

**[This Loan and Security Agreement is substantially in its final form, but remains subject to further review of Northlight and the Debtors.]**

LOAN AND SECURITY AGREEMENT

DATED AS OF \_\_\_\_\_, 2012

among

THE POST-CONFIRMATION ESTATE OF WEST END FINANCIAL ADVISORS LLC

as Borrower,

and

NORTHLIGHT FUND LP,

as Lender

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## LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT is dated as of \_\_\_\_\_, 2012, and is entered into between THE POST-CONFIRMATION ESTATE of West End Financial Advisors LLC, a grantor trust established under the laws of the State of New York (“**Borrower**”), and NORTHLIGHT FUND LP, a Delaware limited partnership (“**Lender**”).

WHEREAS, on March 15, June 9 and July 6, 2011, West End Financial Advisors LLC (the “**Debtor**”) and certain of its affiliates (such affiliates, together with the Debtor, the “**Debtors**”), including, but not limited to, West End/Mercury Short Term Mortgage Fund, LP (“**West End/Mercury**”) and West End Mortgage Finance Fund, LP (“**WEMFF**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), thereby commencing cases under chapter 11 of the Bankruptcy Code that are being administered under Case No. 11-11152 (the “**Chapter 11 Case**”); and

WHEREAS, the respective chapter 11 estates of the Debtors have been substantively consolidated, by order of the Bankruptcy Court dated July 25, 2011; and

WHEREAS, pursuant to an order entered by the Bankruptcy Court on \_\_\_\_\_, 2012 (the “**Confirmation Order**”), the Bankruptcy Court confirmed the [Second] Amended Plan of Liquidation of West End Financial Advisors LLC, dated \_\_\_\_\_ (as amended, modified and/or supplemented according to the terms thereof, the “**Plan of Liquidation**”) pursuant to Section 1129 of the Bankruptcy Code, a copy of which is annexed as Annex A hereto; and

WHEREAS, West End/Mercury, as borrower, WEMFF, as guarantor, Lender and Northlight Financial LLC, as agent, were parties to that certain Amended and Restated Loan Agreement dated as of December 18, 2009 (the “**Prepetition Loan Agreement**”), pursuant to which Lender made loans and certain other financial accommodations to West End/Mercury; and

WHEREAS, pursuant to the Plan of Liquidation, Lender’s secured claim against the Debtors’ consolidated estates was allowed in the amount of \$ \_\_\_\_\_ (the “**Northlight Secured Claim**”); and

WHEREAS, Lender and Borrower are entering into this Agreement in order to give effect to the Plan of Liquidation and memorialize Borrower’s obligation to pay to Lender the Northlight Secured Claim, and secure the repayment of the Northlight Secured Claim, in accordance with the provisions of the Plan of Liquidation; and

WHEREAS, pursuant to the Plan of Liquidation, to secure Borrower’s obligations under the Loan Documents, Borrower is granting to Lender a security interest in and lien upon all of Borrower’s assets;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrower and Lender agree as follows:

## SECTION 1 DEFINITIONS AND ACCOUNTING TERMS

1.1. Certain Defined Terms. The capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below:

“**Additional Collateral**” means all Collateral that is not Prepetition Collateral.

“**Affiliate**” means any Person (other than Lender): (a) directly or indirectly controlling, controlled by, or under common control with, any Loan Party; (b) directly or indirectly owning or holding five percent (5%) or more of any Equity Interest in any Loan Party; (c) five percent (5%) or more of whose stock or other Equity Interest having ordinary voting power for the election of directors or the power to direct or cause the direction of management, is directly or indirectly owned or held by any Loan Party; or (d) which has a senior officer who is also a senior officer of any Loan Party; provided, however, that Fusion Telecommunications Inc., 90 LLC, Easton Ridge Apartments LLC, Burgundy 102 LLC, Ivywood 67 LLC and Scioto LLC shall not be deemed to be Affiliates of any Loan Party for purposes of this Agreement. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Equity Interests, or by contract or otherwise.

“**Agreement**” means this Loan and Security Agreement as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Apartment Collateral**” means all right, title and interest of West End Real Estate Fund I LP in and to the 8.33% Class A membership interest and the 37.5% Class B membership interest in each of 90 LLC, Easton Ridge Apartments LLC, Burgundy 102 LLC, Ivywood 67 LLC and Scioto LLC, which entities own apartment buildings in Ohio, Michigan and Connecticut.

“**Asset Disposition**” means the disposition, whether by sale, lease, transfer, loss, damage, destruction, condemnation or otherwise, of any or all of the assets of any Loan Party.

“**Assignment and Acceptance Agreement**” shall mean an Assignment and Acceptance Agreement substantially in the form of Exhibit A.

“**Avoidance Actions**” means all of the Debtor’s and Borrower’s causes of action against Entities arising under any of Bankruptcy Code §§ 544, 545, 547, 548, 549, 550, 553(b), or 724 or under similar or related state or federal statutes and common law, including, without limitation, all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights, and causes of action, whether or not litigation has been commenced as of the Effective Date to prosecute any such causes of action.

“**Bankruptcy Code**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Bankruptcy Court**” has the meaning assigned to that term in the Recitals section of this Agreement.



“**Basile Insurance Policy**” means that certain term life insurance policy in the face amount of \$5,000,000 issued to WEMFF insuring the life of Anthony P. Basile.

“**Borrower**” has the meaning assigned to such terms in the introductory paragraph of this Agreement.

“**Borrower Professionals**” means any professional retained by Borrower in accordance with the provisions of the Post-Confirmation Estate Agreement to render professional services to Borrower.

“**Budget Funds**” has the meaning assigned to that term in Section 5.5.

“**Business Day**” means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law to be closed.

“**Capital Lease**” means any lease of any property (whether real, personal or mixed) that, in conformity with GAAP, should be accounted for as a capital lease.

“**CapLease**” means CapLease, Inc. and its affiliates and subsidiaries, including CapLease Debt Funding, LP and CapLease Services Corp.

“**CapLease Loan and Security Agreement**” means that certain Loan and Security Agreement, dated as of the Effective Date, executed by Borrower and CapLease pursuant to the Plan of Liquidation, which provides for the terms and conditions governing the repayment of the obligations evidenced by the New CapLease Note and provides for the grant of a first-priority lien upon the Apartment Collateral to secure the obligations evidenced by the New CapLease Note.

“**CapLease Secured Claim**” means the secured claim of CapLease as allowed and awarded by the Bankruptcy Court under the Plan of Liquidation, in an amount equal to \$1,762,068.80 as of July 31, 2011, plus accrued and unpaid interest allowed under the CapLease Loan and Security Agreement from July 31, 2011 to (but not including) the Effective Date, provided however, that in the event CapLease is paid the sum of \$715,000 on or before March 1, 2012, the CapLease Secured Claim shall be deemed paid in full.

“**Chapter 11 Case**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Class 3 Non-Investor Unsecured Claims**” has the meaning assigned to that term in the Plan of Liquidation.

“**Class 4 Investor Creditor Unsecured Claims**” has the meaning assigned to that term in the Plan of Liquidation.

“**Closing Date**” means \_\_\_\_\_, 2012.

“**Collateral**” has the meaning assigned to that term in subsection 2.7(A).

“**Committee**” means the statutory committee of unsecured creditors appointed by the Office of the United States Trustee for Region 2 in the Chapter 11 Case pursuant to Bankruptcy Code § 1102.

“**Confirmation Order**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Contingency Fee Claims**” means all claims, causes of action and/or litigation against third parties, including Avoidance Actions but excluding the Landberg Defendants Actions, arising under (i) chapter 5 of the Bankruptcy Code or state fraudulent transfer/conveyance laws or (ii) any other theory or cause of action pursuant to which the Plan Administrator seeks a monetary recovery as a remedy.

“**Contingency Fees**” means all fees and disbursements incurred by Borrower Professionals in connection with or relating to Contingency Fee Claims, which fees and disbursements the Plan Administrator shall contract for exclusively on a contingency fee basis.

“**Control**” means “control” as defined in the UCC with respect to a particular item of Collateral.

“**Control Agreement**” means a tri-party deposit account, securities account or commodities account control agreement by and among Borrower, Lender and the depository, securities intermediary or commodities intermediary, and each in form and substance reasonably satisfactory to Lender and in any event providing to Lender “control” of such deposit account, securities or commodities account within the meaning of Articles 8 and 9 of the UCC

“**Copyrights**” means, collectively, all of the following (a) all 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 or with respect to any of the foregoing, including damages or payments for past, present or future infringements of 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 throughout the world.

“**Debtor**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Debtors**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Default**” means a condition, act or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition, act or event were not cured or removed within any applicable grace or cure period.

“**Default Rate**” has the meaning assigned to that term in subsection 2.2(A).

“**DZ Bank Franchise Loan Origination Agreement**” means that certain Third Amended and Restated Franchise Loan Origination Agreement dated as of June 11, 2010 by and among Autobahn Funding Company LLC, NFA Funding LLC, NFA Funding II LLC, NFA

Equipment Fund I LP, Northlight Food Franchise Fund, LP, Northlight Food Franchise Fund II, LP, Northlight Equipment Fund I, LP, DZ Bank and National Finance Associates, LLC, as may be amended, restated, supplemented or modified from time to time.

“**Effective Date**” means the date after entry of the Confirmation Order on which (a) all conditions specified in Section 11.2 of the Plan of Liquidation have been satisfied or waived in accordance with Section 11.2 of the Plan of Liquidation (which date shall be the date specified as the Effective Date in the notice contemplated by Section 9.16 of the Plan of Liquidation) and (b) no stay of the Confirmation Order is in effect.

“**Equity Interests**” of any Person shall mean any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“**Event of Default**” has the meaning assigned to that term in subsection 8.1.

“**Excess Interest**” has the meaning assigned to that term in subsection 2.2(C).

“**Expenditures**” means the use of Budget Funds by the Plan Administrator on behalf of Borrower to pay for the costs and expenses of operating and administering Borrower, which costs and expenses shall not include Contingency Fees.

“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board that are applicable to the circumstances as of the date of determination, consistently applied.

“**Governmental Authorities**” means any federal, state or municipal court or other governmental department, commission, board, bureau, agency or instrumentality, governmental or quasi-governmental, domestic or foreign.

“**Iberia**” means IberiaBank.

“**Iberia Secured Claim**” means the secured claim of IberiaBank deemed allowed by the Bankruptcy Court under the Plan of Liquidation in an amount equal to \$4,500,000 as of the Effective Date.

“**Indebtedness**”, as applied to any Person, means without duplication: (a) all indebtedness for borrowed money; (b) obligations under leases which in accordance with GAAP constitute Capital Leases; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services if the purchase price is due more than six (6) months from the date the obligation is incurred or is evidenced by a note or similar written instrument; (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been

assumed by that Person or is non-recourse to the credit of that Person; (f) obligations in respect of Letters of Credit or similar instruments; (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates; (h) “earnouts” and similar payment obligations and (i) any advances under any factoring arrangement.

“**Initial Monthly Budgets**” has the meaning assigned to that term in paragraph 1 of the Reporting Rider.

“**Indemnified Liabilities**” has the meaning assigned to that term in subsection 12.2.

“**Indemnitees**” has the meaning assigned to that term in subsection 12.2.

“**Intangible Assets**” means all intangible assets (determined in conformity with GAAP) including, without limitation, goodwill, Intellectual Property, Software, licenses, organizational costs, deferred amounts, covenants not to compete, unearned income and restricted funds.

“**Intellectual Property**” means, collectively, all: Copyrights, Patents and Trademarks.

“**Interest Rate**” has the meaning assigned to that term in subsection 2.2(A).

“**IRC**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

“**IRS**” means the United States of America Internal Revenue Service.

“**Landberg Defendants Actions**” means any and all claims and causes of action against one or more of William Landberg, Louise Crandall, Kevin Kramer and Steven Gould arising under any of Bankruptcy Code §§ 544, 545, 547, 548, 549, 550, 553(b), or 724 or under similar or related state or federal statutes and common law, including all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights, and causes of action, whether or not litigation has been commenced as of the Effective Date to prosecute any such causes of action.

“**Landberg Defendants Actions Fees**” means fees payable to Borrower Professionals on an hourly fee basis for the purpose of preparing and prosecuting the Landberg Defendants Actions.

“**Lender**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Lender’s Account**” means a deposit account of Lender as may be designated in writing by Lender from time to time.

“**Liabilities**” has the meaning assigned to that term under GAAP and shall include, without limitation, Indebtedness.

“**Lien**” means any lien (statutory or otherwise), mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest).

“**Loan**” means the original principal amount of \$\_\_\_\_\_.

“**Loan Documents**” means this Agreement, the Pledge Agreement, the Notes and all other documents, instruments and agreements executed by or on behalf of any Loan Party and delivered concurrently herewith or at any time hereafter to or for Lender in connection with the Loan, and any other transactions contemplated by this Agreement, all as amended, restated, supplemented or modified from time to time.

“**Loan Party**” means the Borrower and each Subsidiary of Borrower which Subsidiary is or becomes a party to any Loan Document.

“**Material Adverse Effect**” means (a) a material adverse effect upon the operations, prospects, properties, assets or condition (financial or otherwise) of Borrower, or the Loan Parties taken as a whole, (b) a material adverse effect upon the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party or of Lender to enforce or collect any of the Obligations or (c) a material impairment of the enforceability or priority of Lender’s Liens with respect to the Collateral.

“**Maximum Rate**” has the meaning assigned to that term in subsection 2.2(C).

“**Monthly Budgets**” has the meaning assigned to that term in paragraph 1 of the Reporting Rider.

“**New CapLease Note**” means that certain promissory note, issued pursuant to the Plan of Liquidation, executed by Borrower and made payable to the order of CapLease in the principal amount of the CapLease Secured Claim, which promissory note shall mature on the fifth (5<sup>th</sup>) anniversary of the Effective Date and bear interest at the rate of five (5%) percent per annum, payable quarterly in arrears, with a balloon payment consisting of the unpaid principal balance of the New CapLease Note due on the maturity date. Among its other provisions, the New CapLease Note shall provide that, in the event that the Borrower shall have paid CapLease principal in the aggregate amount of \$715,000 on or before March 1, 2012, the CapLease Secured Claim shall be deemed paid in full.

“**New Iberia Note**” means that certain promissory note, issued pursuant to the Plan of Liquidation, executed by Borrower and made payable to the order of Iberia in the principal amount of the Iberia Secured Claim, which promissory note shall bear interest at the rate of three and one-third (3.33%) percent per annum, which shall be accrued and be payable, along with the principal amount of the New Iberia Note, on the New Iberia Note Maturity Date.

“**New Iberia Note Maturity Date**” means the fifth (5<sup>th</sup>) anniversary of the Effective Date, provided however, that (i) upon Borrower providing Iberia thirty (30) days prior written notice of its election to extend the New Iberia Note Maturity Date as provided for herein and (ii) upon the Post-Confirmation Estate’s payment of all accrued and unpaid interest due to Iberia as

of the New Iberia Note Maturity Date, the Borrower shall be entitled to a one (1) year extension of the New Iberia Note Maturity Date to the sixth (6<sup>th</sup>) anniversary of the Effective Date. All other terms and conditions of the New Iberia Note shall remain unchanged.

“**NFA Funding LLC Agreement**” means that certain Amended and Restated Limited Liability Company Agreement of NFA Funding LLC, dated as of June 10, 2008.

“**Northlight GP Entity**” means Northlight GP II, LLC, in its capacity as the general partner of the Northlight Partnership.

“**Northlight Partnership**” means Northlight Food Franchise Fund LP (successor by merger to Northlight Food Franchise Fund II, LP and Northlight Equipment Fund I, LP).

“**Northlight Secured Claim**” has the meaning assigned to that term in the Recitals section of this Agreement.

“**Note**” or “**Notes**” means the promissory note of Borrower in form and substance acceptable to Lender, issued to evidence the Loan.

