administrative Agents or co-Administrative Agent or co-Administrative Agents as above provided, the Administrative Agent may at any time, by an instrument in writing, accept the resignation of or remove any such separate Administrative Agent or co-Administrative Agent and the successor to any such separate Administrative

Agent or co-Administrative Agent shall be appointed by the Administrative Borrower and the Administrative Agent, subject to the terms of this Section 7.12(b).

7.13 Treatment of Payee or Indorsee by Administrative Agent; Representatives of Issuers and Lenders.

(a) The Administrative Agent may treat the registered holder or, if none, the payee or indorsee of any promissory note evidencing an Obligation as the absolute owner thereof for all purposes and shall not be affected by any notice to the contrary, whether such promissory note shall be past due or not.

(b) Any Person that shall be designated as the duly authorized representative of one or more Issuers or Lenders to act as such in connection with any matters pertaining to this Agreement, any other Loan Document or the Collateral shall present to the Administrative Agent such documents, including Opinions of Counsel, as the Administrative Agent may reasonably require, in order to demonstrate to the Administrative Agent the authority of such Person to act as the representative of such Issuers or Lenders.

7.14 Stamp and Other Similar Taxes. Each Grantor, jointly and severally, agrees to indemnify and hold harmless the Administrative Agent, each Issuer and each Lender from any present or future claim for liability for any stamp or any other similar tax, and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with this Agreement, any other Loan Document or any Collateral. The obligations of the Grantors under this Section 7.14 shall survive the termination of the other provisions of this Agreement and the other Loan Documents and the resignation of the Administrative Agent hereunder.

7.15 Filing Fees, Excise Taxes, Etc. Each Grantor, jointly and severally, agrees to pay or to reimburse the Administrative Agent for any and all payments made by the Administrative Agent in respect of all search, filing, recording and registration fees, taxes, excise taxes and other similar imposts which may be payable or determined to be payable in respect of the execution and delivery of this Agreement and the other Loan Documents. The obligations of the Grantors under this Section 7.15 shall survive the termination of the other provisions of this Agreement and the other Loan Documents and the resignation of the Administrative Agent hereunder.

7.16 Indemnification. The Grantors agree to indemnify and hold harmless each Indemnitee pursuant to and in accordance with Section 10.4 of the Revolving Credit Agreement. The agreements in this Section 7.16 shall survive the termination of the other provisions of this Agreement and the other Loan Documents and the resignation of the Administrative Agent hereunder.

SECTION 8. MISCELLANEOUS

8.1 Notices. All notices, requests and demands of any Grantor or the Administrative Agent hereunder shall be effected in the manner provided for in Section 10.8 of the Revolving Credit Agreement.

8.2 Amendments, etc. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Revolving Credit Agreement.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any Issuer or Lender shall by any act (except by a written instrument pursuant to Section 8.2), delay, indulgence, and omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or event of default under the Loan Documents. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent, any Issuer or any Lender, any right, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder or under any other Loan Document shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent, any Issuer or any Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Administrative Agent or such Issuer or Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses. (a) Each Grantor agrees to pay or reimburse the Administrative Agent and each of the Lenders and Issuers for all out-of-pocket costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel and costs of settlement) incurred by the Administrative Agent, such Lenders or Issuers pursuant to and in accordance with Section 10.3(b) of the Revolving Credit Agreement.

(b) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent, the Issuers and the Lenders and their respective successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually-executed counterpart hereof.

8.7 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.9 Integration. This Agreement and the other Loan Documents represent the entire agreement of the parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, or any Issuer or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

8.10 **GOVERNING LAW. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

8.11 Submission to Jurisdiction; Service of Process.

(a) Any legal action or proceeding with respect to this Agreement or any other Collateral Document may be brought in the courts of the State of New York sitting in the City of New York or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, each Grantor hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

(b) Each Grantor irrevocably consents to the services of any and all process in such action or proceeding arising out of or in connection with this Agreement or any other Collateral Document by mailing (by registered or certified mail, postage prepaid) of copies of such process to an appointed process agent or the Administrative Borrower at its address specified in Section 10.8 of the Revolving Credit Agreement. Each Grantor 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.

(c) Nothing contained in this Section 8.11 shall affect the right of the Administrative Agent or any Issuer or Lender to serve process in any other manner permitted by law or commence legal proceedings or otherwise proceed against any Grantor in any other jurisdiction.

8.12 **WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER COLLATERAL DOCUMENT.**

8.13 Releases.

(a) At such time as (i) all of the Obligations (other than contingent indemnification obligations) shall have been indefeasibly paid in cash in full (or cash

collateralized or defeased in accordance with the terms of the Loan Documents), (ii) the Revolving Credit Commitments have been terminated and (iii) there are no outstanding letters of credit or similar instruments issued under the Loan Documents (other than such as have been cash collateralized or defeased in accordance with the terms of the Loan Documents), the Collateral shall be automatically released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and provided that the First Priority Obligations Payment Date (as defined in the Intercreditor Agreement) and the Second Priority Obligations Payment Date (as defined in the Intercreditor Agreement) have occurred, all rights to and interests in the Collateral shall revert to the relevant Grantor. At the request and sole expense of the Grantors following any such termination, the Administrative Agent shall promptly execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such release and termination, and provided that the First Priority Obligations Payment Date (as defined in the Intercreditor Agreement) and the Second Priority Obligations Payment Date (as defined in the Intercreditor Agreement) have occurred, promptly deliver to the Grantors any Collateral held by the Administrative Agent hereunder.

(b) In connection with the sale of any Collateral which constitutes an Asset Sale permitted under Section 6.7 of the Revolving Credit Agreement, upon compliance by the Administrative Borrower with the provisions of such Section 6.7 of the Revolving Credit Agreement and three (3) Business Days' prior notice to the Administrative Agent and delivery to the Administrative Agent of a certificate of a Responsible Officer of the Administrative Borrower dated the date of the release that no Event of Default has occurred and that no Default or Event of Default will result from giving effect to the requested release, the Administrative Agent shall release the applicable Collateral from the Lien of this Agreement. Upon compliance with the foregoing and at the request and sole expense of the applicable Grantor, the Administrative Agent shall, to the extent the Collateral being released from the Lien of this Agreement is in the possession of the Administrative Agent, deliver such Collateral to such Grantor and, in any case, promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such release and termination. In connection with the sale of any Collateral which does not constitute an Asset Sale and is not otherwise prohibited by the Revolving Credit Agreement, upon consummation of such sale, such Collateral shall automatically be released from the Lien of this Agreement, and at the request and sole expense of the applicable Grantor, the Administrative Agent shall, to the extent the Collateral being released from the Lien of this Agreement is in the possession of the Administrative Agent, deliver such Collateral to such Grantor and, in any case, promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such release and termination.