“**Obligations**” means all obligations, liabilities and indebtedness of every nature of each Loan Party from time to time owed to Lender under the Loan Documents (whether incurred before or after the Termination Date) including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable including, without limitation, all interest, fees, costs and expenses accrued or incurred after the filing of any petition under any bankruptcy or insolvency law (regardless of whether allowed or allowable in whole or in part as a claim therein).

“**Patents**” means collectively all of the following: (a) all patents and patent applications and the inventions and improvements described and claimed therein, and patentable inventions; (b) the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of 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 throughout the world.

“**Permitted Encumbrances**” means the following Liens: (a) Liens for taxes, assessments or other governmental charges or levies not yet due and payable; (b) Liens in favor of Lender; (c) the Lien in favor of CapLease pursuant to the CapLease Loan and Security Agreement securing the New CapLease Note; and (d) the Lien in favor of IberiaBank securing the New Iberia Note provided that such Lien shall at all times be junior and subordinate in priority to the liens and security interests granted to Lender pursuant to this Agreement or the other Loan Documents.

“**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts

or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

**“Plan Administrator”** means initially Joshua Rizack, in his capacity as Plan Administrator under the Post-Confirmation Estate Agreement, and any successor Plan Administrator selected pursuant to the Post-Confirmation Estate Agreement.

**“Plan of Liquidation”** means has the meaning assigned to that term in the Recitals section of this Agreement.

**“Pledge Agreement”** shall mean the Pledge Agreement dated as of the Closing Date by and among each Loan Party party thereto and Lender, as amended, restated, supplemented or otherwise modified from time to time.

**“Post-Confirmation Estate Agreement”** shall mean the Post Confirmation Estate Agreement dated as of \_\_\_\_\_, 2012 by and among Borrower and Joshua Rizack, as Plan Administrator of the Post-Confirmation Estate of Borrower.

**“Post-Confirmation Estate Additional Collateral Net Proceeds”** means the portion of the cash proceeds, net of Contingency Fees, realized from the liquidation or other disposition of the Additional Collateral to be retained by Borrower in accordance with the provisions of Section 2.4(B).

**“Prepetition Collateral”** means the items of Collateral that secured the obligations under the Prepetition Loan Agreement and designated as Prepetition Collateral on Schedule 2.4(B).

**“Prepetition Loan Agreement”** means has the meaning assigned to that term in the Recitals section of this Agreement.

**“Prepetition Note”** means has the meaning assigned to that term in subsection 2.1.

**“Professional Fees”** means compensation for services rendered, and reimbursement of expenses incurred, by Professionals prior to the Effective Date, as allowed and awarded by the Bankruptcy Court in the Chapter 11 Case pursuant to one or more Final Orders following application, in accordance with Sections 330 and 331 of the Bankruptcy Code or as otherwise ordered by the Bankruptcy Court.

**“Professionals”** means any professional Person employed by the Debtor or the Committee under Section 105, 327 or 330 of the Bankruptcy Code, or by order of the Bankruptcy Court, to render professional services in the Chapter 11 Case pursuant to a Final Order (as such term is defined in the Plan of Liquidation).

**“Register”** has the meaning assigned to that term in subsection 9.6(D).

**“Related Fund”** has the meaning assigned to that term in subsection 9.6(C).

**“Responsible Officer”** means the Plan Administrator or any member of the Post-Confirmation Estate Plan Oversight Committee.

“**Restricted Payment**” means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party now or hereafter outstanding, except a dividend payable solely with shares of the class of stock on which such dividend is declared; (b) any payment in connection with or relating to the extinguishment, cancellation or repurchase of any Equity Interests; (c) any payment or prepayment of principal of, premium, if any, or interest on, or any redemption, conversion, exchange, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party now or hereafter outstanding, or the issuance of a notice of an intention to do any of the foregoing; (d) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any Equity Interests of any Loan Party now or hereafter outstanding; (e) any director fee paid to any member of the board of directors of any Loan Party who is also an employee of any Loan Party; (f) any payment by any Loan Party of any management, consulting or similar fees to any Affiliate, whether pursuant to a management agreement or otherwise; (g) any payment with respect to principal, interest, fees or other amounts of the CapLease Loan and Security Agreement and the New CapLease Note, except as expressly permitted by the provisions of Section 7.8 of this Agreement, (h) any payment with respect to the New Iberia Note, and (i) any prepayment of any other Indebtedness not otherwise expressly permitted above.

“**Securities Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Subsidiary**” means, with respect to any Person, any corporation, association or other business entity of which more than fifty percent (50%) of the total voting power of Equity Interest (or equivalent ownership or controlling interest) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other subsidiaries of that Person or a combination thereof.

“**Tax Liabilities**” has the meaning assigned to that term in subsection 2.9(A).

“**Termination Date**” has the meaning assigned to that term in subsection 2.5.

“**Trademarks**” means collectively all of the following: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith; (b) all renewals thereof; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing including damages and payments for past, present and future infringements of any of the foregoing; (d) the right to sue for past, present and future infringements of any of the foregoing; (e) all rights corresponding to any of the foregoing throughout the world; and (f) all goodwill associated with and symbolized by any of the foregoing.

“**Transaction**” means the transactions contemplated by the Loan Documents and the financial accommodations contemplated herein.



“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, to the extent the law of any other state or other jurisdiction applies to the attachment, perfection, priority or enforcement of any Lien granted to Lender in any of the Collateral, “UCC” means the Uniform Commercial Code as in effect in such other state or jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, priority or enforcement of a Lien in such Collateral. To the extent this Agreement defines the term “Collateral” by reference to terms used in the UCC, each of such terms shall have the broadest meaning given to such terms under the UCC as in effect in any state or other jurisdiction.

“**VRP Membership Interest Purchase Agreement**” means that certain VRP Membership Interest Purchase Agreement dated as of the \_\_\_ day of January, 2010 by and among Debtor, JBB Partners, LLC, Venture Restaurant Partners, LLC, National Franchise Acceptance, LLC Somerset II, LLC Sam Mascheri and Anthony P. Basile.

“**WEMFF**” means has the meaning assigned to that term in the Recitals section of this Agreement.

“**WEMFF Swap Payments**” means has the meaning assigned to that term in subsection 5.5(E) of this Agreement.

“**WEMFF/WEFIP Waterfall Funds**” means has the meaning assigned to that term in subsection 5.5(F) of this Agreement.

“**West End/Mercury**” means has the meaning assigned to that term in the Recitals section of this Agreement.

1.2. UCC Defined Terms. The following terms used in this Agreement shall have the respective meanings provided for in the UCC: “Accounts”, “Account Debtor”, “Buyer in Ordinary Course of Business”, “Chattel Paper”, “Commercial Tort Claim”, “Deposit Account”, “Documents”, “Electronic Chattel Paper”, “Equipment”, “Farm Products”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter of Credit”, “Letter-of-Credit Rights”, “Licensee in Ordinary Course of Business”, “Payment Intangibles”, “Proceeds”, “Record”, “Software”, “Supporting Obligations” and “Tangible Chattel Paper”.

1.3. Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial statements and other information furnished to Lender pursuant to this Agreement shall be prepared in accordance with GAAP (as in effect at the time of such preparation) on a consistent basis.

1.4. Other Definitional Provisions. References to “Sections”, “subsections”, “Riders”, “Exhibits”, “Schedules”, “Annexes” and “Addenda” shall be to Sections, subsections, Riders, Exhibits, Schedules, Annexes and Addenda, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in subsection 1.1 or otherwise in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, words importing any gender include the other genders; the words “including,” “includes” and “include” shall be deemed to be followed by the

words “without limitation”; the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement or any other Loan Document; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

## SECTION 2 LOAN AND COLLATERAL

### 2.1. Loan.

(A) Loan. The Loan represents the amount of the outstanding obligations of West End/Mercury and WEMFF under the Prepetition Loan Agreement as of the Closing Date and, to give effect to the Plan of Liquidation, Lender shall be deemed to have made the Loan to Borrower on the Closing Date. For the avoidance of doubt, Borrower acknowledges that the entire Loan was funded under the Prepetition Loan Agreement and that Lender shall have no obligation to make any advances hereunder. The aggregate outstanding principal balance of the Loan shall be due and payable in full in immediately available funds on the Termination Date. The parties hereby acknowledge and agree that effective as of the Closing, the Prepetition Loan Agreement shall be automatically terminated and of no further effect.

(B) Note. Borrower shall execute and deliver to Lender a Note to evidence the Loan. In the event of an assignment under subsection 9.6, Borrower shall, upon surrender of the assigning Lender’s Notes, issue new Notes to reflect the interest held by the assigning Lender and its assignee. The parties hereby acknowledge and agree that effective as of the Closing, that certain Secured Promissory Note dated August 6, 2009 issued by West End/Mercury to Lender as successor by assignment from Northlight Financial LLC, as modified by that certain Allonge to Secured Promissory Note executed on or about December 18, 2009 in connection with the Prepetition Loan Agreement (the “**Prepetition Note**”), shall be automatically cancelled and of no further effect. Following the Closing, Lender shall mark the Prepetition Note “cancelled” and promptly surrender same to Borrower.

### 2.2. Interest.

(A) Rate of Interest. The Loan and all other Obligations shall bear interest from the Closing Date or the date such other Obligations become due to the date paid at a rate per annum equal to fifteen percent (15%) (the “**Interest Rate**”). After the occurrence and during the continuance of an Event of Default the Loan and all other Obligations shall, at the election of Lender, bear interest at a rate per annum equal to two percent (2%) plus the applicable Interest Rate (the “**Default Rate**”). Lender shall endeavor to give written notice to Borrower of an election by Lender to impose interest at the Default Rate pursuant to this subsection; provided, however, that a failure by Lender to give such notice shall not affect Lender’s rights to impose interest at the Default Rate.

(B) Computation and Payment of Interest. Interest on the Loan and all other Obligations shall be computed on the daily principal balance on the basis of a three hundred sixty (360) day year for the actual number of days elapsed. In computing interest on the Loan, the Closing Date and the date of payment of the Loan shall be excluded. Interest on the Loan and all other Obligations shall be payable to Lender monthly in arrears on the last day of each calendar month, on the date of any prepayment of Loan, and at maturity, whether by acceleration or otherwise.

(C) Interest Laws. Notwithstanding any provision to the contrary contained in this Agreement or any other Loan Document, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by applicable law (“**Excess Interest**”). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Agreement or in any other Loan Document, then in such event: (1) the provisions of this subsection shall govern and control; (2) neither Borrower nor any other Loan Party shall be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder shall be, at Lender’s option, (a) applied as a credit against the outstanding principal balance of the Obligations or accrued and unpaid interest (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the “**Maximum Rate**”), and this Agreement and the other Loan Documents shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) neither Borrower nor any other Loan Party shall have any action against Lender for any damages arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any Obligations is calculated at the Maximum Rate rather than the applicable rate under this Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on such Obligations shall remain at the Maximum Rate until each Lender shall have received the amount of interest which Lender would have received during such period on such Obligations had the rate of interest not been limited to the Maximum Rate during such period.

2.3. Intentionally Omitted.

2.4. Payments and Prepayments.

(A) Manner and Time of Payment. Any amounts due hereunder or under any of the other Loan Documents shall be immediately due and payable with interest thereon accruing from the applicable due date. All payments made by Borrower with respect to the Obligations shall be made without deduction, defense, setoff or counterclaim. All payments to Lender hereunder shall, unless otherwise directed by Lender, be made to Lender’s Account. All payments remitted to Lender’s Account shall be credited to the Obligations on the same Business Day as such payments are received by Lender in immediately available funds; provided, however, payments received by Lender after 4:00 P.M. (EST) shall be deemed received on the next Business Day. Borrower shall notify Lender if Borrower intends to make any voluntary payment or repayment of the Obligations to Lender’s Account.

(B) Mandatory Prepayments.

(1) Prepayments from Proceeds of Asset Dispositions. Promptly, but in no event later than seven (7) Business Days after receipt by any Loan Party of proceeds of any Asset Dispositions (including, without limitation, any insurance proceeds), Borrower shall prepay the Obligations in an amount equal to the net proceeds (i.e., gross proceeds less the reasonable costs of such sales or other dispositions) from such Asset Dispositions; provided, that if and to the extent proceeds are received from the disposition of Additional Collateral (“**Additional Collateral Proceeds**”), then the following provisions shall apply:

(a) until such time as all Professional Fees are paid in full, (a) ten percent (10%) of all Additional Collateral Proceeds (net of Contingency Fees) shall be paid to Lender as a mandatory prepayment of the Obligations, and (b) the remaining ninety percent (90%) of the Additional Collateral Proceeds (net of Contingency Fees) shall be retained by Borrower and (i) utilized to fund Expenditures subject to and in accordance with the then applicable Monthly Budget, (ii) utilized to pay Professional Fees and/or (iii) paid to Lender as a mandatory prepayment of the Obligations, in the discretion of the Plan Administrator;

(b) During the period commencing upon the date immediately succeeding the date on which all Professional Fees then outstanding are paid in full, and continuing through and including the second anniversary of the Effective Date, (a) eighty percent (80%) of the Additional Collateral Proceeds (net of Contingency Fees) shall be paid to Lender as a mandatory prepayment of the Obligations, and (b) the remaining twenty percent (20%) of the proceeds of the Additional Collateral Proceeds (net of Contingency Fees) shall be retained by Borrower and (i) utilized to fund Expenditures subject to and in accordance with the then applicable Monthly Budget, and/or (ii) paid to Lender as a mandatory prepayment of the Obligations, in the discretion of the Plan Administrator; and

(c) thereafter, provided that all Professional Fees are paid in full, (a) seventy percent (70%) of the Additional Collateral Proceeds (net of Contingency Fees) shall be shall be paid to Lender as a mandatory prepayment of the Obligations, and (b) the remaining thirty percent (30%) of the Additional Collateral Proceeds (net of Contingency Fees) shall be retained by Borrower and (i) utilized to fund Expenditures subject to and in accordance with the then applicable Monthly Budget, and/or (ii) paid to Lender as a mandatory prepayment of the Obligations, in the discretion of the Plan Administrator;

provided, further that to the extent that Additional Collateral Proceeds are proceeds of the Apartment Collateral, such proceeds shall be used by Borrower to make scheduled interest payments to CapLease under the New CapLease Note and, as set forth in Section 5.5(C), may be used, at Borrower’s discretion, to satisfy the New CapLease Note, in whole or in part, and/or to create a reserve for such payments.

Notwithstanding anything herein to the contrary, unless and until all Obligations shall have been indefeasibly paid in full, in cash, (i) none of the Pre-Petition Collateral, nor any proceeds thereof, shall be used or distributed to pay Professional Fees, (ii) none of the Collateral, nor any proceeds thereof, shall be used to make payments in respect of the New CapLease Note except as expressly provided in this Section 2.4(B) and (iii) none of the Collateral, nor any proceeds thereof, shall be used to make payments in respect of the Iberia Secured Claim.

All such prepayments shall be applied to the payment of the Obligations as Lender shall determine in its sole discretion.

(2) Prepayments from Tax Refunds. Promptly upon the receipt by any Loan Party of the proceeds of any tax refunds, Borrower shall prepay the Loan in an amount equal to such proceeds. All such prepayments shall be applied to the payment of the Obligations as Lender shall determine in its sole discretion.

(3) Other Prepayments.

(a) Notwithstanding the provisions of Section 5.5(F), (i) to the extent that any portion of WEMFF/WEFIP Waterfall Funds constitutes proceeds of a principal prepayment made by a Franchise Loan Obligor (as such term is defined in the DZ Bank Franchise Loan Origination Agreement) that is not scheduled under the relevant Franchise Loan Documents (as such term is defined in the DZ Bank Franchise Loan Origination Agreement), ninety (90%) of such proceeds shall be distributed to Lender as a mandatory prepayment of the Obligations, and, the remaining ten percent (10%) of such proceeds shall be retained by Borrower and utilized to fund Expenditures subject to and in accordance with the then applicable Monthly Budget, and (ii) upon the occurrence of an Event of Default and thereafter until such Event of Default shall be cured, any and all WEMFF/WEFIP Waterfall Funds payments shall be applied as a mandatory prepayment of the Obligations.