(c) The Administrative Agent agrees to consent to a termination of a Deposit Account Control Agreement with respect to any Securities Account so long as the Grantor in whose name such Securities Account is maintained has (i) provided written evidence to the Administrative Agent that the Securities Account has a \$0 balance and (ii) certified in writing to the Administrative Agent that a \$0 balance will be maintained through and including the date on which such Securities Account is closed. Promptly following the closing of such Securities

Account, the applicable Grantor shall deliver written evidence thereof to the Administrative Agent.

8.14 Additional Grantors. Each Subsidiary of the Administrative Borrower that is required to become a party to the Revolving Credit Agreement pursuant to Section 6.13 of the Revolving Credit Agreement or party to the Revolver Guaranty pursuant to Section 23 of the Revolver Guaranty shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Exhibit A.

8.15 Reinstatement. Each Grantor agrees that if any payment made by a Grantor or other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of Collateral are required to be returned by the Administrative Agent, any Issuer or any Lender to such Grantor, its estate, trustee, receiver or any other Person under any requirement of law of a Governmental Authority (the portion of such payment of proceeds so refunded, repaid or returned being the “*Avoided Payment*”), then to the extent of such Avoided Payment, any Lien or other Collateral securing the Obligation that is the subject of such Avoided Payment shall be and remain in full force and effect as fully as if such Avoided Payment had never been made or, if prior thereto the Lien granted hereby or by any other Collateral Document or other Collateral securing such Obligation hereunder shall have been released or terminated by virtue of such cancellation or surrender, such Lien or other Collateral shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect any Lien or other Collateral securing the Obligations of any Grantor in respect of the amount of such Avoided Payment.

8.16 Continuing Security Interest. The security interest created pursuant to the Original Security Agreement is and shall continue to be in full force and effect as amended and restated by this Agreement and is hereby ratified and confirmed in all respects.

8.17 Intercreditor Agreement.

(a) The delivery of any Collateral or any certificates, titles, Instruments, Chattel Paper or Documents evidencing or in connection with such Collateral to any First Priority Agent (as defined in the Intercreditor Agreement) under and in accordance with the First Priority Documents (as defined in the Intercreditor Agreement), the granting of “control” over Collateral, the execution and delivery of control agreements and/or the assignment of any Collateral to any First Priority Agent under and in accordance with the Loan Documents and the First Lien Term Loan Documents, as applicable, shall constitute compliance by the Grantors with the provisions of this Agreement or any other Loan Document which require delivery, possession, control and/or assignment of certain types of Collateral by the Administrative Agent or delivery of control agreements to the Administrative Agent so long as such First Priority Documents are in full force and effect, the First Priority Obligations Payment Date (as defined in the Intercreditor Agreement) has not occurred, and the Grantors are in compliance with the applicable provisions thereof with respect to such Collateral.

(b) Notwithstanding anything herein to the contrary, the Collateral granted to the Administrative Agent pursuant to this Agreement and the exercise of any right or remedy by

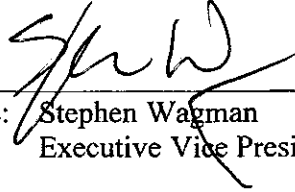
the Administrative Agent hereunder is subject to the terms, conditions and provisions of the Intercreditor Agreement in all respects. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control in all respects and each holder of the Obligations, by its acceptance hereof, irrevocably agrees to be bound by the terms, conditions and provisions of the Intercreditor Agreement.

[Remainder of page intentionally left blank; signature pages follow]

ADMINISTRATIVE BORROWER:

TOUSA, INC.,
as the Administrative Borrower

By: _____

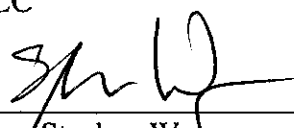

Name: Stephen Wagman
Title: Executive Vice President

[Amended and Restated Security Agreement]

SUBSIDIARY BORROWERS:

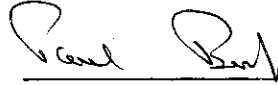
ENGLE HOMES RESIDENTIAL CONSTRUCTION, L.L.C.
ENGLE HOMES COMMERCIAL CONSTRUCTION, LLC
ENGLE SIERRA VERDE P4, LLC
ENGLE/JAMES LLC
LB/TE #1, LLC
LORTON SOUTH CONDOMINIUM, LLC
MCKAY LANDING LLC
NEWMARK HOMES PURCHASING, L.P.
NEWMARK HOMES, L.L.C.
NEWMARK HOMES, L.P.
PREFERRED BUILDERS REALTY, INC.
REFLECTION KEY, LLC
SILVERLAKE INTERESTS, L.C.
TOI, LLC
TOUSA/WEST HOLDINGS, INC.
TOUSA ASSOCIATES SERVICES COMPANY
TOUSA HOMES ARIZONA, LLC
TOUSA HOMES COLORADO, LLC
TOUSA HOMES FLORIDA, L.P.
TOUSA HOMES INVESTMENT #1, INC
TOUSA HOMES INVESTMENT #2, INC.
TOUSA HOMES INVESTMENT #2, LLC
TOUSA HOMES MID-ATLANTIC HOLDING, LLC
TOUSA HOMES MID-ATLANTIC, LLC
TOUSA HOMES NEVADA, LLC
TOUSA HOMES, INC.
TOUSA HOMES, L.P.
TOUSA INVESTMENT #2, INC.
TOUSA MID-ATLANTIC INVESTMENT, LLC
TOUSA REALTY, INC.
~~TOUSA VENTURES, LLC~~
TOUSA, LLC

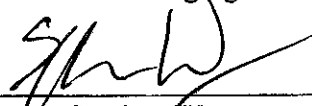
By: _____

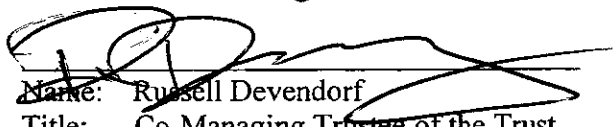

Name: Stephen Wagman
Title: Executive Vice President

[Amended and Restated Security Agreement]

NEWMARK HOMES BUSINESS TRUST

By: 
Name: Paul Berkowitz
Title: Co-Managing Trustee of the Trust

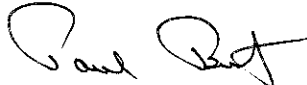
By: 
Name: Stephen Wagman
Title: Co-Managing Trustee of the Trust

By: 
Name: Russell Devendorf
Title: Co-Managing Trustee of the Trust

ENGLE HOMES DELAWARE, INC.