(b) To the extent that any of the WEMFF/WEFIP Waterfall Funds are not needed and used to fund Expenditures for a particular month, as provided for in the applicable Monthly Budget, Borrower shall distribute such excess WEMFF/WEFIP Waterfall Funds to Lender as a mandatory prepayment of the Obligations.

(c) Notwithstanding the provisions of Section 5.5(E), upon the occurrence of an Event of Default and thereafter until such Event of Default shall be cured, any and all WEMFF Swap Payments shall be applied as a mandatory amortization payment in respect of the Obligations.

(C) Voluntary Prepayments and Repayments. Borrower may, at any time upon not less than one (1) Business Day prior notice to Lender, prepay the Loan without prepayment premium.

(D) Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest or fees due hereunder.

(E) Intentionally Omitted.

(F) Intentionally Omitted.

2.5. Term of this Agreement. This Agreement shall be effective until the earliest of (a) January 10, 2015, (b) the Investment Period Termination Date (as such term is defined in the DZ Bank Franchise Loan Agreement) and (c) the acceleration of all Obligations pursuant to subsection 8.3 (the "**Termination Date**"). Upon the Termination Date all Obligations shall

become immediately due and payable without notice or demand. Notwithstanding any termination, until all Obligations have been fully paid and satisfied, Lender shall be entitled to retain security interests in and liens upon all Collateral, and even after payment of all Obligations hereunder, each Borrower's obligation to indemnify Lender in accordance with the terms hereof shall continue.

2.6. Statements. Lender shall record on its books and records the amount of the Loan, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Lender shall deliver to Borrower on a monthly basis a loan statement setting forth such record for the immediately preceding calendar month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loan and the interest and payments thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrower hereunder (and under the Note) to pay any amount owing with respect to the Loan or provide the basis for any claim against Lender.

2.7. Grant of Security Interest.

(A) Grant of Liens in the Collateral. To secure the payment and performance of the Obligations, including all renewals, extensions, restructurings and refinancings of any or all of the Obligations, each Loan Party hereby grants to Lender a continuing security interest in, lien and mortgage in and to, right of setoff against and collateral assignment of all of such Loan Parties' personal and real property and all rights to such personal and real property, in each case, whether now owned or existing or hereafter acquired or arising and regardless of where located (all being collectively referred to as the "**Collateral**") including, without limitation, all: (1) Accounts; (2) Chattel Paper; (3) Commercial Tort Claims, including those specified on Schedule 2.7(A); (4) Deposit Accounts and cash and other monies and property of any Loan Party in the possession or under the control of Lender; (5) Documents; (6) Equipment; (7) Fixtures; (8) General Intangibles (including Intellectual Property); (9) Goods; (10) Instruments; (11) Inventory; (12) Investment Property; (13) Letter-of-Credit Rights and Supporting Obligations; and (14) other personal property whether or not subject to the UCC; together with all books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software that at any time evidence or contain information relating to any of the property described above or are otherwise necessary or helpful in the collection thereof or realization thereon; and Proceeds and products of all or any of the property described above.

(B) Loan Parties Remain Liable. Anything herein to the contrary notwithstanding: (i) each Loan Party shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement or the other Loan Documents had not been executed; (ii) the exercise by Lender of any of the rights under this Agreement or the other Loan Documents shall not release any Loan Party from any of their respective duties or obligations to the parties under the contracts and agreements included in the Collateral; (iii) Lender shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement or the other Loan Documents, nor shall Lender be obligated to perform any of the obligations or duties of any Loan Party thereunder or to take any action to collect or

enforce any claim for payment assigned under this Agreement or the other Loan Documents; and (iv) Lender shall not have any liability in contract or tort for any Loan Party's acts or omissions.

2.8. Intentionally Omitted.

2.9. Taxes.

(A) No Deductions. Any and all payments or reimbursements made hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (all such taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto referred to herein as "**Tax Liabilities**"; excluding, however, taxes imposed on the net income of Lender by the jurisdiction under the laws of which Lender is organized or doing business or any political subdivision thereof and taxes imposed on its net income by the jurisdiction of Lender's applicable lending office or any political subdivision). If any Loan Party shall be required by law to deduct any such Tax Liabilities from or in respect of any sum payable hereunder to Lender, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Lender receives an amount equal to the sum it would have received had no such deductions been made.

(B) Changes in Tax Laws. In the event that, subsequent to the Closing Date, (i) any changes in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (ii) any new law, regulation, treaty or directive enacted or any interpretation or application thereof, or (iii) compliance by a Lender with any request or directive (whether or not having the force of law) from any Governmental Authority, agency or instrumentality:

(1) does or shall subject Lender to any tax of any kind whatsoever with respect to this Agreement, the other Loan Documents or the Loan, or change the basis of taxation of payments to Lender of principal, fees, interest or any other amount payable hereunder (except for net income taxes, or franchise taxes imposed in lieu of net income taxes, imposed generally by federal, state or local taxing authorities with respect to interest or commitment or other fees payable hereunder or changes in the rate of tax on the overall net income of Lender); or

(2) does or shall impose on Lender any other condition or increased cost in connection with the transactions contemplated hereby or participations herein; and the result of any of the foregoing is to increase the cost to Lender of making or continuing any Loan hereunder, as the case may be, or to reduce any amount receivable hereunder;

then, in any such case, Borrower shall promptly pay to Lender, upon its notice and demand, any additional amounts necessary to compensate Lender, on an after-tax basis, for such additional cost or reduced amount receivable, as reasonably determined by Lender with respect to this Agreement or the other Loan Documents. If Lender becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Borrower of the event by reason of which Lender has become so entitled. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes.

2.10. Endorsement; Insurance Claims. Borrower hereby constitutes and appoints Lender and all Persons designated by Lender for that purpose as Borrower's true and lawful attorney-in-fact, with power in the place and stead of Borrower and in the name of Borrower (a) to endorse Borrower's name to any payments on, and proceeds of Collateral that come into Lender's possession or under Lender's control, including without limitation, with respect to any drafts, Instruments, Documents and Chattel Paper, and (b) after the occurrence and during the continuance of an Event of Default to obtain, adjust and settle insurance claims, which are required to be paid to Lender. Borrower hereby ratifies and approves all acts of Lender made or taken pursuant to this subsection 2.10. Both the appointment of Lender as Borrower's attorney and Lender's rights and powers are coupled with an interest and are irrevocable, until indefeasible payment in full, in cash, of all Obligations.

### SECTION 3 CONDITIONS TO CLOSING DATE

3.1. Closing Date. The obligations of Lender to enter this Agreement are subject to satisfaction of all of the terms and conditions set forth below and the accuracy of all the representations and warranties of Borrower and the other Loan Parties set forth herein and in the other Loan Documents:

(A) Closing Deliveries. Lender shall have received, in form and substance reasonably satisfactory to Lender, all documents, instruments and information identified on the transaction checklist attached hereto as Schedule 3.1(A) and all other agreements, notes, certificates, orders, authorizations, financing statements, mortgages and other documents which Lender may at any time reasonably request.

(B) Security Interests. The Confirmation Order shall provide, in language reasonably acceptable to Lender, that upon the occurrence of the Effective Date, all security interests and liens granted to Lender pursuant to this Agreement or the other Loan Documents shall be deemed duly perfected and shall constitute first priority liens on the Collateral, subject only to the Permitted Encumbrances, without the necessity of the Lender taking any acts otherwise required under applicable non-bankruptcy law governing perfection of a security interest in the Collateral.

(C) Representations and Warranties. The representations and warranties contained herein and in the Loan Documents shall be true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date, except for any representation or warranty limited by its terms to a specific date and taking into account any amendments to the Schedules or Exhibits as a result of any disclosures made by Loan Parties to Lender after the Closing Date and approved by Lender.

(D) Payment of Northlight Partnership Funds. The Northlight Partnership shall have paid to Lender on the Closing Date the sum of \$\_\_\_\_\_, representing 100% of the funds held by the Northlight Partnership as of the Closing Date, which amount shall be a mandatory prepayment of the Obligations.

(E) No Default. No event shall have occurred and be continuing that would constitute an Event of Default or a Default.



(F) Performance of Agreements. Each Loan Party shall have performed in all material respects all agreements and satisfied in all material respects all conditions which any Loan Document provides shall be performed by it on or before the Closing Date.

(G) No Litigation. There shall not be pending or, to the knowledge of any Loan Party, threatened, any action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration by, against or affecting any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries that has not been disclosed to Lender by Loan Parties in writing, and there shall have occurred no development in any such action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration that, in the reasonable opinion of Lender, would reasonably be expected to have a Material Adverse Effect.

(H) Insurance. Lender shall have received copies of certificates of insurance, insurance policies or binders for insurance with respect to the Basile Insurance Policy with appropriate endorsements naming Lender as loss payee and/or additional insured, as appropriate.

(I) Initial Monthly Budgets. Lender shall have received the Initial Monthly Budgets, the foregoing to be in form and substance reasonably satisfactory to Lender.

(J) Solvency. Each Loan Party shall have demonstrated to Lender that after giving effect to the Transactions, such Loan Party is solvent, able to meet its obligations as they mature and has sufficient capital to enable it to operate its business.

(K) Confirmation Order. The Confirmation Order approving the Plan of Liquidation shall have been entered by the Bankruptcy Court and all of the conditions precedent to confirmation and the effective date of the Plan of Liquidation shall have been fulfilled, including, without limitation, those set forth in Section 11.2 of the Plan of Liquidation, or waived in accordance with Section 11.2 of the Plan of Liquidation.

(L) Post-Confirmation Estate Agreement. Lender shall have received a copy of the Post-Confirmation Estate Agreement, duly executed and delivered by the parties thereto.

#### SECTION 4 REPRESENTATIONS, WARRANTIES AND CERTAIN COVENANTS

To induce Lender to enter into the Loan Documents, each Loan Party represents, warrants and covenants to Lender that the following statements are and will be true, correct and complete on the Closing Date and, unless specifically limited, shall remain so until indefeasible payment in full, in cash, of all Obligations:

##### 4.1. Organization, Powers, Capitalization.

(A) Organization and Powers. Each of the Loan Parties is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and qualified to do business in all states and other jurisdictions where such qualification is required except where failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Upon entry of the Confirmation Order, each of the Loan Parties has all

requisite power and authority to own and operate its properties, to carry on its activities as now conducted and proposed to be conducted and to enter into each Loan Document. The name of (within the meaning of Section 9-503 of the UCC) and jurisdiction of organization of each Loan Party is set forth on Schedule 4.1(A). The chief executive office of each Loan Party is located at the address indicated on Schedule 4.1(A). Each Loan Party's organizational identification numbers, if any, are identified on Schedule 4.1(A).

(B) Capitalization. The authorized capital stock of each of the Loan Parties and its respective Subsidiaries is as set forth on Schedule 4.1(B), including all preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Loan Party of any shares of capital stock or other securities or equity interests of any such entity. All issued and outstanding shares of capital stock or other equity interests of each of the Loan Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Lender or the Permitted Encumbrances, and such shares were issued in compliance with all applicable state and federal laws concerning the issuance of securities. Each Loan Party will promptly notify Lender of any change in its ownership or organizational structure.

4.2. Authorization; No Conflict. Upon entry of the Confirmation Order, each Loan Party has the power and authority to incur the Obligations and to grant security interests in the Collateral. On the Closing Date and upon entry of the Confirmation Order, the execution, delivery and performance of the Loan Documents by each Loan Party signatory thereto will have been duly authorized by all necessary corporate and shareholder action. The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party and the consummation of the transactions contemplated by the Loan Documents by each Loan Party do not contravene any applicable law, the corporate charter or bylaws or other organizational documents of any Loan Party or any material agreement or order by which any Loan Party or any Loan Party's property is bound and will not (x) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of any Loan Party, or (y) require any approval of the interest holders of any Loan Party or any approval or consent of any Person under any material contractual obligation of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect. Upon entry of the Confirmation Order, the Loan Documents are the legally valid and binding obligations of the applicable Loan Parties respectively, each enforceable against the Loan Parties, as applicable, in accordance with their respective terms.

4.3. Intentionally Omitted.

4.4. Intentionally Omitted.

4.5. Collateral Warranties and Covenants.

(A) Title; No Other Liens. Each Loan Party has good, sufficient and legal title to, or interest in, all of the Collateral and will have good, sufficient and legal title of all after-acquired Collateral, in each case, free and clear of all Liens except for the Permitted Encumbrances. Lender has valid, perfected and, except for the Lien set forth in clause (c) of the definition of Permitted Encumbrances, first priority Liens in the Collateral, securing the payment

of the Obligations, and such Liens are entitled to all of the rights, priorities and benefits afforded by the UCC or other applicable law as enacted in any relevant jurisdiction which relates to perfected Liens. All actions by Borrower reasonably necessary to protect and perfect the lien granted hereunder to Lender on the Collateral have been taken. Borrower agrees that it will not, and hereby waives any right to, contest, challenge or object to, or support any other Person in contesting, challenging or objecting to, the perfection, priority, validity or enforceability of the liens and security interests granted hereunder to Lender on the Collateral..

(B) Intentionally Omitted.

(C) Intentionally Omitted.

(D) Intentionally Omitted.

(E) Instruments Warranties and Covenants. Each Loan Party will deliver to Lender all Instruments it holds or obtains duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Lender. Each Loan Party will also deliver to Lender all security agreements securing any Instruments and execute UCC financing statement amendments assigning to Lender any UCC financing statements filed by each Loan Party in connection with such security agreements.

(F) Investment Property Warranties and Covenants. Each Loan Party will take any and all actions necessary (or required or requested by Lender), from time to time, to (i) cause Lender to obtain exclusive Control of any Investment Property owned by each Loan Party in a manner reasonably acceptable to Lender and (ii) obtain from any issuers of such Investment Property and such other Persons, for the benefit of Lender, written confirmation of Lender's Control over such Investment Property upon terms and conditions reasonably acceptable to Lender.

(G) Letters of Credit Warranties and Covenants. There are no Letters of Credit under which a Loan Party is the beneficiary or is otherwise entitled to receive proceeds.

(H) General Intangibles Warranties and Covenants. Each Loan Party shall obtain any consents, waivers or agreements necessary to enable Lender to exercise remedies hereunder and under the other Loan Documents with respect to any of any Loan Party's rights under any General Intangibles.

(I) Intentionally Omitted.

(J) Commercial Tort Claims Warranties and Covenants. To the Borrower's knowledge, no Loan Party owns any Commercial Tort Claims except for matters disclosed on Schedule 2.7(A). Each Loan Party shall advise Lender promptly upon such Loan Party becoming aware that it owns any additional Commercial Tort Claims. With respect to any new Commercial Tort Claim, the applicable Loan Party will execute and deliver such documents as Lender reasonably deems necessary to create, perfect and protect Lender's security interest in such Commercial Tort Claim.

(K) Deposit Accounts; Bank Accounts Warranties and Covenants. Schedule 4.5(J) sets forth the account numbers and locations of all Deposit Accounts or other bank accounts of each Loan Party and such Schedule correctly identifies the name of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

(L) Bailees. None of the Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor. No Collateral shall at any time be in the possession or control of any warehouse, bailee or any of Loan Parties' agents or processors without Lender's prior written consent.

(M) Intentionally Omitted.

(N) Collateral Filing Requirements; Collateral Records. Each Loan Party shall keep full and accurate books and records relating to the Collateral and shall stamp or otherwise mark such books and records in such manner as Lender may reasonably request to indicate Lender's Liens in the Collateral.

(O) Lender Authorized. Each Loan Party hereby authorizes and, until such time as the Obligations are indefeasibly paid in full, in cash, shall continue to authorize Lender to file one or more financing or continuation statements, and amendments thereto (or similar documents required by any laws of any applicable jurisdiction), relating to all or any part of the Collateral without the signature of such Loan Party and hereby specifically ratifies all such actions previously taken by Lender.