TOUSA DELAWARE, INC.

TOUSA FUNDING, LLC

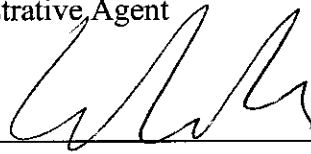
By: 
Name: PAUL BEDRUM
Title: President

[Amended and Restated Security Agreement]

Administrative Agent:

CITICORP NORTH AMERICA, INC.,
as Administrative Agent

By: _____



Name:

Title:

Svetoslav Nikov
Vice President

**Schedule 1
to Security Agreement**

PERFECTION MATTERS

1. UCC Filing

Grantor	Filing Office(s)
Engle Homes Commercial Construction,LLC	Delaware
Engle Homes Delaware, Inc.	Delaware
Engle Homes Residential Construction, L.L.C.	Arizona
Engle Sierra Verde P4, LLC	Delaware
Engle/James, LLC	Colorado
LB/TE # 1, LLC	Florida
Lorton South Condominium, LLC	Delaware
McKay Landing LLC	Colorado
Newmark Homes Business Trust	Delaware
Newmark Homes Purchasing, L.P.	Texas
Newmark Homes, L.L.C.	Delaware
Newmark Homes, L.P.	Texas
Preferred Builders Realty, Inc.	Florida
Reflection Key, LLC	Delaware
Silverlake Interests, L.C.	Texas
TOI, LLC	Delaware
TOUSA /West Holdings, Inc.	Delaware
TOUSA Associates Services Company	Delaware
TOUSA Delaware, Inc.	Delaware
TOUSA Funding, LLC	Nevada
TOUSA Homes Arizona, LLC	Delaware
TOUSA Homes Colorado, LLC	Delaware
TOUSA Homes Florida, L.P.	Delaware
TOUSA Homes Investment #1, Inc.	Delaware
TOUSA Homes Investment #2, Inc.	Delaware
TOUSA Homes Investment #2, LLC	Delaware
TOUSA Homes Mid-Atlantic Holding, LLC	Delaware
TOUSA Homes Mid-Atlantic, LLC	Delaware
TOUSA Homes Nevada, LLC	Delaware
TOUSA Homes, Inc.	Florida
TOUSA Homes, L.P.	Delaware
TOUSA Investment #2, Inc.	Delaware

**Schedule 1
to Security Agreement**

TOUSA Mid-Atlantic Investment, LLC	Delaware
TOUSA Realty, Inc.	Delaware
TOUSA, Inc.	Delaware
TOUSA, LLC	Delaware

2. To the extent required, filing in the United States Patent and Trademark Office, filing in the United States Copyright Office, notation on certificates of title, or control or possession of any Collateral.

**Schedule 2
to Security Agreement**

JURISDICTIONS OF ORGANIZATION AND CHIEF EXECUTIVE OFFICES

NAME AND CHIEF EXECUTIVE OFFICE ADDRESS	F/K/A NAME AND ADDRESS	DATE OF NAME CHANGE	ORGANIZATIO N JURUSDICITION	ORG ID
TOUSA, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	Technical Olympic USA, Inc.	05/08/200 7	Delaware	3356346
Engle Homes Commercial Construction, LLC 2600 N. Central Ave., Ste. 1400 Phoenix, AZ 85004	TOUSA LV-NV, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	09/18/200 6	Delaware	4206708
Engle Homes Delaware, Inc. 1007 Orange Street Nemours Bldg., Ste. 1414 Wilmington, DE 19801			Delaware	3117955
Engle Homes Residential Construction, L.L.C. 2600 North Central Ave., Ste. 1400 Phoenix, AZ 85004			Arizona	L-1062529-7
Engle/James LLC 10700 E. Geddes Ave., #100 Englewood, CO 80112			Colorado	20001224522
Engle Sierra Verde P4, LLC 2600 North Central Avenue, Ste. 1400 Phoenix, AZ 85004	3150 S. 48 th St., Ste. 100 Phoenix, AZ 85040		Delaware	3754213
LB/TE #1, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Florida	L06000107142
Lorton South Condominium, LLC 11920 Freedom Drive, Ste. 1100 Reston, VA 20190			Delaware	3816689
McKay Landing LLC 10700 E. Geddes Ave., #100 Englewood, CO 80112			Colorado	19981199909

**Schedule 2
to Security Agreement**

NAME AND CHIEF EXECUTIVE OFFICE ADDRESS	F/K/A NAME AND ADDRESS	DATE OF NAME CHANGE	ORGANIZATIO N JURUSDICITION	ORG ID
Newmark Homes Business Trust 10455 Briar Forrest Drive Houston, TX 77042	1470 First Colony Blvd., Ste. 200 Sugar Land, TX 77479		Delaware	3310589
Newmark Homes, L.L.C. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3640915
Newmark Homes Purchasing, L.P. 10455 Briar Forrest Drive Houston, TX 77042	1470 First Colony Blvd., Ste. 200 Sugar Land, TX 77479		Texas	14190710
Newmark Homes, L.P. 10455 Briar Forrest Drive Houston, TX 77042	1470 First Colony Blvd., Ste. 200 Sugar Land, TX 77479		Texas	9175810
Preferred Builders Realty, Inc. 123 NW 13 th Street #300 Boca Raton, FL 33432			Florida	H58358
Reflection Key, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3781745
Silverlake Interests, L.C. 6500 River Place Blvd., Bldg. 1, Ste. 300 Austin, TX 78730			Texas	703474822
TOI, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3679364
TOUSA Associates Services Company 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3589043
TOUSA Delaware, Inc. 1007 Orange Street Nemours Bldg., Ste. 1414 Wilmington, DE 19801			Delaware	3719147
TOUSA Funding, LLC 3763 Howard Hughes Parkway Hughes Center Ste. 170A Las Vegas, Nevada 89109			Nevada	E0879692005-1

**Schedule 2
to Security Agreement**

NAME AND CHIEF EXECUTIVE OFFICE ADDRESS	F/K/A NAME AND ADDRESS	DATE OF NAME CHANGE	ORGANIZATIO N JURUSDICITION	ORG ID
TOUSA Homes Arizona, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Investment #1, LLC	09/11/2006	Delaware	3926130
TOUSA Homes Colorado, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Investment #2, LLC	09/11/2006	Delaware	3926131
TOUSA Homes Florida, L.P. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Homes Investment #1, L.P.	09/20/2006	Delaware	3927682
TOUSA Homes, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Florida	F95345
TOUSA Homes Investment #1, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3926880
TOUSA Homes Investment #2, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3926917
TOUSA Homes Investment #2, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3926136
TOUSA Homes, L.P. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3896256
TOUSA Homes Mid- Atlantic Holding, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Investment #4, LLC	09/11/2006	Delaware	3926133
TOUSA Homes Mid- Atlantic, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Investment #5, LLC	09/11/2006	Delaware	3926134

**Schedule 2
to Security Agreement**

NAME AND CHIEF EXECUTIVE OFFICE ADDRESS	F/K/A NAME AND ADDRESS	DATE OF NAME CHANGE	ORGANIZATIO N JURUSDICITION	ORG ID
TOUSA Homes Nevada, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Investment #3, LLC	09/11/2006	Delaware	3926132
TOUSA Investment #2, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3927749
TOUSA, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3894395
TOUSA Mid-Atlantic Investment, LLC 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021	TOUSA Homes Investment #1, LLC	09/11/2006	Delaware	3926135
TOUSA Realty, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	3927737
TOUSA /West Holdings, Inc. 4000 Hollywood Blvd., Ste. 500N Hollywood, FL 33021			Delaware	4087715

**Schedule 3
to Security Agreement**

[RESERVED]

**Schedule 4
to Security Agreement**

JOINT VENTURES, ETC. (EXCLUDED COLLATERAL)

NAME OF ENTITY	STATE OF INCORPORATION	SHAREHOLDER/MEMBER/PARTNER	INTEREST	SHARES AUTHORIZED	SHARES OUTSTANDING
Alliance Insurance and Information Services, LLC	Florida	Universal Land Title Investment #4, LLC Universal Land Title, Inc.	99.044% 0.060%	N/A	N/A
Beacon Hill at Mountain's Edge, LLC	Delaware	TOUSA Homes, Inc.	49.0%	N/A	N/A
Centex/TOUSA at Wellington, LLC	Delaware	TOUSA Homes, Inc.	50.0%	N/A	N/A
Cibola Vista Community Development, LLC	Arizona	TOUSA Homes, Inc.	50.0%	N/A	N/A
Community Title Services of Nevada, LLC	Nevada	Universal Land Title, Inc.	33.33%	N/A	N/A
CP Red Oak Management, LLC	Texas	TOUSA Homes, Inc.	30.0%	N/A	N/A
CP Red Oak Partners Ltd.	Texas	CP Red Oak Management, LLC TOUSA Ventures, LLC	1.0% (GP) 49.0% (LP)	N/A	N/A
Engle/Sunbelt, LLC	Delaware	Engle Sunbelt Holdings, LLC	100.0%	N/A	N/A
Engle/Sunbelt Holdings, LLC	Delaware	TOUSA Homes, Inc.	49.0%	N/A	N/A
Engle/Gilligan, LLC	Delaware	TOUSA Homes, Inc.	49.0%	N/A	N/A
Engle Sierra Verde P5, LLC	Delaware	TOUSA Homes, Inc.	49.0%	N/A	N/A
HomePartners Title Services, L.L.C.	Florida	Universal Land Title, Inc.	50.0%	N/A	N/A
HM Villas GP, LLC	Texas	TOUSA Homes, Inc.	40.0%	N/A	N/A
HM Villas at Tremont, Ltd.	Texas	HM Villas GP, LLC TOUSA Ventures, LLC	2.0% (GP) 49.0% (LP)	N/A	N/A
LH-EH Layton Lakes Estates, LLC	Arizona	TOUSA Homes, Inc.	50.0%	N/A	N/A
Laurel Highlands, LLC	Virginia	TOUSA Homes, Inc.	50.0%	N/A	N/A
MFS Title of Florida, Ltd.	Florida	Universal Land Title Investments #2, LLC Universal Land Title, Inc.	1.0% (GP) 39.0% (LP)	N/A	N/A
Newmark/Buffington Brushy Creek, L.P.	Texas	TOUSA Homes, Inc. Newmark Homes, L.P.	1.0% (GP) 49.0% (LP)	N/A	N/A
Newmark/Castletop Brushy Creek, L.P.	Texas	TOUSA Homes, Inc. Newmark Homes, L.P.	1.0% (GP) 47.979592% (LP)	N/A	N/A
Newmark/Lennar Central Texas, L.P.	Texas	TOUSA Homes Newmark Homes, L.P.	1.0% (GP) 49.0% (LP)	N/A	N/A
R.R. Houston Developers,	Texas	TOUSA Homes, Inc.	25.0%	N/A	N/A

**Schedule 4
to Security Agreement**

NAME OF ENTITY	STATE OF INCORPORATION	SHAREHOLDER/MEMBER/PARTNER	INTEREST	SHARES AUTHORIZED	SHARES OUTSTANDING
L.L.C.					
R.R. Houston Development, L.P.	Texas	R.R. Houston Developers, L.L.C. TOUSA Ventures, LLC	2.0% (GP) 49.0% (LP)	N/A	N/A
R.R. Houston Investors, L.L.C.	Texas	TOUSA Homes, Inc.	22.0%	N/A	N/A
R.R. Houston Investments, L.P.	Texas	R.R. Houston Investors, L.L.C. TOUSA Ventures, LLC	2.0% (GP) 21.5% (LP)	N/A	N/A
SC Development Enterprises, LLC	Florida	TOUSA Homes, Inc.	49.9%	N/A	N/A
TOUSA-Hearthstone Lake Webster, LLC	Delaware	TOUSA Homes, Inc.	5.0%	N/A	N/A
TOUSA/Kolter Holdings, LLC	Delaware	TOUSA Homes, Inc.	50.0%	N/A	N/A
TOUSA/Kolter, LLC	Delaware	TOUSA/Kolter Holdings, LLC	100.0%	N/A	N/A
The Century Title Agency, Ltd.	Florida	Universal Land Title, Inc.	51.0%	N/A	N/A
Universal Land Title of North Texas, LLC	Delaware	Universal Land Title of Texas, Inc.	80.0%	N/A	N/A
Universal Land Title of South Florida, Ltd.	Florida	Universal Land Title, Inc. Universal Land Title Investment #1, LLC	50.0% (LP) 1.0% (GP)	N/A	N/A
Universal Land Title of Maryland, LLC	Maryland	Universal Land Title, Inc.	50.0%	N/A	N/A
Universal Land Title of the Palm Beaches, Ltd.	Florida	Universal Land Title, Inc.	51.0% (GP)	N/A	N/A
Waterview JV Partners, LLC	Delaware	TOUSA Homes, Inc.	50.0%	N/A	N/A