4.6. Intentionally Omitted.

4.7. Real Property. Borrower does not own, lease or have any option in, or any right or obligation to acquire any interest in real property except for Borrower's month-to-month leasehold interest in the property located at \_\_\_\_\_.

4.8. Intentionally Omitted.

4.9. Intentionally Omitted.

4.10. Intentionally Omitted.

4.11. Intentionally Omitted.

4.12. Broker's Fees. Except as set forth on Schedule 4.12, no broker's or finder's fee or commission will be payable with respect to any of the transactions contemplated hereby.

4.13. Intentionally Omitted.

4.14. Intentionally Omitted.

4.15. Disclosure. To Borrower's actual knowledge, no representation or warranty of any Loan Party contained in this Agreement, the financial statements, the other Loan Documents,

or any other document, certificate or written statement furnished to Lender by or on behalf of any such Person for use in connection with the Loan Documents contains any untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. There is no material fact known to any Loan Party that has had or could have a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to Lender for use in connection with the transactions contemplated hereby.

4.16. Insurance. The Loan Parties do not maintain any insurance policies other than the Basile Insurance Policy. Each Loan Party shall cause Lender at all times to be named as loss payee on the Basile Insurance Policy, in each case pursuant to appropriate endorsements in form and substance reasonably satisfactory to Lender. No notice of cancellation has been received with respect to the Basile Insurance Policy. Any proceeds received from the Basile Insurance Policy shall be applied to the Obligations as set forth in subsection 2.4(B)(1).

4.17. Compliance with Laws; Government Authorizations; Consents. No Loan Party is in violation of any law, ordinance, rule, regulation, order, policy, guideline or other requirement of (i) any Governmental Authority in all jurisdictions in which any Loan Party is now doing business, and (ii) any government authority otherwise having jurisdiction over the conduct of any Loan Party or any of its respective businesses, or the ownership of any of its respective properties, which violation would subject any Loan Party, or any of their respective officers to criminal liability or have a Material Adverse Effect and no such violation has been alleged. Each Loan Party will comply with the requirements of all applicable laws, ordinances, rules, regulations, orders, policies, guidelines or other requirements of (a) any Governmental Authority as now in effect and which may be imposed in the future in all jurisdictions in which any Loan Party is now doing business or may hereafter be doing business, and (b) any government authority otherwise having jurisdiction over the conduct of any Loan Party or any of its respective businesses, or the ownership of any of its respective properties, except to the extent the noncompliance with which would not have a Material Adverse Effect. Other than the entry of the Confirmation Order, no authorization, approval or other action by, and no notice to or filing with, any domestic or foreign Governmental Authority or regulatory body or consent of any other Person is required for (1) the grant by each Loan Party of the Liens granted hereby or for the execution, delivery or performance of this Agreement or the other Loan Documents by each Loan Party; (2) the perfection of the Liens granted hereby and pursuant to any other Loan Documents (except for filing UCC financing statements with the appropriate jurisdiction); or (3) the exercise by Lender of its rights and remedies hereunder (except as may have been taken by or at the direction of a Loan Party or Lender).

4.18. Employee Matters. No Loan Party has any employees or is subject to an employment contract.

4.19. Intentionally Omitted.

4.20. Access to Accountants and Management. Each Loan Party authorizes Lender to discuss the financial condition and financial statements of each Loan Party with Loan Parties'

accountants upon reasonable notice to Loan Parties of its intention to do so, and authorizes Loan Parties' accountants to respond to all of Lender's inquiries.

4.21. Inspection. Each Loan Party shall permit Lender and any authorized representatives designated by Lender to visit and inspect any of the properties of any Loan Party, including their financial and accounting records, and, in conjunction with such inspection, to make copies and take extracts therefrom, and to discuss their affairs, finances and business with their officers and any Loan Parties' accountants, at such reasonable times during normal business hours and as often as may be reasonably requested.

4.22. Intentionally Omitted.

4.23. Payment of Taxes by Lender. If any of the Collateral includes a charge for any tax payable to any governmental tax authority, Lender is hereby authorized (but in no event obligated) in its discretion to pay the amount thereof to the proper taxing authority for the account of any Loan Party and to charge the Loan Party's account therefore. Borrower shall notify Lender if any Collateral include any tax due to any such taxing authority and, in the absence of such notice, Lender shall have the right to retain the full proceeds of such Collateral and shall not be liable for any taxes that may be due from any Loan Party by reason of the sale of any of the Collateral.

## SECTION 5 REPORTING AND OTHER AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that, until indefeasible payment in full, in cash, of all Obligations, each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1. Financial Statements and Other Reports. Loan Parties will deliver to Lender the reports contained in the Reporting Rider attached hereto.

5.2. Intentionally Omitted.

5.3. Further Assurances. Each Loan Party shall, from time to time, execute such guaranties, financing or continuation statements, documents, security agreements, reports and other documents or deliver to Lender such instruments, certificates of title, mortgages, deeds of trust, or other documents as Lender at any time may reasonably request in writing to evidence, or otherwise implement, or for Lender to perfect the guaranties and security for repayment of the Obligations provided for in the Loan Documents.

5.4. Control Agreements. Borrower shall enter into, and cause each bank, depository, securities intermediary or commodities intermediary to enter into, Control Agreements with respect to each deposit, securities, commodity or similar account maintained by Borrower as of or after the Closing Date. Borrower may not open or maintain any such account with any bank, depository, securities intermediary or commodities intermediary that has not entered into a Control Agreement with Lender. Borrower shall ensure that all funds of Borrower and all payments of any type to Borrower (including payments in respect of proceeds from Collateral) shall be promptly deposited in the identical form in which such payment was made,

whether by cash or check, in a bank account that is subject to a Control Agreement with Lender and Borrower shall comply with the terms of each such Control Agreement.

5.5. Funding Expenditures of Borrower. Borrower shall only make Expenditures subject to and in accordance with the applicable Monthly Budgets (subject to a ten (10) percent variance per line-item). Borrower shall fund the Expenditures provided for in each Monthly Budget exclusively from the following sources of funds (the “**Budget Funds**”) in the sequence set forth below to the extent necessary to fund such Expenditures:

- (A) *First*, cash on hand held by Borrower;
- (B) *Second*, the Post-Confirmation Estate Additional Collateral Net Proceeds;
- (C) *Third*, the proceeds from the Apartment Collateral; provided, however, that the Plan Administrator, in his discretion, may use such proceeds to satisfy the New CapLease Note, in whole or in part, and/or retain and reserve such proceeds for the purpose of funding the scheduled interest payments to CapLease under the New CapLease Note;
- (D) *Fourth*, the receivables related to the swap breakage, risk transfer and interest rate differential payments that arose under the DZ Bank Franchise Loan Origination Agreement and are payable to West End Financial Advisors, LLC pursuant to Section 10.2 of that certain VRP Membership Interest Purchase Agreement, dated as of January \_\_, 2010, by and among West End Financial Advisors, LLC, JBB Partners, LLC, Venture Restaurant Partners, LLC, National Franchise Acceptance, LLC, Somerset II, LLC, Sam Mascheri and Anthony P. Basile;
- (E) *Fifth*, so long as no Event of Default has occurred and is continuing, the interest rate differential payments (the “**WEMFF Swap Payments**”) received by West End Mortgage Finance Fund I, LP pursuant to Section 5.1(a)(ii) of the NFA Funding LLC Agreement and Section 10.2 of the VRP Membership Interest Purchase Agreement, during that period commencing on the Effective Date and ending on the earlier of (i) the second anniversary of the Effective Date and (ii) the date on which WEMFF no longer has rights to receive such WEMFF Swap Payments pursuant to Section 5.1(a)(ii) of the NFA Funding LLC Agreement and Section 10.2 of the VRP Membership Interest Purchase Agreement; provided, however, that upon the occurrence of an Event of Default and thereafter, unless and until such Event of Default shall be cured, Borrower shall no longer be entitled to receive or use any WEMFF Swap Payments, and all WEMFF Swap Payments shall be applied as mandatory prepayments of the Obligations in accordance with Section 2.4(B)(3) hereof;
- (F) *Sixth*, so long as no Event of Default has occurred and is continuing, the funds derived from the DZ Bank Franchise Loan Origination Agreement Waterfall (the “**WEMFF/WEFIP Waterfall Funds**”) that are distributed during the twenty-four (24) months following the Effective Date to West End Mortgage Finance Fund I LP and West End Fixed Income Partners LP by the Northlight Partnership pursuant to the partnership agreement of the Northlight Partnership, after payment by the Northlight Partnership to

Lender of accrued and unpaid interest under the Loan Documents; provided, however, that, for each month during such twenty-four (24)-month period, Borrower shall not be entitled to use more than the lesser of (a) \$30,000 or (b) an amount equal to the funds necessary to fund the Expenditures for such month, as set forth in the Monthly Budget for such month, after application of the Budget Funds contemplated by sub-sections (A), (B), (C), (D) and (E) of this Section; and provided further, however, that Borrower shall not be entitled to use more than \$360,000 in the aggregate of WEMFF/WEFIP Waterfall Funds during such twenty-four (24)-month period. To the extent that any of the WEMFF/WEFIP Waterfall Funds are not needed and used to fund Expenditures for a particular month, as provided for in the applicable Monthly Budget, the Plan Administrator shall distribute such excess WEMFF/WEFIP Waterfall Funds to Lender as a mandatory prepayment of the Obligations in accordance with Section 2.4(B)(3) hereof; provided further, however, that, upon the occurrence of an Event of Default, Borrower no longer shall be entitled to receive or use any WEMFF/WEFIP Waterfall Funds, and, thereafter, unless and until such Event of Default shall be cured, any and all WEMFF/WEFIP Waterfall Funds payments shall be applied as a mandatory prepayment of the Obligations in accordance with Section 2.4(B)(3) hereof.

Monthly Budgets shall not include, and Budget Funds shall not be used to pay, any fees for services performed by Post-Confirmation Estate Professionals retained by Borrower that are Contingency Fees.

5.6. Intentionally Omitted.

5.7. Maintenance of Properties. The Loan Parties shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause their respective Subsidiaries to, maintain and preserve all of their respective properties in good working order and condition, ordinary wear, tear, and casualty excepted and make or cause to be made all appropriate repairs, renewals and replacements thereof. Each Loan Party will maintain and preserve its existence, rights, privileges, permits, licenses, authorizations and approvals, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by such Loan Party or in which the transaction of its business makes such qualification necessary.

5.8. Intentionally Omitted.

5.9. Additional Collateral. The Loan Parties acknowledge that it is their intention to provide Lender with a Lien on all the property of the Loan Parties (personal, real and mixed), whether now owned or hereafter acquired (other than as agreed to in writing by Lender), subject only to Liens permitted hereunder. Loan Parties shall from time to time promptly notify Lender of the acquisition by any Loan Party of any material property in which, to the Borrower's actual knowledge, Lender does not then hold a perfected Lien (other than as agreed to in writing by Lender), or the creation or existence of any such property, and such person shall, upon request by Lender, promptly execute and deliver to Lender or cause to be executed and delivered to Lender pledge agreements, security agreements, mortgages or other like agreements with respect to such property, together with such other documents, certificates, opinions of counsel and the like as Lender shall reasonably request in connection therewith, in form and substance satisfactory to Lender, such that Lender shall receive valid and perfected first priority Liens (subject to the



Permitted Encumbrances) on all such property (including property which, on the Closing Date, is not subject to a Lien in favor of the Lender).

## SECTION 6 INTENTIONALLY OMITTED

## SECTION 7 NEGATIVE COVENANTS

Each Loan Party covenants and agrees that until indefeasible payment in full, in cash, of all Obligations, each Loan Party shall not and will not permit any of its Subsidiaries to:

7.1. Indebtedness and Liabilities. Directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable, on a fixed or contingent basis, with respect to any Indebtedness except: (a) the Obligations; (b) Indebtedness existing on the Closing Date and identified on Schedule 4.4; and (c) Indebtedness set out in any Monthly Budget approved by Lender in accordance with paragraph 1 of the Reporting Rider. No Loan Party will, incur any Liabilities except for Indebtedness permitted herein.

7.2. Guaranties. Guaranty, endorse, or otherwise in any way become or be responsible for any obligations of any other Person, whether directly or indirectly by agreement to purchase the indebtedness of any other Person or through the purchase of goods, supplies or services, or maintenance of working capital or other balance sheet covenants or conditions, or by way of stock purchase, capital contribution, advance or loan for the purpose of paying or discharging any indebtedness or obligation of such other Person or otherwise.

### 7.3. Transfers, Liens and Related Matters.

#### (A) Dispositions of Collateral.

(1) Prepetition Collateral. Directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any Prepetition Collateral unless (a) all Obligations have been indefeasibly paid in full, in cash or (b) the proceeds of such transfer or sale are sufficient to indefeasibly pay in full, in cash, all Obligations, and the provisions of the applicable transfer documents require proceeds of such transfer or sale to be applied, and such proceeds, in fact, are applied, to the indefeasible payment in full, in cash, of such Obligations upon closing of such transfer or sale.

(2) Additional Collateral. Directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions) any Additional Collateral unless (a) all Obligations have been indefeasibly paid in full, in cash; (b) the proceeds of such transfer or sale are sufficient to indefeasibly pay in full, in cash, all Obligations, and the provisions of the applicable transfer documents require proceeds of such transfer or sale to be applied, and such proceeds, in fact, are applied, to the indefeasible payment in full, in cash, of such Obligations upon closing of such transfer or sale; or (c) twenty-one (21) days prior written notice of the sale has been provided to Lender, Lender has the right to submit to the Plan Administrator an overbid for such assets by means of a credit bid (subject to a carve-out from the Lien in favor of Lender pursuant to Section 7.16.2 of the Plan of Liquidation), of all or a portion of the Obligations, and Lender is provided the ability to submit to the Plan Administrator a written objection to such sale. In the event that Lender submits to the Plan

Administrator a written objection to such sale, Borrower shall not consummate such sale until (i) the Plan Administrator has filed a motion with the Bankruptcy Court, pursuant to sections 363(b), (f) and (k) of the Bankruptcy Code, seeking authority to sell such assets free and clear of Liens (which motion shall not be heard on less than twenty-one (21) days notice to Lender and other parties in interest and shall expressly acknowledge Lender's right to credit bid at such sale, subject to the carve-out provided in Section 7.16.2 of the Plan of Liquidation) and (ii) the Bankruptcy Court shall have entered an order (a "**Section 363 Order**") authorizing and approving such sale. Under no circumstances shall any sale of the Additional Collateral extinguish or discharge the Lien in favor of Lender, either in full or in part, without Lender's written consent and release of such Lien (to the extent that such Lien encumbers the property proposed to be sold) or the entry by the Bankruptcy Court of a Section 363 Order providing for the extinguishment and discharge of such Lien.

(B) Liens. Except for Permitted Encumbrances, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of the Collateral or any proceeds, income or profits therefrom.

(C) No Negative Pledges. Enter into or assume any agreement (other than the Loan Documents) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired.

(D) No Restrictions on Subsidiary Distributions to Loan Parties. Except as provided herein, directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to: (1) pay dividends or make any other distribution on any of such Subsidiary's capital stock owned by a Loan Party; (2) pay any indebtedness owed to a Loan Party or any other Subsidiary of a Loan Party; (3) make loans or advances to a Loan Party or any other Subsidiary of a Loan Party; or (4) transfer any of its property or assets to a Loan Party or any other Subsidiary of a Loan Party.

7.4. Investments and Loans. Make or permit to exist investments in or loans to any other Person.

7.5. Restricted Payments. Directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Payment, other than payment of compensation to the Plan Administrator and its professionals in accordance with the provisions of Section 1.13 of the Post-Confirmation Estate Agreement.

7.6. Restrictions on Payment of Certain Fees.

(A) Pay any Contingency Fees except from the proceeds of Contingency Fee Claims. For the avoidance of doubt, the Plan Administrator shall have the discretion to (i) engage Borrower Professionals on an hourly fee basis for the purpose of preparing and prosecuting the Landberg Defendants Actions and (ii) subject to the funding of the then current Monthly Budget, fund the payment of Landberg Defendants Actions Fees for such hourly services from Budget Funds that constitute Post-Confirmation Estate Additional Collateral Net Proceeds.

(B) Notwithstanding anything in this Agreement to the contrary, use or distribute Pre-Petition Collateral, Additional Collateral or any proceeds thereof, to pay Professional Fees; provided, however, that Contingency Fees shall be paid from the proceeds of the Contingency Fee Claims and Landberg Defendants Action Fees shall be paid from Budget Funds that constitute Post-Confirmation Estate Additional Collateral Net Proceeds.

7.7. Restrictions on Distributions to Holders of Class 3 and Class 4 Claims. Notwithstanding anything herein to the contrary, make any distributions to the respective holders of Class 3 Non-Investor Unsecured Claims and Class 4 Investor Creditor Unsecured Claims unless and until (a) all Obligations have been paid in full, in cash or (b) Lender, in its sole and absolute discretion and without any obligation to do so, consents to such distribution.

7.8. Restriction on Certain Distributions to CapLease and Iberia. Use or distribute any of the Collateral, or any proceeds therefrom, to pay all or any portion of the CapLease Secured Claim (except as otherwise provided in Section 2.4(B)) or the Iberia Secured Claim; provided, however, that, notwithstanding the foregoing, proceeds of the Apartment Collateral shall be used to make scheduled interest payments to CapLease under the New CapLease Note and, as set forth in Section 2.4(B) hereof, may be used to satisfy the new CapLease Note, in whole or in part, and/or create a reserve for such payments. Subject to the terms of Section 7.3(A) hereof, nothing herein shall limit the Borrower's ability to satisfy the New CapLease Note with proceeds from the sale of the Apartment Collateral.

7.9. Restriction on Fundamental Changes. (a) Enter into any transaction of merger or consolidation; (b) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); (c) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of any of its Subsidiaries, whether now owned or hereafter acquired; or (d) acquire by purchase or otherwise all or any substantial part of the business or assets of, or stock or other beneficial ownership of, any Person.

7.10. Changes Relating to Other Indebtedness. Change or amend the terms of any agreement evidencing any Indebtedness of Borrower, including without limitation, the CapLease Loan and Security Agreement, the New CapLease Note, the New Iberia Note or any related documents, without the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed in respect of any such proposed change or amendment that is not adverse to the rights or interests of Lender.

7.11. Transactions with Affiliates. Directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale or exchange of property or the rendering of any service) with any Affiliate of Borrower.

7.12. Conduct of Business. From and after the Closing Date, conduct any business or engage in any activities except as expressly permitted by the Post-Confirmation Estate Agreement.

7.13. Intentionally Omitted.

7.14. Subsidiaries. Other than the Subsidiaries set forth on Schedule 7.14, establish, create or acquire any new Subsidiaries.

7.15. Press Release; Public Offering Materials. Disclose the name of Lender in any press release or in any prospectus, proxy statement or other materials filed with any governmental entity relating to a public offering of the capital stock of any Loan Party except as may be required by law.

## SECTION 8 DEFAULT, RIGHTS AND REMEDIES

8.1. Event of Default. “**Event of Default**” shall mean the occurrence or existence of any one or more of the following (after giving effect to any grace or cure period specified in the applicable subsection, but if no grace or cure period is specified, such occurrence or existence constitutes an immediate Event of Default):

(A) Payment. Failure to make payment of any of the Obligations when due;  
or

(B) Default in Other Agreements. (1) Failure of any Loan Party to pay when due any principal or interest on any other Indebtedness (other than the Obligations) or (2) breach or default of any Loan Party with respect to any other Indebtedness (other than the Obligations) having an individual principal amount in excess of \$25,000 or having an aggregate principal amount in excess of \$50,000 and such failure continues beyond any applicable grace period; or

(C) Breach of Certain Provisions. Failure of any Loan Party to perform or comply with any term or condition contained in subparagraphs (1), (2) and (3) of the Reporting Rider and subsections 5.3, 5.4, 5.5, Section 4 or Section 7; or

(D) Breach of Warranty. Any representation, warranty, certification or other statement made by any Loan Party in any Loan Document or in any statement or certificate at any time given by such Person in writing pursuant or in connection with any Loan Document is false in any material respect on the date made; or

(E) Other Defaults Under Loan Documents. Any Loan Party defaults in the performance of or compliance with any term contained in this Agreement in any material respect other than those otherwise set forth in this subsection 8.1 and such default is not remedied or waived within fifteen (15) days after notice from Lender to Borrower of such default, or defaults in the performance of or compliance with any term contained in the other Loan Documents in any material respect and such default is not remedied or waived within fifteen (15) days after notice from Lender, to Borrower of such default; or

(F) Administration of Borrower. (1) Joshua Rizack, or any successor Plan Administrator, ceases to be Plan Administrator for any reason and a successor Plan Administrator reasonably acceptable to Lender is not appointed within \_\_ Business Days; or (2) the grantor trust established pursuant to the Plan of Liquidation and the Post-Confirmation Estate Agreement (i.e., the Post-Confirmation Estate of West End Financial Advisors LLC) is terminated or dissolved for any reason; or (3) the Borrower or the Plan Administrator fails to

perform or comply with any term or condition contained in the Confirmation Order, the Plan of Liquidation or the Post-Confirmation Estate Agreement in any material respect; or

(G) Involuntary Bankruptcy; Appointment of Receiver, etc. (1) A court enters a decree or order for relief with respect to any Loan Party in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state law; or (2) the continuance of any of the following events for thirty (30) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against any Loan Party, under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) a receiver, liquidator, sequestrator, trustee, custodian or other fiduciary having similar powers over any Loan Party, or over all or a substantial part of their respective property, is appointed; or

(H) Voluntary Bankruptcy; Appointment of Receiver, etc. (1) Any Loan Party commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) any Loan Party makes any assignment for the benefit of creditors; or (3) the board of directors of any Loan Party adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this subsection 8.1(H); or

(I) Liens. Any lien, levy or assessment is filed or recorded with respect to or otherwise imposed upon all or any material part of the Collateral or the assets of any Loan Party by the United States or any department or instrumentality thereof or by any state, county, municipality or other governmental agency (other than Permitted Encumbrances) and such lien, levy or assessment is not stayed, vacated, paid or discharged within twenty (20) days; provided that so long as a Loan Party has commenced activity to have such lien, levy or assessment stayed, vacated, paid or discharged within such twenty (20) day period and is proceeding diligently with such cure, such twenty (20) day period shall be extended for such reasonable time as shall be necessary to enable the Loan Party to have such lien, levy or assessment is not stayed, vacated, paid or discharged; or

(J) Judgment, Attachments and Litigation. Any money judgment, writ or warrant of attachment, or similar process involving (1) an amount in any individual case in excess of \$50,000 or (2) an amount in the aggregate at any time in excess of \$100,000 (in either case not adequately covered by insurance as to which the insurance company has acknowledged coverage) is entered or filed against any Loan Party or any of their respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days, but in any event not later than five (5) days prior to the date of any proposed sale thereunder; or an event occurs or circumstance arises with respect to any litigation involving the Loan Parties which could reasonably be expected to have a Material Adverse Effect; or

(K) Dissolution. Any order, judgment or decree is entered against any Loan Party decreeing the dissolution or split up of such Loan Party and such order remains undischarged or unstayed for a period in excess of twenty (20) Business Days, but in any event not later than five (5) days prior to the date of any proposed dissolution or split up; or

(L) Intentionally Omitted; or

(M) Injunction. Any Loan Party is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any material part of its business and such order continues for thirty (30) days or more; or

(N) Invalidity of Loan Documents. Any of the Loan Documents for any reason, other than a partial or full release in accordance with the terms thereof, ceases to be in full force and effect or is declared to be null and void, or any Loan Party denies that it has any further liability under any Loan Documents to which it is party, or gives notice to such effect; or

(O) Failure of Security. Lender does not have or ceases to have a valid and perfected first priority security interest in the Collateral (subject, as to priority, only to the Lien described in clause (c) of the definition of Permitted Encumbrances), in each case, for any reason other than the failure of Lender to take any action within its control; or

(P) Damage, Strike, Casualty. Any material damage to, or loss, theft or destruction of, any Collateral which would reasonably be expected to have a Material Adverse Effect; or

(Q) Forfeiture. There is filed against any Loan Party any civil or criminal action, suit or proceeding under any federal or state racketeering statute (including, without limitation, the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit or proceeding (1) is not dismissed within one hundred twenty (120) days; and (2) would reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral; or

(R) Intentionally Omitted; or

(S) Post-Confirmation Estate Agreement. The Post-Confirmation Estate Agreement ceases to be in full force and effect and a replacement or successor Post-Confirmation Estate Agreement reasonably acceptable to Lender is not entered within thirty (30) days thereafter or any material provision of the Post-Confirmation Estate Agreement is amended without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned.

8.2. Intentionally Omitted.

8.3. Acceleration. Upon the occurrence of any Event of Default described in the foregoing subsections 8.1(G) or 8.1(H), all Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Loan Party. Upon the occurrence and during the continuance of any other Event of Default, Lender may, by written notice to Borrower, declare all or any portion of the Obligations to be, and the same shall forthwith become, immediately due and payable.

8.4. Remedies. If any Event of Default shall have occurred and be continuing, in addition to and not in limitation of any other rights or remedies available to Lender at law or in equity, Lender may exercise in respect of the Collateral, in addition to all other rights and

remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and may also (a) require Loan Parties to, and each Loan Party hereby agrees that it will, at its expense and upon request of Lender forthwith, assemble all or part of the Collateral as directed by Lender and make it available to Lender at a place to be designated by Lender which is reasonably convenient to both parties; and (b) without notice or demand or legal process, enter upon any premises of any Loan Party and take possession of the Collateral. Each Loan Party agrees that, to the extent notice of sale of the Collateral or any part thereof shall be required by law, at least ten (10) Business Days notice to Borrower of the time and place of any public disposition or the time after which any private disposition (which notice shall include any other information required by law) is to be made shall constitute reasonable notification. At any disposition of the Collateral (whether public or private), if permitted by law, Lender may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) for the purchase, lease, or licensing of the Collateral or any portion thereof for the account of Lender. Lender shall not be obligated to make any disposition of Collateral regardless of notice of disposition having been given. Each Loan Party shall remain liable for any deficiency. Lender may adjourn any public or private disposition from time to time by announcement at the time and place fixed therefor, and such disposition may, without further notice, be made at the time and place to which it was so adjourned. Lender is not obligated to make any representations or warranties in connection with any disposition of the Collateral. To the extent permitted by law, each Loan Party hereby specifically waives all rights of redemption, stay or appraisal, which it has or may have under any law now existing or hereafter, enacted. Lender shall not be required to proceed against any Collateral but may proceed against one or more Loan Parties directly.

8.5. Appointment of Attorney-in-Fact. Each Loan Party hereby constitutes and appoints Lender as such Loan Party's attorney-in-fact with full authority in the place and stead of such Loan Party and in the name of such Loan Party, Lender or otherwise, from time to time in Lender's discretion while an Event of Default is continuing to take any action and to execute any instrument that Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including: (a) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) to enforce the obligations of any Account Debtor or other Person obligated on the Collateral and enforce the rights of any Loan Party with respect to such obligations and to any property that secures such obligations; (c) to file any claims or take any action or institute any proceedings that Lender may deem necessary or desirable for the collection of or to preserve the value of any of the Collateral or otherwise to enforce the rights of Lender with respect to any of the Collateral; (d) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Lender in its sole discretion, and such payments made by Lender to become Obligations, due and payable immediately without demand; (e) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper or General Intangibles and other Documents relating to the Collateral; and (f) generally to take any act required of any Loan Party under Section 4 or Section 5 of this Agreement, and to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option and Loan Parties' expense, at any time or from time to time, all acts and things that Lender deems

necessary to protect, preserve or realize upon the Collateral. Each Loan Party hereby ratifies and approves all acts of Lender made or taken pursuant to, and in accordance with, this subsection 8.5. The appointment of Lender as each Loan Party's attorney and Lender's rights and powers are coupled with an interest and are irrevocable, until indefeasible payment in full, in cash, of all Obligations.

8.6. Limitation on Duty of Lender with Respect to Collateral. Beyond the safe custody thereof, Lender shall have no duty with respect to any Collateral in its possession (or in the possession of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Lender accords its own property. Lender shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouse, carrier, forwarding agency, consignee, broker or other agent or bailee selected by Loan Parties or selected by Lender in good faith.

8.7. Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) each Loan Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Lender from or on behalf of any Loan Party, and Lender shall have the continuing and exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as Lender may deem advisable notwithstanding any previous application by Lender and (b) in the absence of a specific determination by Lender with respect thereto, the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by or owing to Lender with respect to this Agreement, the other Loan Documents or the Collateral; second, to accrued and unpaid interest on the Obligations (including any interest which but for the provisions of any bankruptcy or insolvency law would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding in a manner as Lender shall determine in its sole discretion; and fourth, to any other Obligations of any Loan Party owing to Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

8.8. License of Intellectual Property. Each Loan Party hereby assigns, transfers and conveys to Lender, effective upon the occurrence of any Event of Default hereunder, the non-exclusive right and license to use all Intellectual Property owned or used by any Loan Party together with any goodwill associated therewith, all to the extent necessary to enable Lender to realize on the Collateral and any successor or assign to enjoy the benefits of the Collateral. This right and license shall inure to the benefit of all successors, assigns and transferees of Lender and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license is granted free of charge and, except to the extent the failure to obtain such consent would result in a Material Adverse Effect, does not require the consent of any other Person.



8.9. Waivers; Non-Exclusive Remedies. No failure on the part of Lender to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement or the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise by Lender of any right under this Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the other Loan Documents are cumulative and shall in no way limit any other remedies provided by law.

## SECTION 9 ASSIGNMENTS; SET OFF

9.1. Intentionally Omitted.

9.2. Intentionally Omitted.

9.3. Intentionally Omitted.

9.4. Intentionally Omitted.

9.5. Intentionally Omitted.

9.6. Assignments.

(A) Assignments. Lender may assign its rights and delegate its obligations under this Agreement. In the case of an assignment, the assignee shall be considered to be a “Lender” hereunder and Loan Parties hereby acknowledge and agree that any assignment will give rise to a direct obligation of Loan Parties to the assignee.

(B) Participations. Lender may sell participations in all or any part of the Loan to another Person. All amounts payable by Loan Parties hereunder shall be determined as if that Lender had not sold such participation and the holder of any such participation shall not be entitled to require Lender to take or omit to take any action hereunder except action directly effecting (1) any reduction in the principal amount or an interest rate on any Loan in which such holder participates; (2) any extension of the Termination Date or the date fixed for any payment of interest or principal payable with respect to any Loan in which such holder participates; and (3) any release of substantially all of the Collateral. Loan Parties hereby acknowledge and agree that the participant under each participation shall for purposes of subsections 2.9, 9.7 and 12.2 be considered to be a “Lender”.

(C) Security Interests; Assignment to Affiliates. Notwithstanding any other provision set forth in this Agreement, Lender may at any time (1) pledge the Obligations held by it or create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents in favor of any Person; provided, however the acquisition of title to Lender’s Obligations pursuant to any foreclosure or other exercise of remedies by such Person shall be subject to the provisions of this Agreement and the other Loan Documents in all respects; and (2) assign all or any portion of its funded loans to an assignee which is a Subsidiary of Lender or its parent company, to one or more other Lenders, or to a Related Fund. For purposes of this paragraph, a “**Related Fund**” shall mean, with respect to Lender, a fund or other investment

vehicle that invests in commercial loans and is managed by Lender or by the same investment advisor that manages Lender or by an Affiliate of such investment advisor.

(D) Recording of Assignments. Lender shall maintain a copy of each Assignment and Acceptance Agreement delivered to it and a register for the recordation of the names and addresses of Lenders, and the principal amount of the Loan owing to each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be presumptive evidence of the amounts due and owing to Lender in the absence of manifest error. Loan Parties and Lender may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement.