**Schedule 5
to Security Agreement**

EQUIPMENT AND INTELLECTUAL PROPERTY

PART A

Aircraft, Ships and Railcars

None

**Schedule 5
to Security Agreement**

SCHEDULE 5

EQUIPMENT AND INTELLECTUAL PROPERTY

PART B

Intellectual Property

UNITED STATES TRADEMARKS:

Registrations:

Owner	Registration Number	Trademark
Engle Homes Delaware, Inc.	2970032	PHMC (stylized/design)
Engle Homes Delaware, Inc.	2993922	PREFERRED HOME MORTGAGE & Design
Engle Homes Delaware, Inc.	2991426	PREFERRED HOME MORTGAGE & Design
Engle Homes Delaware, Inc.	2823127	PREFERRED HOME MORTGAGE COMPANY
Engle Homes Delaware, Inc.	2991710	UNIVERSAL LAND TITLE & Design
Engle Homes Delaware, Inc.	2838466	UNIVERSAL LAND TITLE, INC.
TOUSA, Inc. (1)	2880082	BREAKING NEW GROUND
TOUSA, Inc..(1)	2891695	TOUSA
TOUSA Delaware, Inc.	SM00360243 (Nevada Registration)	TROPHY HOMES
TOUSA Delaware, Inc.	2970031	ENGLE HOMES (stylized)
TOUSA Delaware, Inc.	2823126	ENGLE HOMES, INC.
TOUSA Delaware, Inc.	3213293	EURO STYLE. CITY SMART.
TOUSA Delaware, Inc.	3206101	LUXURY BY DESIGN
TOUSA Delaware, Inc.	2178245	NEWMARK
TOUSA Delaware, Inc.	3251411	NEWMARK HOMES (stylized/design)
TOUSA Delaware, Inc.	3239492	PRICE PROTECTION PROMISE
TOUSA Delaware, Inc.	3229934	TROPHY HOMES
TOUSA Delaware, Inc.	3229935	TROPHY HOMES (stylized/design)
TOUSA Delaware, Inc.	E0149282005-9 (Nevada Registration)	TROPHY HOMES BUILDING TRUST
TOUSA Delaware, Inc.	3090957	A FRIENDLY, FRIENDLY PLACE
TOUSA Delaware, Inc.	3197236	P (stylized)
TOUSA Delaware, Inc. (2)	3101523	PROVINCE

Applications:

Owner	Application Number	Trademark
TOUSA Delaware, Inc.	77/165,332	(Arrow) Logo
TOUSA Delaware, Inc.	78/856,677	BETTER LIVING. BY DESIGN
TOUSA Delaware, Inc.	77/201,934	FEDRICK HARRIS
TOUSA Delaware, Inc.	77/201,926	FEDRICK HARRIS
TOUSA Delaware, Inc.	77/192,322	FEDRICK HARRIS ESTATE HOMES
TOUSA Delaware, Inc.	78/709,385	NEWMARK HOMES & Design
TOUSA Delaware, Inc.	78/921,217	PRICE PROTECTION PROMISE P3 ENGLE HOMES A MEMBER OF THE TOUSA FAMILY (stylized/design)
TOUSA Delaware, Inc.	77/165,402	TOUSA and Arrow Design

**Schedule 5
to Security Agreement**

TOUSA Delaware, Inc.	76/662,329	UPSCALE AFFORDABLE
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Licenses:

Licensee	Licensor	Registration/ Application Number	Trademark

- (1) Proof of name change from Technical Olympic USA, Inc. to TOUSA, Inc. will be filed with the USPTO post-closing.
- (2) Proof of assignment from TOUSA Homes, Inc. to TOUSA Delaware, Inc. will be filed with the USPTO post-closing.

**Schedule 5
to Security Agreement**

UNITED STATES COPYRIGHTS

Registrations:

Owner	Title	Registration Number
Newmark Homes, L.P. (1)	Architectural work. Title: Garfield: no. 3503	VA1304472
Newmark Homes, L.P. (1)	Architectural work. Title: Grant: no. 3560	VA1303150
Newmark Homes, L.P. (1)	Architectural work. Title: Jefferson: no. 3570	VA1303151
Newmark Homes, L.P. (1)	Architectural work. Title: Madelaine No. 4575	VA1317480
Newmark Homes, L.P. (1)	Architectural work. Title: Melissa: no. 4585	VA1317514
Newmark Homes, L.P. (1)	Architectural work. Title: Samantha: no. 4022	VA1303152
Newmark Homes, L.P. (1)	Architectural work. Title: Samara: no. 4065 RF	VA1304176
Newmark Homes, L.P. (1)	Architectural work. Title: Sarah: no. 4010	VA1281514
Newmark Homes, L.P. (1)	Architectural work. Title: Sonya: no. 4020	VA1304195
Newmark Homes, L.P. (1)	Architectural work. Title: Sophia: no. 4005	VA1304671
Newmark Homes, L.P. (1)	Architectural work. Title: Suzanna: no. 4055	VA1304194
Newmark Homes, L.P. (1)	Architectural work. Title: The Adams: no. 3575 RF	VA1304673
Newmark Homes, L.P. (1)	Architectural work. Title: The Kennedy: no. 3565 RF	VA1303288
Newmark Homes, L.P. (1)	Architectural work. Title: The Roosevelt: no. 3555 RF	VA1304672
Newmark Homes, L.P. (1)	Architectural work. Title: The Sylvia: no. 4060 RF	VA1304175
Newmark Homes, L.P. (1)	Architectural work. Title: The Truman: no. 3505	VA1306974
Newmark Homes, L.P. (1)	Architectural work. Title: The Washington: no. 3502	VA1304471
Newmark Homes, L.P. (1)	Architectural work. Title: The Wilson: no. 3551 RF	VA1303287
Newmark Homes, L.P. (1)	Architectural work. Title: 4510.	VA1304178
Newmark Homes, L.P. (1)	Architectural work. Title: 4530.	VA1304177
Newmark Homes, L.P. (1)	Architectural work. Title: 4555	VA1304193
TOUSA Homes, Inc. (2)	Architectural work. Title: Alexandria 2000	VA990172
TOUSA Homes, Inc. (2)	Architectural work. Title: Ascot	VA1150218
TOUSA Homes, Inc. (2)	Architectural work. Title: Baccarat	VA759639
TOUSA Homes, Inc. (2)	Architectural work. Title: Baccarat	VAu297151
TOUSA Homes, Inc. (2)	Architectural work. Title: Banyan Trails, 1999: Cypress	VA915927
TOUSA Homes, Inc. (2)	Architectural work. Title: Banyan Trails Twin Townhomes	VA1038409
TOUSA Homes, Inc. (2)	Architectural work. Title: Bartran	VA718293
TOUSA Homes, Inc. (2)	Architectural work. Title: Bayberry: no. 40-1662	VA990502
TOUSA Homes, Inc. (2)	Architectural work. Title: Bayhill Estates Yale no. V6368.	VA694429
TOUSA Homes, Inc. (2)	Architectural work. Title: Aberdeen	VAu295912
TOUSA Homes, Inc. (2)	Architectural work. Title: Bimini	VA869056
TOUSA Homes, Inc. (2)	Architectural work. Title: Santa Barbara.	VAu294142
TOUSA Homes, Inc. (2)	Architectural work. Title: Newport	VAu294143
TOUSA Homes, Inc. (2)	Architectural work. Title: Bal Harbour	VAu294835
TOUSA Homes, Inc. (2)	Architectural work. Title: Bridgeport	VAu308204
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Newport	VA659500
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: La Jolla	VA659501
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Bal Harbour	VA659502

**Schedule 5
to Security Agreement**

Owner	Title	Registration Number
TOUSA Homes, Inc. (2)	Architectural work. Title: Santa Barbara	VA664961
TOUSA Homes, Inc. (2)	Architectural work. Title: Brookfield	VA1167106
TOUSA Homes, Inc. (2)	Architectural work. Title: Boca Grande	VAu289888
TOUSA Homes, Inc. (2)	Architectural work. Title: Buckingham	VA1175466
TOUSA Homes, Inc. (2)	Architectural work. Title: Butterfield: no. 1730	VA614923
TOUSA Homes, Inc. (2)	Architectural work. Title: Cabot	VA718292
TOUSA Homes, Inc. (2)	Architectural work. Title: Cabridge: Avon Estates	VA1147069
TOUSA Homes, Inc. (2)	Architectural work. Title: Captiva	VA749781
TOUSA Homes, Inc. (2)	Architectural work. Title: Cascade: no. P1645	VA785199
TOUSA Homes, Inc. (2)	Architectural work. Title: Catalina '94	VAu289153
TOUSA Homes, Inc. (2)	Architectural work. Title: Concord '94	VAu289156
TOUSA Homes, Inc. (2)	Architectural work. Title: Crystal Point, Mikasa	VA736312
TOUSA Homes, Inc. (2)	Architectural work. Title: Crystal Point, Lalique	VA741540
TOUSA Homes, Inc. (2)	Architectural work. Title: Egret	VA741537
TOUSA Homes, Inc. (2)	Architectural work. Title: Dartmouth	VA749804
TOUSA Homes, Inc. (2)	Architectural work. Title: Denmark	VAu289157
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: El Mirasol	VA857105
TOUSA Homes, Inc. (2)	Architectural work. Title: El Solano, Mizner Pointe: no. M35-02304	VA860594
TOUSA Homes, Inc. (2)	Architectural work. Title: Eldorado	VA862925
TOUSA Homes, Inc. (2)	Architectural work. Title: FL-26	VA681030
TOUSA Homes, Inc. (2)	Architectural work. Title: FL23	VA681177
TOUSA Homes, Inc. (2)	Architectural work. Title: FL24	VA681170
TOUSA Homes, Inc. (2)	Architectural work. Title: FL26/S	VA681167
TOUSA Homes, Inc. (2)	Architectural work. Title: FL30	VA681176
TOUSA Homes, Inc. (2)	Architectural work. Title: FL31	VA681180
TOUSA Homes, Inc. (3)	Architectural work. Title: Fraser: plan no. P1457	VA785167
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Gorham	VA772498
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Grand Cayman	VA784216
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Hampton: no. P50-2102	VA777577
TOUSA Homes, Inc. (2)	Architectural work. Title: Ibis: no. 59-2248	VA759638
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Key Biscayne	VA711479
TOUSA Homes, Inc. (2)	Architectural work. Title: Kingston '96: no. E50-3288	VA784191
TOUSA Homes, Inc. (2)	Architectural work. Title: La Bellucia	VA860674
TOUSA Homes, Inc. (2)	Architectural work. Title: La Bonita	VA1385120
TOUSA Homes, Inc. (2)	Architectural work. Title: La Cordova	VA1385121
TOUSA Homes, Inc. (2)	Architectural work. Title: La Fontana, Mizner Pointe	VA860593
TOUSA Homes, Inc. (2)	Architectural work. Title: La Selena	VA1385123
TOUSA Homes, Inc. (2)	Architectural work. Title: La Verona	VA1385124
TOUSA Homes, Inc. (2)	Architectural work. Title: Lakes of Sherbrooke - The Pearl	VAu285931
TOUSA Homes, Inc. (2)	Architectural work. Title: Lalique	VAu297153
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Lenox	VA774025
TOUSA Homes, Inc. (2)	Architectural work. Title: Lexington	VA1175431
TOUSA Homes, Inc. (2)	Architectural work. Title: Malibu	VA741601