9.7. Set Off and Sharing of Payments. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, Lender is hereby authorized by each Loan Party at any time or from time to time, to set off and to appropriate and to apply any and all (a) balances held by Lender at any of its offices for the account of Loan Parties (regardless of whether such balances are then due to Loan Parties), and (b) other property at any time held or owing by Lender to or for the credit or for the account of any Loan Party, against and on account of any of the Obligations.

## SECTION 10 AGREEMENTS OF LENDER

10.1. Release of Lien in Respect of the Apartment Collateral. Lender shall promptly release, extinguish and discharge Lender’s Lien in respect of the Apartment Collateral in connection with a sale by Borrower of the Apartment Collateral to an unaffiliated third party on arms-length terms, provided that the proceeds from such sale are applied in accordance with the applicable provisions of Section 2.4(B) of this Agreement.

10.2. Mandatory Transfer of General Partner Interests in Northlight Partnerships. The Northlight GP Entity shall transfer its general partner interest in the Northlight Partnership to the entity or entities designated in writing by the Plan Administrator, upon written request of the Plan Administrator providing reasonable notice to the Northlight GP Entity, subject to the prior or contemporaneous satisfaction of the following conditions: (i) all of the Obligations shall have been paid in full in Cash; (ii) all management fees and all other amounts owing to the Northlight GP Entity shall have been paid in full in Cash; (iii) any and all consents to, and approvals of, such transfer that contractually, or as a matter of law, are required (such consents and approvals, collectively, the “**Consents**”) shall have been obtained; (iv) the Northlight GP Entity shall receive from the Northlight Partnership and the limited partners thereof, as well as from the Plan Administrator on behalf of the Borrower, a written release and discharge of and from any and all claims and causes of action relating to its role and actions as general partner of the Northlight Partnership, which release shall contain customary carve-outs for willful misconduct, gross negligence and fraud and otherwise shall be satisfactory to the Northlight GP Entity in all respects; and (v) Lender or its designee shall have been paid the sum of \$500,000.00 in consideration of the transfer by the Northlight GP Entity of such general partner interests. The Northlight GP Entity (together with its managers, officers and employees) agrees that it shall endeavor to cooperate, in good faith with the Plan Administrator solely in connection with the Plan Administrator’s efforts to obtain the Consents required to effectuate the transfer of the

Northlight GP Entity's general partner interest in the Northlight Partnership in accordance with the foregoing provisions and will not unduly delay or condition any such transaction proposed by the Plan Administrator. The Northlight GP Entity shall not be required to incur any fees, costs, or expenses in connection with such cooperation.

10.3. Lender's Reports. Lender shall use good faith efforts to deliver to Borrower, within fifteen (15) Business Days of the end of each calendar month, an accounting identifying all fees and expenses incurred and/or paid by the Lender during the immediate preceding month to be charged as Obligations together with an accounting identifying all WEMFF/WEFIP Waterfall Funds received by the Northlight Partnership during the immediate preceding month (the "**Lender Reports**"); provided, however, that Borrower acknowledges and agrees that (i) the delivery of the Lender Reports is an accommodation to Borrower, (ii) the obligations of Borrower under the Loan Documents shall not be affected in any way by the contents of any Lender Reports or the failure by Lender to deliver any Lender Reports and (iii) Lender shall have no liability to Borrower or any Loan Party in any way arising from or related to the Lender Reports, including without limitation, the contents of any Lender Reports or the failure by Lender to deliver any Lender Reports.

## SECTION 11 INTENTIONALLY OMITTED

## SECTION 12 MISCELLANEOUS

12.1. Expenses and Attorneys' Fees. Whether or not the transactions contemplated hereby shall be consummated, each Loan Party agrees to promptly pay all fees, costs and expenses incurred by Lender after the Effective Date in connection with any matters contemplated by or arising out of this Agreement or the other Loan Documents including the following, and all such fees, costs and expenses shall be part of the Obligations, payable on demand and secured by the Collateral: (a) fees, costs and expenses incurred by Lender (including reasonable attorneys' fees and expenses, the allocated costs of Lender's internal legal staff and fees of accountants and other professionals retained by Lender) incurred in connection with the examination, review, due diligence investigation, documentation and closing of the arrangements evidenced by the Loan Documents; (b) fees, costs and expenses incurred by Lender (including reasonable attorneys' fees and expenses, the allocated costs of Lender's internal legal staff and fees of accountants and other professionals retained by Lender) incurred in connection with the review, negotiation, preparation, documentation, execution, syndication and administration of the Loan Documents, the Loan, and any amendments, waivers, consents, forbearances and other modifications relating thereto or any subordination or intercreditor agreements, including reasonable documentation charges assessed by Lender for amendments, waivers, consents and any other documentation prepared by Lender's internal legal staff; (c) fees, costs and expenses (including reasonable attorneys' fees and allocated costs of internal legal staff) incurred by Lender in creating, perfecting and maintaining perfection of Liens in favor of Lender; (d) fees, costs, expenses (including reasonable attorneys' fees and allocated costs of internal legal staff) of Lender and costs of settlement incurred in collecting upon or enforcing rights against the Collateral or incurred in any action to enforce this Agreement or the other Loan Documents or to collect any payments due from Borrower or any other Loan Party under this Agreement or any other Loan Document or incurred in connection with any refinancing or restructuring of the

credit arrangements provided under this Agreement, whether in the nature of a “workout” or in connection with any insolvency or bankruptcy proceedings or otherwise.

12.2. Indemnity. In addition to the payment of expenses pursuant to subsection 12.1, whether or not the transactions contemplated hereby shall be consummated, each Loan Party agrees to indemnify, pay and hold Lender, and the officers, directors, employees, agents, consultants, auditors, persons engaged by Lender, to evaluate or monitor the Collateral, affiliates and attorneys of Lender (collectively called the “**Indemnitees**”) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnity shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnity, in any manner relating to or arising out of this Agreement or the other Loan Documents, the consummation of the transactions contemplated by this Agreement, or the exercise of any right or remedy hereunder or under the other Loan Documents (the “**Indemnified Liabilities**”); provided that no Loan Party shall have any obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment by a court of competent jurisdiction. Indemnified Liabilities shall constitute Obligations hereunder. In the event that an Indemnified Liability shall arise, upon payment in full of all Professional Fees, the Plan Administrator shall facilitate payment of such Indemnified Liability by, among other things, exercising his discretion under Section 2.4(B)(1) hereof and 7.16.2 of the Plan of Liquidation by paying all Post-Confirmation Estate Additional Collateral Net Proceeds to Lender until such Indemnified Liability shall be paid in full.

12.3. Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth below and may be personally served, faxed or sent by overnight courier service or United States mail and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax, on the date of transmission if transmitted on a Business Day before 4:00 p.m. New York City time or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, one (1) Business Day after delivery to such courier properly addressed; or (d) if by U.S. Mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed.

If to Borrower  
or any Loan Party:  
410 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10022  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

With a copy to:  
Gluck PC

Robinson Brog Leinwand Greene Genovese &  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
Attention: A. Mitchell Greene, Esq.

Fax No.: (212) 956-2164

If to Lender: Northlight Fund LP  
Grand Central Plaza  
60 East 42<sup>nd</sup> Street  
New York, New York 10165  
Attention: Mark P. Hirschhorn  
Fax No.: (646) 495-1601

With a copy to: Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019  
Attn: Michael D. Rosenbloom, Esq.  
Fax No.: (212) 506-1800

12.4. Survival of Representations and Warranties and Certain Agreements. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of each Loan Party, and Lender set forth in subsections 10.2, 12.1, 12.2, 12.6, 12.11, 12.14, and 12.15 shall survive the payment of the Loan and the termination of this Agreement.

12.5. Indulgence Not Waiver. No failure or delay on the part of Lender or any holder of any Note in the exercise of any power, right or privilege hereunder or under any Note shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

12.6. Marshaling; Payments Set Aside. Lender shall not be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to Lender or Lender enforces its security interests or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

12.7. Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement among the parties hereto and supersede all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto.

12.8. Severability. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Agreement or the other Loan Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement, or the other Loan Documents.

12.9. Intentionally Omitted.

12.10. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

12.11. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES BUT INCLUDING AND GIVING EFFECT TO SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT ANY SUCH OTHER LOAN DOCUMENT EXPRESSLY SELECTS THE LAW OF ANOTHER JURISDICTION AS GOVERING LAW THEREOF, IN WHICH CASE THE LAW OF SUCH OTHER JURISDICTION SHALL GOVERN.

12.12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, no Loan Party may assign its rights or obligations hereunder without the written consent of Lender.

12.13. No Fiduciary Relationship; No Duty; Limitation of Liabilities.

(A) No Fiduciary Relationship. No provision in this Agreement or in any of the other Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty by Lender to any Loan Party.

(B) No Duty. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Loan Party or any of any Loan Party's shareholders or any other Person.

(C) Limitation of Liabilities. Neither Lender, nor any affiliate, officer, director, shareholder, employee, attorney, or agent of Lender (other than the Northlight GP Entity, or any successor entity thereto, in its capacity as general partner of the Northlight Partnership) shall have any liability with respect to, and each Loan Party hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by any Loan Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Each Loan Party hereby waives, releases, and agrees not to sue Lender or any of Lender's affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan

Documents, or any of the transactions contemplated by this Agreement or any of the transactions contemplated hereby.

12.14. CONSENT TO JURISDICTION. EACH LOAN PARTY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH LOAN PARTY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH LOAN PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

12.15. WAIVER OF JURY TRIAL. EACH LOAN PARTY AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. EACH LOAN PARTY AND LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH LOAN PARTY AND LENDER WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

12.16. Construction. Each Loan Party and Lender each acknowledge that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel. This Agreement and the other Loan Documents shall be construed as if jointly drafted by Loan Parties and Lender. In the event that any provision of this Agreement or any other Loan Document directly contradicts any provision of the Plan of Liquidation, the Plan of Liquidation shall control. Borrower and Lender each represent to the other that to their knowledge and belief the provisions of this Agreement and the other Loan Documents do not contradict in any way the provisions of the Plan of Liquidation.

12.17. Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents, or supplements may be executed via facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.





Witness the due execution hereof by the respective duly authorized officers of the undersigned as of the date first written above.

**THE POST-CONFIRMATION ESTATE OF  
WEST END FINANCIAL ADVISORS LLC, as  
Borrower**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
FEIN: \_\_\_\_\_

**NORTHLIGHT FUND LP, as Lender**

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

EXHIBITS

A. Assignment and Acceptance Agreement

ANNEXES

A. Plan of Liquidation

SCHEDULES

2.4(B)	Prepetition Collateral
2.7(A)	Commercial Tort Claims
3.1(A)	List of Closing Documents
4.1(A)	Chief Executive Office and Organizational Identification Number
4.1(B)	Capitalization of Loan Parties
4.4	Indebtedness
4.5(J)	Deposit Accounts
4.6	Business and Trade Names (Present and Past Five Years); Location of Principal Place of Business, Books and Records and Collateral; State (other Jurisdiction) of Organization and Organizational Identification Number
4.9	Federal Tax Identification Numbers
4.12	Broker's or Finder's Fees
7.14	Subsidiaries

RIDERS

A. Reporting Rider

## REPORTING RIDER

This Reporting Rider is attached and made a part of that certain Loan and Security Agreement, dated as of \_\_\_\_\_, 2012 and entered into among The Post-Confirmation Estate of West End Financial Advisors LLC, as Borrower, and Northlight Fund LP, as Lender.

1. Monthly Budgets. Borrower shall furnish Lender prior to the beginning of each consecutive period of six (6) months (commencing with the six (6)-month period commencing on the Closing Date) the following monthly budgets (each a “**Monthly Budget**”): (i) no later than thirty (30) days after the Confirmation Date a series of six (6) prospective monthly budgets for the initial six (6)-month period beginning on the Closing Date (the “**Initial Monthly Budgets**”) and (ii) no later than fifteen (15) days prior to the commencement of each consecutive six (6)-month period thereafter, a series of six (6) prospective monthly budgets for the applicable six (6)-month period; provided, however, should the Effective Date occur prior to the delivery of the Initial Monthly Budget, then the Monthly Budget provided to Lender by the Debtor shall continue in full force and effect and control until the Plan Administrator provides the Initial Monthly Budget. Each Monthly Budget shall be prepared by the Plan Administrator and accompanied by a certificate signed by the Plan Administrator to the effect that such Monthly Budget has been prepared based upon good faith estimates and assumptions believed to be reasonable at the time made, together with appropriate supporting details and a statement of underlying assumptions. Monthly Budgets shall be subject to the reasonable approval of Lender and each Monthly Budget submitted to Lender shall be deemed approved unless objected to by Lender in writing within five (5) Business Days after such Monthly Budget is submitted for approval.

2. Accountings. Within thirty (30) days of the end of each calendar month, Borrower shall deliver to Lender an accounting, identifying on a line-item basis, the dollar amount of each category of Budget Funds received by the Plan Administrator during such month and the dollar amount of each category of Budget Funds used by the Plan Administrator to fund Expenditures during such month, together with an accounting that compares, on a line-item basis, the actual Expenditures made during such month against the Expenditures set forth in the Monthly Budget for such month. The form of such accountings shall be reasonably satisfactory to Lender. The monthly accountings shall be accompanied by a certificate of the Plan Administrator, which shall state that, to the best of his knowledge, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default, its nature, when it occurred, whether it is continuing and the steps being taken by Borrower with respect to such event.

3. Variances From Monthly Budgets. Furnish Lender, concurrently with the delivery of the accountings referred to in item 2 hereof, a written report summarizing all variances from the applicable Monthly Budget submitted by Borrower pursuant to item 1 hereof and a discussion and analysis with respect to such variances.

4. Disclosure of Material Matters. Promptly upon learning thereof, report to Lender all matters materially affecting the value, enforceability or collectability of any portion of the Collateral.

5. Material Occurrences. Promptly notify Lender in writing upon the occurrence of (a) any Event of Default or Default with such notice stating that it is a “**Notice of Default**”; (b) any event of default under any other Indebtedness of Borrower; (c) any event which with the giving of notice or lapse of time, or both, would constitute an event of default under any other Indebtedness of Borrower; (d) any event, development or circumstance whereby any statements or other reports furnished to Lender fail in any material respect to present fairly, the Expenditures by Borrower as of the date of such statements; and (e) any other development in the affairs of Borrower which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action Borrower proposes to take with respect thereto.

6. Litigation. Within thirty (30) days of the end of each calendar month, furnish Lender a summary of the current status of any ongoing litigation, suit or administrative proceeding affecting Borrower.

7. Additional Information. Furnish Lender with such additional information as Lender shall reasonably request in order to enable Lender to determine whether the terms, covenants, provisions and conditions of this Agreement have been complied with by Borrower.

8. Additional Documents. Deliver to Lender simultaneous copies of all reports, notices or other information (i) delivered by Borrower to the Plan Oversight Committee established pursuant to the Post-Confirmation Estate Agreement, (ii) delivered by any Loan Party to CapLease, or by CapLease to any Loan Party, in connection with the New CapLease Note or the related agreements with CapLease or (iii) delivered by any Loan Party to Iberia, or by Iberia to any Loan Party, in connection with the New Iberia Note or the related agreements with Iberia.

**[This Pledge Agreement is substantially in its final form, but remains subject to further review of Northlight and the Debtors.]**

## **PLEDGE AGREEMENT**

This Pledge Agreement (this "**Agreement**") dated as of \_\_\_\_\_, 2012 by and among THE POST CONFIRMATION ESTATE of West End Financial Advisors LLC, a grantor trust established under the laws of the State of New York ("**Pledgor**"), and NORTHLIGHT FUND LP, a Delaware limited partnership ("**Lender**").

### **BACKGROUND TO THE AGREEMENT**

Pledgor (as Borrower) has entered or is entering into a Loan and Security Agreement dated as of \_\_\_\_\_, 2012 (as amended, modified, restated or supplemented from time to time, the "**Loan Agreement**") with Lender, pursuant to which Lender has agreed, subject to the terms and conditions contained therein, to provide certain financial accommodations to the Borrower.