**Schedule 5
to Security Agreement**

Owner	Title	Registration Number
TOUSA Homes, Inc. (2)	Architectural work. Title: Manchester	VA1177810
TOUSA Homes, Inc. (2)	Architectural work. Title: Mansfield	VA669033
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Martinique	VA882514
TOUSA Homes, Inc. (2)	Architectural work. Title: Monterey	VA748922
TOUSA Homes, Inc. (2)	Architectural work. Title: Oxford III'94	VA613210
TOUSA Homes, Inc. (2)	Architectural work. Title: Pelican	VA1089142
TOUSA Homes, Inc. (2)	Architectural work. Title: Carmel	VA741538
TOUSA Homes, Inc. (2)	Architectural work. Title: Montego, P40-2464.	VA741539
TOUSA Homes, Inc. (2)	Architectural work. Title: Pineland	VA718296
TOUSA Homes, Inc. (2)	Architectural work. Title: Plan no. FL242	VA683512
TOUSA Homes, Inc. (3)	Architectural work. Title: Catamount, F2094	VA830727
TOUSA Homes, Inc. (2)	Architectural work. Title: Princeton III	VA613211
TOUSA Homes, Inc. (2)	Architectural work. Title: Providence	VA1186998
TOUSA Homes, Inc. (2)	Architectural work. Title: Radcliffe	VA980604
TOUSA Homes, Inc. (2)	Architectural work. Title: RL-30	VA683513
TOUSA Homes, Inc. (2)	Architectural work. Title: RL25	VA681181
TOUSA Homes, Inc. (2)	Architectural work. Title: FL31	VA681175
TOUSA Homes, Inc. (2)	Architectural work. Title: RL33	VA681178
TOUSA Homes, Inc. (2)	Architectural work. Title: RL34	VA681172
TOUSA Homes, Inc. (2)	Architectural work. Title: RL34	VA681174
TOUSA Homes, Inc. (2)	Architectural work. Title: Birchwood	VA688526
TOUSA Homes, Inc. (2)	Architectural work. Title: Cornell "94".	VAu298878
TOUSA Homes, Inc. (2)	Architectural work. Title: Sabal Palm	VA669034
TOUSA Homes, Inc. (2)	Architectural work. Title: San Benito	VA1328141
TOUSA Homes, Inc. (2)	Architectural work. Title: San Carlos	VA1319262
TOUSA Homes, Inc. (2)	Architectural work. Title: San Luis	VA1319261
TOUSA Homes, Inc. (2)	Architectural work. Title: San Marcos	VA1385122
TOUSA Homes, Inc. (2)	Architectural work. Title: San Marino	VA1319263
TOUSA Homes, Inc. (2)	Architectural work. Title: San Ramon	VA1385119
TOUSA Homes, Inc. (2)	Architectural work. Title: San Sebastian	VA1319260
TOUSA Homes, Inc. (2)	Architectural work. Title: Sheffield 2000	VA991966
TOUSA Homes, Inc. (2)	Architectural work. Title: Sheltowe	VA718295
TOUSA Homes, Inc. (2)	Architectural work. Title: SL-30	VA680644
TOUSA Homes, Inc. (2)	Architectural work. Title: SL2795	VA681171
TOUSA Homes, Inc. (2)	Architectural work. Title: SL29	VA681179
TOUSA Homes, Inc. (2)	Architectural work. Title: SL3057	VA681173
TOUSA Homes, Inc. (2)	Architectural work. Title: South Hampton II	VA659499
TOUSA Homes, Inc. (2)	Architectural work. Title: Springtree: Carissa	VA989735
TOUSA Homes, Inc. (2)	Architectural work. Title: Springree: Magnolia	VA989736
TOUSA Homes, Inc. (2)	Architectural work. Title: Springtree: Azalea	VA989737
TOUSA Homes, Inc. (2)	Architectural work. Title: Springree: Jasmine	VA989738
TOUSA Homes, Inc. (2)	Architectural work. Title: St. Croix	VA1153847
TOUSA Homes, Inc. (2)	Architectural work. Title: St. James	VA1145385
TOUSA Homes, Inc. (2)	Architectural work. Title: St. Kitts	VA1145384
TOUSA Homes, Inc. (2)	Architectural work. Title: St. Martin	VA901540
TOUSA Homes, Inc. (2)	Architectural work. Title: St. Thomas	VA1148330
TOUSA Homes, Inc. (3)	Architectural work. Title: Sterling: plan no. P1835	VA819359
TOUSA Homes, Inc. (2)	Architectural work. Title: Viscaya V3 Car "94".	VAu286463
TOUSA Homes, Inc. (2)	Architectural work. Title: Palm Beach.	VA297150
TOUSA Homes, Inc. (2)	Architectural work. Title: Princeton IV.	VAu298879

**Schedule 5
to Security Agreement**

Owner	Title	Registration Number
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Carrington	VA684607
TOUSA Homes, Inc. (2)	Architectural work. Title: Stirling	VA1089141
TOUSA Homes, Inc. (2)	Architectural work. Title: Stonegate	VA1187294
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Stoneridge, Santa Barbara 3000	VA659498
TOUSA Homes, Inc. (2)	Architectural work. Title: Great Spruce 3 car.	VA694444
TOUSA Homes, Inc. (2)	Architectural work. Title: Fairfield.	VA694445
TOUSA Homes, Inc. (3)	Architectural work. Title: Stratton	VA819358
TOUSA Homes, Inc. (3)	Architectural work. Title: Sullivan II	VA819357
TOUSA Homes, Inc. (2)	Architectural work. Title: Teakwood	VA748806
TOUSA Homes, Inc. (2)	Architectural work. Title: Jamestown	VA1165616
TOUSA Homes, Inc. (2)	Architectural work. Title: Templeton	VA1297936
TOUSA Homes, Inc. (2)	Architectural work. Title: The Hawthorne, Palm Beach County, FL	VA1185622
TOUSA Homes, Inc. (2)	Architectural work. Title: The Keeneland, Palm Beach county, FL	VA1187553
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Torrey Pine	VA684608
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Tradewinds '94	VA642148
TOUSA Homes, Inc. (2)	Architectural work. Title: Vanderbilt	VA1103687
TOUSA Homes, Inc. (2)	Architectural work. Title: Versailles	VA1001450
TOUSA Homes, Inc. (2)	Architectural work. Title: Waters Edge	VA858613
TOUSA Homes, Inc. (2)	Architectural work. Title: Waterford	VAu297152
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Waterford	VA784218
TOUSA Homes, Inc. (2)	Architectural work. Title: Copenhagen.	VAu289889
TOUSA Homes, Inc. (2)	Architectural work. Title: Great Spruce.	VAu289890
TOUSA Homes, Inc. (2)	Architectural work. Title: Willow Oak.	VAu289891
TOUSA Homes, Inc. (2)	Architectural work. Title: Laurel III.	VA694427
TOUSA Homes, Inc. (2)	Architectural work. Title: Redwood.	VA694428
TOUSA Homes, Inc. (2)	Architectural work. Title: Maplewood.	VA694430
TOUSA Homes, Inc. (2)	Architectural work. Title: Timberline '94	VA697913
TOUSA Homes, Inc. (3)	Architectural work. Title: Windsor	VA783500
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Yale: no. 6368	VA600683
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Yale, 6065 "94"	VA642147
TOUSA Homes, Inc. (employer for hire) (2)	Architectural work. Title: Yale 6065, '95	VA711480

Applications: SEE ATTACHED

Licenses: NONE

Post-Closing:

- (1) An amendment will be filed with the USPTO correcting the application owner name from TOUSA/Newmark Homes to Newmark Homes, L.P.
- (2) Proof of name change from Engle Homes, Inc. to TOUSA Homes, Inc. will be filed with the USPTO.
- (3) (i) Proof of name change from Park-Engle Homes, Inc. to Engle Homes Colorado, Inc. will be filed with the USPTO.

**Schedule 5
to Security Agreement**

(ii) Proof of merger of Engle Homes Colorado, Inc. with and into TOUSA Homes, Inc. will be filed with the USPTO.

UNITED STATES COPYRIGHTS

Applications:

<u>Owner</u>	<u>Title</u>	<u>Registration Number</u>
TOUSA, Inc.	35-1392	Applied For
TOUSA, Inc.	35-1575	Applied For
TOUSA, Inc.	35-1944	Applied For
TOUSA, Inc.	35-1962	Applied For
TOUSA, Inc.	35-2170	Applied For
TOUSA, Inc.	35-2261	Applied For
TOUSA, Inc.	35-2742	Applied For
TOUSA, Inc.	35-2943	Applied For
TOUSA, Inc.	35-2655	Applied For
TOUSA, Inc.	35-1824	Applied For
TOUSA, Inc.	30-1374	Applied For
TOUSA, Inc.	30-1850	Applied For
TOUSA, Inc.	30-1756	Applied For
TOUSA, Inc.	30-1904	Applied For
TOUSA, Inc.	30-1835	Applied For
TOUSA, Inc.	40-1606	Applied For
TOUSA, Inc.	40-2082	Applied For
TOUSA, Inc.	40-2297	Applied For
TOUSA, Inc.	40-2600	Applied For
TOUSA, Inc.	40-1405	Applied For
TOUSA, Inc.	40-2883	Applied For
TOUSA, Inc.	40-3086	Applied For
TOUSA, Inc.	4514	Applied For
TOUSA, Inc.	5016	Applied For
TOUSA, Inc.	5015	Applied For
TOUSA, Inc.	5014	Applied For
TOUSA, Inc.	5013	Applied For
TOUSA, Inc.	5012	Applied For
TOUSA, Inc.	5011	Applied For
TOUSA, Inc.	4518	Applied For
TOUSA, Inc.	4517	Applied For
TOUSA, Inc.	4516	Applied For
TOUSA, Inc.	4515	Applied For
TOUSA, Inc.	5517	Applied For
TOUSA, Inc.	5518	Applied For
TOUSA, Inc.	4020	Applied For
TOUSA, Inc.	4019	Applied For
TOUSA, Inc.	4018	Applied For
TOUSA, Inc.	4017	Applied For
TOUSA, Inc.	4015	Applied For
TOUSA, Inc.	4016	Applied For
TOUSA, Inc.	4021	Applied For
TOUSA, Inc.	4022	Applied For
TOUSA, Inc.	4023	Applied For
TOUSA, Inc.	4512	Applied For
TOUSA, Inc.	4511	Applied For
TOUSA, Inc.	4513	Applied For

**Schedule 5
to Security Agreement**

TOUSA, Inc.	4520	Applied For
TOUSA, Inc.	4519	Applied For
TOUSA, Inc.	5020	Applied For
TOUSA, Inc.	5019	Applied For
TOUSA, Inc.	5017	Applied For
TOUSA, Inc.	5018	Applied For
TOUSA, Inc.	5511	Applied For
TOUSA, Inc.	5512	Applied For
TOUSA, Inc.	5513	Applied For
TOUSA, Inc.	5514	Applied For
TOUSA, Inc.	5516	Applied For
TOUSA, Inc.	5515	Applied For

**Schedule 6
to Security Agreement**

COMMERCIAL TORT CLAIMS

None.

**Schedule 7
to Security Agreement**

CHATTEL PAPER, INSTRUMENTS AND OTHER INVESTMENT PROPERTY

CHATTEL PAPER, INSTRUMENTS AND OTHER INVESTMENT PROPERTY

Entity	Principal Amount of Note	Date of Issuance	Interest Rate	Maturity Date
Engle Homes/AZ Construction, Inc.	\$ 62,027,000	4/1/2003	11.75%	4/1/2010
Engle Homes/ Virginia, Inc.	\$ 58,924,000	4/1/2003	11.75%	4/1/2010
Newmark Homes, L.P.	\$ 54,338,171	1/1/2003	11.75%	1/1/2010
TOUSA Homes, Inc.	\$ 271,746,970	1/1/2003	11.75%	1/1/2010
TOUSA Homes, Inc.	\$ 200,000,000	1/1/2006	10.00%	1/1/2016
TOUSA Homes, Inc.	\$ 82,869,109	4/1/2003	11.75%	4/1/2010
TOUSA Homes, Inc.	\$ 5,100,000	1/4/2007	10.00%	6/2/2008
TOUSA Homes, Inc.	\$ 4,300,000	11/12/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 4,000,000	7/24/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 4,000,000	8/13/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 4,000,000	9/10/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 3,600,000	10/14/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 2,824,848	12/22/2003	1.75%	1/1/2008
TOUSA Homes, Inc.	\$ 2,000,000	11/17/2003	1.75%	1/1/2008
Engle Homes Delaware, Inc.	\$ 55,000,000	1/1/2004	1.75%	1/1/2008
Tousa Delaware, Inc.	\$ 25,000,000	1/1/2004	1.75%	1/1/2008
Tousa Financing, Inc.	\$ 115,000,000	1/1/2004	1.75%	1/1/2008

**Schedule 8
to Security Agreement**

LETTERS OF CREDIT

None.

**Exhibit A
to Amended and Restated Security Agreement**

FORM OF ASSUMPTION AGREEMENT
(Amended and Restated Security Agreement (Revolving Credit Agreement))

ASSUMPTION AGREEMENT, dated as of _____, 200_, made by _____ (the "**Additional Grantor**"), in favor of Citicorp North America, Inc., as administrative agent (in such capacity, the "**Administrative Agent**") for its benefit and for the ratable benefit of the Issuers and the Lenders. All capitalized terms not defined herein shall have the meaning ascribed to them in the Security Agreement referred to below.

W I T N E S S E T H :

WHEREAS, TOUSA, Inc. (the "**Administrative Borrower**"), certain of its subsidiaries and the Administrative Agent have entered into an Amended and Restated Security Agreement, dated as of July 31, 2007 (as amended, supplemented or otherwise modified from time to time, the "**Security Agreement**");

WHEREAS, the Security Agreement requires the Additional Grantor to become a party to the Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Security Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Security Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Security Agreement, hereby becomes a party to the Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in the Schedules to the Security Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties applicable to it contained in Section 3 of the Security Agreement is true and correct in all material respects on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except that any representation or warranty that is qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects).

2. Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: _____

Name:

Title:

**Exhibit A
to Amended and Restated Security Agreement**

Annex 1-A to
Assumption Agreement

Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3