In order to induce Lender to provide or continue to provide the financial accommodations to Borrower described in the Loan Agreement, Pledgor has agreed to pledge and grant a security interest to Lender in the Pledged Collateral (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.**

All capitalized terms used herein which are not defined shall have the meanings given to them in the Loan Agreement and the following terms shall have the meanings set forth below:

"**Pledged Collateral**" shall have the meaning assigned to it in Section 2.

"**Pledged Equity Interests**" shall mean those Equity Interests listed in **Part A** of **Schedule I**.

"**Pledged Indebtedness**" shall mean the Indebtedness evidenced by the promissory notes, other Instruments and letters of credit listed on **Part B** of **Schedule I**.

2. **Pledge and Grant of Security Interest.**

To secure the full and punctual payment and performance of the Obligations, Pledgor hereby pledges, assigns, hypothecates, transfers and grants a security interest and lien in and to, right of setoff against and collateral assignment to Lender in all of the following (the "**Pledged Collateral**"):

(a) all Pledged Equity Interests set forth on **Part A** of **Schedule I** annexed hereto and expressly made a part hereof, the certificates, if any, representing such Pledged



Equity Interests and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Equity Interests;

(b) all additional shares of stock and other equity interests of any issuer of the Pledged Equity Interests (the "Issuer") from time to time acquired by Pledgor in any manner, including, without limitation, stock dividends or a distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off (which shares shall be deemed to be part of the Pledged Collateral), and the certificates, if any, representing such additional shares, and all dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares;

(c) all Pledged Indebtedness set forth on **Part B** of **Schedule I** annexed hereto and expressly made a part hereof and the promissory notes, other Instruments and letters of credit evidencing such Pledged Indebtedness, and all interest, cash, Instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of such Pledged Indebtedness; and

(d) all additional Indebtedness arising after the date hereof and owing to Pledgor and evidenced by promissory notes, other Instruments or letters of credit, together with such promissory notes, Instruments and letters of credit, and all interest, cash, Instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of such Pledged Indebtedness.

3. Delivery of Pledged Collateral.

(a) All certificates representing or evidencing the Pledged Equity Interests shall be delivered to and held by or on behalf of Lender pursuant hereto and shall be accompanied by (i) duly executed instruments of transfer or assignment in blank; and (ii) irrevocable proxies granted to Lender with respect to the voting rights of such Pledged Equity, all in form and substance satisfactory to Lender. Pledgor hereby authorizes the Issuer upon demand by Lender to deliver any certificates, instruments or other distributions issued in connection with the Pledged Collateral directly to Lender, in each case to be held by Lender, subject to the terms hereof. Lender shall have the right, at any time following the occurrence and during the continuance of an Event of Default, in its discretion and without notice to Pledgor, to transfer to or to register in the name of Lender or any of its nominees any or all of the Pledged Equity. In addition, Lender shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Equity for certificates or instruments of smaller or larger denominations, or if such Issuer is not directly or indirectly controlled by Pledgor, to request such exchange of certificates or instruments. If any Pledged Equity Interests are beneficially owned by Pledgor through a securities or other similar account, Pledgor shall deliver duly executed control agreements for the benefit of Lender with respect thereto, all in form and substance satisfactory to Lender. All promissory notes or other Instruments evidencing the Pledged Indebtedness shall be delivered to and held by or on behalf of Lender pursuant hereto and shall be accompanied by (i) duly executed instruments of transfer or assignment in blank and (ii) acknowledgments from the Issuer as to the security interest held by Lender to the extent practicably obtainable by Pledgor, all in form and substance satisfactory to Lender.

4. Representations and Warranties of Pledgor.

Pledgor represents and warrants to Lender (which representations and warranties shall be deemed to continue to be made until all of the Obligations have been paid in full and the Loan Agreement has been irrevocably terminated) that:

(a) Upon entry of the Confirmation Order, Pledgor has the requisite power and authority to enter into this Agreement and to pledge the Pledged Collateral for the purposes described herein.

(b) The execution, delivery and performance by Pledgor of this Agreement and the pledge of the Pledged Collateral hereunder have been duly and properly authorized and do not and will not result in any violation of any material agreement, indenture, instrument, license, judgment, decree, order, law, statute, ordinance or other governmental rule or regulation applicable to Pledgor.

(c) This Agreement constitutes the legal, valid and binding obligation of Pledgor enforceable against Pledgor in accordance with its terms.

(d) Pledgor is the sole direct and beneficial owner of and has good, sufficient and legal title to, or interest in, all of the Pledged Collateral.

(e) This Agreement creates and grants a valid, perfected first lien on and security interest in the Pledged Collateral and the proceeds thereof, subject to no prior security interest, mortgage, pledge, claim, lien, charge, hypothecation, assignment, offset or encumbrance whatsoever (collectively, "**Liens**") or to any agreement purporting to grant to any third party a Lien upon the property or assets of Pledgor which would include the Pledged Collateral; provided, however, that Lender's Lien in the Apartment Collateral and the proceeds thereof (but not in any of the other Pledged Collateral) shall be subordinate to the Lien in favor of CapLease pursuant to the CapLease Loan and Security Agreement securing the New CapLease Note to the extent of the CapLease Secured Claim. Borrower agrees that it will not, and hereby waives any right to, contest, challenge or object to, or support any other Person in contesting, challenging or objecting to, the perfection, priority, validity or enforceability of the liens and security interests granted hereunder to Lender on the Pledged Collateral.

(f) There are no pending or, to the best of Pledgor's knowledge, threatened actions or proceedings before any court, judicial body, administrative agency or arbitrator which may materially adversely affect the Pledged Collateral.

(g) Upon entry of the Confirmation Order, no consent, approval, authorization or other order of any Person and no consent, authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required by Pledgor either (i) for the pledge of the Apartment Collateral or the Pledged Indebtedness pursuant to this Agreement or for the execution, delivery or performance of this Agreement or (ii) for the exercise by the Lender of the voting or other rights provided for in this Agreement or the remedies in respect of the Apartment Collateral or the Pledged Indebtedness pursuant to this Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(h) No notification of the pledge evidenced hereby to any Person is required.

(i) As of the date hereof, there are no existing options, warrants, calls or commitments of any such character whatsoever relating to any Pledged Equity Interests and no indebtedness or other security convertible into any Pledged Equity Interests.

(j) As of the date hereof any proxy or proxies heretofore given by Pledgor to any Person or Persons whatsoever have been revoked.

(k) The Pledged Equity Interests constitute 100% of the issued and outstanding Equity Interests of each Issuer, unless otherwise disclosed on Schedule I.

(l) Pledgor does not own or hold any Equity Interests aside from the Pledged Equity Interests pledged to Lender pursuant to this Agreement and listed on **Part A** of **Schedule I**.

(m) Pledgor does not own or hold any Indebtedness aside from the Pledged Indebtedness pledged to Lender pursuant to this Agreement and listed on **Part B** of **Schedule I**.

The representations and warranties set forth in this Section 4 shall survive the execution and delivery of this Agreement.

5. Covenants.

Until such time as all of the Obligations have been paid in full and the Loan Agreement has been irrevocably terminated, Pledgor shall:

(a) Not sell, assign, transfer, convey, or otherwise dispose of its rights in or to the Pledged Collateral or any interest therein; nor create, incur or permit to exist any Lien whatsoever with respect to any of the Pledged Collateral or the proceeds thereof other than that created hereby, in each case unless expressly permitted by the Loan Agreement.

(b) At any time, and from time to time, upon the written request of Lender, execute and deliver such further documents and do such further acts and things as Lender may reasonably request in order to effect the purposes of this Agreement.

(c) Not give any other proxies in derogation hereof until this Agreement is no longer in full force and effect as hereinafter provided.

(d) Within five (5) days of receipt thereof by Pledgor, deliver to Lender all material notices and statements relating to the Pledged Collateral received by Pledgor.

(e) At its expense, promptly execute, acknowledge and deliver all Instruments and deliver letters of credit and take any other action deemed necessary or desirable by Lender in order to protect and perfect the Lien in favor of Lender, upon the Pledged Collateral, including the filing of any necessary Code financing statements, which may be filed by Lender without the signature of Pledgor, and will cooperate with Lender, at Pledgor's expense, in obtaining all necessary approvals and making all necessary filings under federal, state, local or foreign law in connection with such Liens or any sale or transfer of such Pledged Collateral.

(f) Unless expressly permitted by the Loan Agreement, not consent to or approve the issuance of (i) any additional shares or interests of any class of equity of any Issuer; (ii) any securities convertible either voluntarily by the holder thereof or automatically upon the occurrence or nonoccurrence of any event or condition into, or any securities exchangeable for, any such shares; or (iii) any warrants, options, contracts or other commitments entitling any person to purchase or otherwise acquire any such shares or interests.

(g) Upon obtaining ownership of any additional Equity Interests, promissory notes or other Instruments or letter of credit of an Issuer or Equity Interests, promissory notes or other Instruments or letter of credit otherwise required to be pledged to Lender pursuant to any of the Loan Documents that does not already constitute Pledged Collateral hereunder, promptly (and in any event within five (5) Business Days after it acquires any such additional Stock, notes or other Instruments or letters of credit) deliver to Lender an amendment to this Agreement, in form and substance satisfactory to Lender in its reasonable discretion, duly executed by Pledgor (each, a "Pledge Amendment"), in respect of any such additional Equity Interests, notes or other Instruments or letters of credit, pursuant to which Pledgor shall deliver to Lender and pledge to Lender all of such additional Equity Interests, notes and other Instruments or letters of credit. Pledgor hereby authorizes Lender to attach each such Pledge Amendment to this Agreement and agrees that all Pledged Equity Interests and Pledged Indebtedness listed in any such Pledge Amendment and delivered to Lender concurrently with Pledgor's delivery of such Pledge Amendment shall for all purposes hereunder be considered Pledged Collateral.

#### 6. Voting Rights and Dividends.

In addition to Lender's rights and remedies set forth in Section 8 hereof, in case an Event of Default shall have occurred and be continuing, Lender shall (i) vote the Pledged Collateral, (ii) be entitled to give consents, waivers and ratifications in respect of the Pledged Collateral (Pledgor hereby irrevocably constituting and appointing Lender, with full power of substitution, the proxy and attorney-in-fact of Pledgor for such purposes) to the extent not prohibited by the applicable governance and operating documents and (iii) be entitled to collect and receive for its own use cash dividends paid on the Pledged Collateral. Pledgor shall not exercise or refrain from exercising any voting rights or other powers in a way materially adverse to Lender, in the reasonable judgment of Lender; and, provided, further, that Pledgor shall give at least five (5) days' written notice of the manner in which Pledgor intends to exercise, or the reasons for refraining from exercising, any voting rights or other powers other than with respect to any election of directors and voting with respect to any incidental matters. All dividends and all other distributions in respect of any of the Pledged Collateral, whenever paid or made, shall be delivered to Lender to hold as Pledged Collateral and shall, if received by Pledgor, be received in trust for the benefit of Lender, be segregated from the other property or funds of Pledgor, and be forthwith delivered to Lender as Pledged Collateral in the same form as so received (with any necessary endorsement).

#### 7. Events of Default.

The term "Event of Default" wherever used herein shall mean the occurrence of any Event of Default under the Loan Agreement.

8. Remedies.

Upon the occurrence of an Event of Default, Lender may:

(a) Demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Pledged Collateral (or any part thereof), as Lender may determine in its sole discretion;

(b) Transfer any or all of the Pledged Collateral into its name, or into the name of its nominee or nominees;

(c) Exercise all rights with respect to the Pledged Collateral including, without limitation, all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any shares of the Pledged Collateral as if it were the absolute owner thereof, in each case to the extent not prohibited by the applicable governance and operating documents, including, but without limitation, the right to exchange, at its discretion, any or all of the Pledged Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of the Issuer thereof, or upon the exercise by the Issuer of any right, privilege or option pertaining to any of the Pledged Collateral, and, in connection therewith, to deposit and deliver any and all of the Pledged Collateral with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine, all without liability except to account for property actually received by it;

(d) Subject to the requirements of applicable law and to the extent not prohibited by the applicable governance and operating documents, sell, assign and deliver the whole or, from time to time, any part of the Pledged Collateral at the time held by Lender, at any private or public sale or auction, with or without demand, advertisement or notice of the time or place of sale or adjournment thereof or otherwise (all of which are hereby waived, except such notice as is required by applicable law and cannot be waived), for cash or credit or for other property for immediate or future delivery, and for such price or prices and on such terms as Lender in its sole discretion may determine, or as may be required by applicable law.

Pledgor hereby waives and releases any and all right or equity of redemption, whether before or after sale hereunder. At any such sale, unless prohibited by applicable law, Lender may bid for and purchase the whole or any part of the Pledged Collateral so sold free from any such right or equity of redemption. All moneys received by Lender hereunder whether upon sale of the Pledged Collateral or any part thereof or otherwise shall be held by Lender and applied by it as provided in Section 11 hereof. No failure or delay on the part of Lender in exercising any rights hereunder shall operate as a waiver of any such rights nor shall any single or partial exercise of any such rights preclude any other or future exercise thereof or the exercise of any other rights hereunder. Lender shall have no duty as to the collection or protection of the Pledged Collateral or any income thereon nor any duty as to preservation of any rights pertaining thereto, except to apply the funds in accordance with the requirements of Section 11 hereof. Lender may exercise its rights with respect to property held hereunder without resort to other security for or sources of reimbursement for the Obligations. In addition to the foregoing, Lender shall have all of the rights, remedies and privileges of a secured party under applicable law and the Uniform Commercial Code of New York regardless of the jurisdiction in which

enforcement hereof is sought.

9. Registration.

If Lender shall exercise its right to sell all or any part of the Pledged Collateral following an Event of Default which is continuing and the acceleration of the payment of the Obligations, and if, in the opinion of counsel for Lender, it is necessary to have the Pledged Collateral being sold registered under the provisions of the Securities Act of 1933, as amended (the "Securities Act"), Pledgor will use commercially reasonable efforts to cause the applicable Issuer to execute and deliver, and to cause the directors and officers of such Issuer to execute and deliver, all at Pledgor's expense, all such instruments and documents and to do or cause to be done all such other acts and things as may be necessary to register the Pledged Collateral being sold under the provisions of the Securities Act. Pledgor will use commercially reasonable efforts to cause any such registration statement to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Collateral being sold and to make all amendments thereto and to related documents which, in the opinion of Lender or its counsel, are necessary or advisable in their reasonable discretion, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Pledgor shall also use commercially reasonable efforts to cause the applicable Issuer to comply with the provisions of the "Blue Sky" law of any jurisdiction which Lender shall designate in connection with any sale hereunder; and will use commercially reasonable efforts to cause the applicable Issuer to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) covering a period of at least twelve months but not more than eighteen months, beginning with the first month after the effective date of any such registration statement, which earnings statement will satisfy the provisions of Section 11(a) of the Securities Act. Pledgor acknowledges that a breach of any of the covenants contained in this Section may cause irreparable injury to Lender, that Lender will have no adequate remedy at law with respect to such breach and, as a consequence, such covenants of Pledgor shall be specifically enforceable against Pledgor.

10. Private Sale.

Notwithstanding anything contained in Section 9, Pledgor recognizes that Lender may be unable to effect (or to do so only after delay which would adversely affect the value that might be realized from the Pledged Collateral) a public sale of all or part of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act, and may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Pledgor agrees that any such private sale may be at prices and on terms less favorable to the seller than if sold at public sales. Pledgor agrees that Lender has no obligation to delay sale of any Pledged Collateral for the period of time necessary to permit the Issuer to register the Pledged Collateral for public sale under the Securities Act.

11. Proceeds of Sale.

The proceeds of any collection, recovery, receipt, appropriation, realization, disposition or sale of the Pledged Collateral shall be applied by Lender as follows:

(a) First, to the payment of all reasonable costs, expenses and charges of Lender and to the reimbursement of Lender for the prior payment of such costs, expenses and charges incurred in connection with the care and safekeeping of any of the Pledged Collateral (including, without limitation, the expenses of any sale or other proceeding, the expenses of any taking, attorneys' fees and expenses, court costs, any other fees or expenses incurred or expenditures or advances made by Lender in the protection, enforcement or exercise of its rights, powers or remedies hereunder) with interest on any such reimbursement at the rate prescribed in the Loan Agreement as the Default Rate.

(b) Second, to the payment of the Obligations, in whole or in part, in such order as Lender may elect, whether such Obligations are then due or not due, subject to any applicable provisions of Section 2.4(B) of the Loan Agreement.

(c) Third, to such Persons as required by applicable law including, without limitation, Section 9-615(a)(3) of the Uniform Commercial Code.

(d) Fourth, to the extent of any surplus thereafter remaining, to the Pledgor or as a court of competent jurisdiction may direct.

In the event that the proceeds of any collection, recovery, receipt, appropriation, realization or sale are insufficient to satisfy the Obligations, Pledgor shall be liable for the deficiency together with interest thereon at the rate prescribed in the Loan Agreement as the Default Rate plus the costs and reasonable fees of any attorneys employed by Lender to collect such deficiency.

Lender, in its sole and absolute discretion, with or without notice to Pledgor, may deposit any proceeds of any collection, recovery, receipt, appropriation, realization, disposition or sale of the Pledged Collateral in a non-interest bearing cash collateral deposit account to be maintained as security for the Obligations.

12. Waiver of Marshaling.

Pledgor hereby waives any right to compel any marshaling of any of the Pledged Collateral.

13. Lender Appointed Attorney-In-Fact and Performance by Lender.

Upon the occurrence of an Event of Default which is continuing, Pledgor hereby irrevocably constitutes and appoints Lender as Pledgor's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to do in Pledgor's name, place and stead, all such acts, things and deeds for and on behalf of and in the name of Pledgor, which Pledgor could or might do or which Lender may deem necessary, desirable or convenient to accomplish the purposes of this Agreement, including, without limitation, to execute such instruments of assignment or transfer or orders and to register, convey or otherwise transfer title to the Pledged Collateral into Lender's name. Pledgor hereby ratifies and confirms all that said attorney-in-fact may so do and hereby declares this power of attorney to be coupled with an interest and irrevocable. If Pledgor fails to perform any agreement herein contained, Lender may itself perform or cause performance thereof, and any reasonable costs and

expenses of Lender incurred in connection therewith shall be paid by Pledgor as provided in Section 24 hereof.

14. Termination.

(a) Termination of Prepetition Loan Agreement and Related Agreements.

The parties hereby acknowledge and agree that, effective as of the Closing, the following agreements are hereby terminated and of no further effect:

- (i) Pledge Agreement dated as of December 18, 2009 by and among Lender, West End/Mercury, WEMFF and West End Fixed Income Partners, LP (“**WEFIP**”);
- (ii) Guaranty of Payment and Performance executed as of December 18, 2009 by WEMFF and WEFIP in favor of Lender;
- (iii) Security Agreement dated as of December 18, 2009 by and between West End/Mercury and Lender;
- (iv) Security Agreement dated as of December 18, 2009 by and among Lender, WEMFF and WEFIP; and
- (v) Collateral Assignment of Payments dated as of August 6, 2009 by and among Debtor, West End Capital Management LLC and Lender.

(b) Termination of this Agreement. This Agreement shall terminate and Pledgor shall be entitled to the return, at Pledgor’s expense, of such of the Pledged Collateral as has not theretofore been sold, disposed of or otherwise applied in accordance with this Agreement upon payment in full of the Obligations under the Loan Agreement.

15. Concerning Lender.

The recitals of fact herein shall be taken as statements of Pledgor for which Lender assumes no responsibility. Lender makes no representation to anyone as to the value of the Pledged Collateral or any part thereof or as to the validity or adequacy of the security afforded or intended to be afforded thereby or as to the validity of this Agreement. Lender shall be protected in relying upon any notice, consent, request or other paper or document believed by it to be genuine and correct and to have been signed by a proper person. The permissive rights of Lender hereunder shall not be construed as duties of Lender. Lender shall be under no obligation to take any action toward the enforcement of this Agreement or rights or remedies in respect of any of the Pledged Collateral. Lender shall not be personally liable for any action taken or omitted by it in good faith and reasonably believed by it to be within the power or discretion conferred upon it by this Agreement.

16. Notices.

Any notice or other communication required or permitted pursuant to this Agreement



shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) Business Days following posting thereof by certified or registered mail, postage prepaid, (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by facsimile to the number set forth below with electronic confirmation of receipt, in each case addressed to each party at its address or facsimile number set forth below or at such other address or facsimile number as has been furnished in writing by a party to the other by like notice:

If to Lender: Northlight Fund LP  
Grand Central Plaza  
60 East 42<sup>nd</sup> Street  
New York, New York 10165  
Attention: Mark P. Hirschhorn  
Fax No.: (646) 495-1601

with a copy to: Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019  
Attention: Michael D. Rosenbloom, Esq.  
Fax No.: (212) 506-1800

If to Pledgor: \_\_\_\_\_  
410 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10022  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

with a copy to: Robinson Brog Leinwand Greene Genovese &  
Gluck PC  
875 Third Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
Attention: A. Mitchell Greene, Esq.  
Fax No.: (212) 956-2164

17. Governing Law.

This Agreement and all rights and obligations hereunder shall be governed by and construed and enforced in all respects in accordance with the laws of the State of New York applied to contracts to be performed wholly within the State of New York.

18. Waivers.

EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING

UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OTHER AGREEMENT EXECUTED OR DELIVERED BY THEM IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

19. Litigation.

PLEDGOR EXPRESSLY CONSENTS TO THE JURISDICTION AND VENUE OF EACH COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF NEW YORK FOR ALL PURPOSES IN CONNECTION WITH THIS AGREEMENT. ANY JUDICIAL PROCEEDING BY PLEDGOR AGAINST LENDER INVOLVING, DIRECTLY OR INDIRECTLY ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE COURT LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK. EACH PARTY HERETO FURTHER CONSENTS THAT ANY SUMMONS, SUBPOENA OR OTHER PROCESS OR PAPERS (INCLUDING, WITHOUT LIMITATION, ANY NOTICE OR MOTION OR OTHER APPLICATION TO EITHER OF THE AFOREMENTIONED COURTS OR A JUDGE THEREOF) OR ANY NOTICE IN CONNECTION WITH ANY PROCEEDINGS HEREUNDER, MAY BE SERVED INSIDE OR OUTSIDE OF THE STATE OF NEW YORK OR THE SOUTHERN DISTRICT OF NEW YORK BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE PROVIDED A REASONABLE TIME FOR APPEARANCE IS PERMITTED, OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS. EACH PARTY HERETO WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREON AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

20. No Waiver; Cumulative Remedies.

Any and all of Lender's rights with respect to the Liens granted under this Agreement shall continue unimpaired, and Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) the bankruptcy, insolvency or reorganization of Pledgor, (b) the release or substitution of any item of the Pledged Collateral at any time, or of any rights or interests therein, or (c) any delay, extension of time, renewal, compromise or other indulgence granted by Lender in reference to any of the Obligations. Pledgor hereby waives all notice of any such delay, extension, release, substitution, renewal, compromise or other indulgence. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such

right, power or remedy by Lender preclude any other or further exercise thereof or the exercise of any right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

21. Severability.

In case any security interest or other right of Lender shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other security interest or other right, privilege or power granted under this Agreement. In the event that any provision of this Agreement or the application thereof to Pledgor or any circumstance in any jurisdiction governing this Agreement shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provision to parties, jurisdictions, or circumstances other than to whom or to which it is held invalid or unenforceable shall not be affected thereby, nor shall same affect the validity or enforceability of any other provision of this Agreement.

22. Counterparts; Facsimiles.

This Agreement and any amendments, waivers, consents, or supplements may be executed via telecopier or facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.

23. Miscellaneous.

(a) This Agreement constitutes the entire and final agreement among the parties with respect to the subject matter hereof and neither this Agreement nor any term hereof may be changed, discharged or terminated orally, but only by an instrument in writing, signed by Lender and Pledgor. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

(b) This Agreement shall be binding upon Pledgor, and Pledgor's successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. The term "Lender", as used herein, shall include any successor or assign of Lender at the time entitled to the pledged interest in the Pledged Collateral.

(c) The headings and captions in this Agreement are for purposes of reference only and shall not constitute part of this Agreement for any other purpose.

(d) In the event that any provision of this Agreement directly contradicts any provision of the Plan of Liquidation, the Plan of Liquidation shall control. Borrower and Lender each represent to the other that to their knowledge and belief the provisions of this Agreement do not contradict in any way the provisions of the Plan of Liquidation.

24. Expenses.

The Pledged Collateral shall also secure, and Pledgor shall pay to Lender on demand, from time to time, all costs and expenses, (including but not limited to, attorneys' fees and costs, taxes, and all transfer, recording, filing and other charges) of, or incidental to, the custody, care, transfer, administration of the Pledged Collateral or any other collateral, or in any way relating to the enforcement, protection or preservation of the rights or remedies of Lender under this Agreement or with respect to any of the Obligations.

25. Recapture

Anything in this Agreement to the contrary notwithstanding, if Lender receives any payment or payments on account of the Obligations, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver, or any other party under the United States Bankruptcy Code, as amended, or any other federal or state bankruptcy, reorganization, moratorium or insolvency law relating to or affecting the enforcement of creditors' rights generally, common law or equitable doctrine, then to the extent of any sum not finally retained by Lender, Pledgor's obligations to Lender shall be reinstated and this Agreement shall remain in full force and effect (or be reinstated) until payment shall have been made to Lender, which payment shall be due on demand.

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

THE POST CONFIRMATION ESTATE OF  
WEST END FINANCIAL ADVISORS LLC, as  
Pledgor

By: \_\_\_\_\_  
Name:  
Its:

NORTHLIGHT FUND LP, as Lender

By: \_\_\_\_\_  
Name:  
Its:

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that s/he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that s/he is the \_\_\_\_\_ of \_\_\_\_\_, the company described in and which executed the above instrument; and that s/he was authorized to sign her/his name thereto.

\_\_\_\_\_  
Notary Public

SCHEDULE I

A. PLEDGED EQUITY INTERESTS

<u>Issuer</u>	<u>Type and Class of Equity</u>	<u>Equity Certificate Number</u>	<u>Par Value</u>	<u>Number of Shares or Interests</u>	<u>Percentage of Outstanding Shares or Interests</u>
Fusion Telecommunications Inc.	Capital Stock	[ ]	[ ]	[19,000,000]	[ ]%
90 LLC	Class A Membership Interest	[ ]	[ ]		[8.33]%
	Class B Membership Interest	[ ]	[ ]		[37.5]%
Easton Ridge Apartments LLC	Class A Membership Interest	[ ]	[ ]		[8.33]%
	Class B Membership Interest	[ ]	[ ]		[37.5]%
Burgundy 102 LLC	Class A Membership Interest	[ ]	[ ]		[8.33]%
	Class B Membership Interest	[ ]	[ ]		[37.5]%
Ivywood 67 LLC	Class A Membership Interest	[ ]	[ ]		[8.33]%
	Class B Membership Interest	[ ]	[ ]		[37.5]%
Sciotto LLC	Class A Membership Interest	[ ]	[ ]		[8.33]%
	Class B Membership Interest	[ ]	[ ]		[37.5]%

Northlight Food Franchise Fund, L.P.	[ ]	[ ]	[ ]	[ ]	[ ]%
Northlight Food Franchise Fund II, L.P.	[ ]	[ ]	[ ]	[ ]	[ ]%
Northlight Equipment Fund I, L.P.	[ ]	[ ]	[ ]	[ ]	[ ]%
West End Mortgage Fund I LP	[ ]	[ ]	[ ]	[ ]	[ ]%
Northlight Distressed Real Estate Fund LP	[ ]	[ ]	[ ]	[ ]	[ ]%
West End Dividend Strategy Fund I, LP	[ ]	[ ]	[ ]	[ ]	[ ]%
Southwood Court Properties LLC	[ ]	[ ]	[ ]	[ ]	[ ]%
New Riverhead Realty Holding LLC	[ ]	[ ]	[ ]	[ ]	[ ]%
West End Sagaponack SPV I LLC	[ ]	[ ]	[ ]	[ ]	[ ]%
West End Cash Liquidity Fund I LP	[ ]	[ ]	[ ]	[ ]	[ ]%
West End Real Estate Group LP	[ ]	[ ]	[ ]	[ ]	[ ]%



**B. PLEDGED INDEBTEDNESS**

<b><i>Obligor</i></b>	<b><i>Initial Principal Amount</i></b>	<b><i>Issue Date</i></b>	<b><i>Maturity Date</i></b>	<b><i>Interest Rate</i></b>
Chicago Diversified Foods Corp.	\$250,000	[ ]	[ ]	[ ]%

**[This Note is substantially in its final form, but remains subject to further review of Northlight and the Debtors.]**

NOTE

\$ \_\_\_\_\_ New York, New York  
\_\_\_\_\_, 2012

This Note (this “**Note**”) is executed and delivered under and pursuant to the terms of that certain Loan and Security Agreement dated as of \_\_\_\_\_, 2012 (as amended, modified, supplemented or restated from time to time, the “Loan Agreement”) by and among THE POST-CONFIRMATION ESTATE of West End Financial Advisors LLC, a grantor trust established under the laws of the State of New York (“**Borrower**”), and NORTHLIGHT FUND LP, a Delaware limited partnership (“**Lender**”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender at such place as Lender may from time to time designate to Borrower in writing:

(i) the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or if different from such amount, the unpaid principal balance of the Loan as may be due and owing from time to time under the Loan Agreement, payable in accordance with the provisions of the Loan Agreement, subject to acceleration upon the occurrence of an Event of Default under the Loan Agreement or earlier termination of the Loan Agreement pursuant to the terms thereof; and

(ii) interest on the principal amount of this Note from time to time outstanding, payable at the Interest Rate in accordance with the provisions of the Loan Agreement. Upon and after the occurrence of an Event of Default, and during the continuation thereof, interest shall be payable at the Default Rate. In no event, however, shall interest hereunder exceed the maximum interest rate permitted by law.

This Note is one of the Notes referred to in the Loan Agreement and is secured, inter alia, by the liens granted pursuant to the Loan Agreement and the Loan Documents, is entitled to the benefits of the Loan Agreement and the Loan Documents, and is subject to all of the agreements, terms and conditions therein contained.

This Note is subject to mandatory prepayment and may be voluntarily prepaid, in whole or in part, on the terms and conditions set forth in the Loan Agreement.

If an Event of Default under Subsections 8.1(G) or 8.1(H) of the Loan Agreement shall occur, then this Note shall immediately become due and payable, without notice, together with attorneys’ fees if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof. If any other Event of Default shall occur under the Loan Agreement or any of the Loan Documents which is not cured within any applicable grace period, then this Note may, as provided in the Loan Agreement, be declared to be immediately due and payable, without

notice, together with attorneys' fees, if the collection hereof is placed in the hands of an attorney to obtain or enforce payment hereof.

This Note shall be governed by and construed in accordance with the laws of the State of New York.

Borrower expressly waives any presentment, demand, protest, notice of protest, or notice of any kind except as expressly provided in the Loan Agreement.

**THE POST-CONFIRMATION ESTATE OF  
WEST END FINANCIAL ADVISORS LLC**

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

STATE OF NEW YORK     )  
                                                      : ss.:  
COUNTY OF NEW YORK   )

On the \_\_\_\_ day of \_\_\_\_\_, 2012, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that s/he is the \_\_\_\_\_ of The Post-Confirmation Estate of West End Financial Advisors LLC, the grantor trust described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by order of the \_\_\_\_\_ of said grantor trust.

\_\_\_\_\_  
Notary Public