

**THIRD AMENDED AND RESTATED  
CREDIT AND TERM LOAN AGREEMENT**

THIS SECOND AMENDED AND RESTATED CREDIT AND TERM LOAN AGREEMENT (the “**Agreement**”), effective February 1, 2016, by and between PETTIT NATIONAL ICE CENTER, INC., a nonstock, nonprofit Wisconsin corporation (the “**Company**”), and TCF NATIONAL BANK, a national banking association (the “**Bank**”). This Agreement amends, modifies and replaces the Credit and Term Loan Agreement dated January 5, 2007, by and between the Company and the Bank, as amended by that certain First Amendment to Credit and Term Loan Agreement dated January 5, 2008, that certain Second Amendment to Credit and Term Loan Agreement dated January 5, 2009, that certain Third Amendment to Credit and Term Loan Agreement dated February 24, 2009, that certain Fourth Amendment to Credit and Term Loan Agreement dated January 5, 2010, that certain Fifth Amendment to Credit and Term Loan Agreement dated February 1, 2011, that certain Amended and Restated Credit and Term Loan Agreement dated January 6, 2012, and that certain Second Amended and Restated Credit and Term Loan Agreement effective October 25, 2012 (the “**Prior Loan Agreement**”).

In consideration of the mutual agreements herein contained, the Bank and the Company agree as follows:

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**ARTICLE I**

**LOANS AND NOTES**

**Section 1.01 Revolving Credit.**

From time to time prior to February 1, 2019, or the earlier termination in full of the Revolving Commitment (in either case the “**Revolving Termination Date**”), and subject to all of the terms and conditions of this Agreement, the Company may obtain loans (each a “**Revolving Loan**” and collectively the “**Revolving Loans**”) from the Bank, up to the maximum outstanding principal amount of One Hundred Thousand Dollars (\$100,000) (the “**Revolving Commitment**”), repay such loans and reborrow hereunder. All such loans shall be evidenced by a single promissory note of the Company (the “**Revolving Credit Note**”, and collectively with the Term Note, sometimes called the “**Notes**”) in the form of Exhibit 1.01 annexed hereto. The Revolving Credit Note shall be executed by the Company and delivered to the Bank prior to the initial Revolving Loan. Although the Revolving Credit Note shall be expressed to be payable in the full amount specified above, the Company shall be obligated to pay only the amounts actually disbursed to or for the account of the Company, together with interest on the unpaid balance of sums so disbursed which remains outstanding from time to time, at the rates and on the dates specified herein or in the Revolving Credit Note, and together with the other amounts provided herein.

### **Section 1.02 Term Loan.**

On the date hereof, the Company may obtain a term loan from the Bank in a single draw in the principal amount of Three Hundred Fifty-Three Thousand Fifty One and 88/100 Dollars (\$353,051.88) (the “**Term Loan**” and, collectively with the Revolving Loans, the “**Loans**”). The Term Loan shall be evidenced by a single promissory note of the Company (the “**Term Note**”, and collectively with the Revolving Credit Note, sometimes called the “**Notes**”), in the form of Exhibit 1.02 attached hereto. The Term Note shall bear interest on the unpaid balance thereof at the rates and on the dates specified herein or in the Term Note.

### **Section 1.03 Use of Proceeds.**

The Company represents, warrants and agrees that:

- (a) The proceeds of the Revolving Loans made hereunder will be used for general working capital purposes of the Company. The proceeds of the Term Loan made hereunder will be applied on the date hereof for the sole purposes of financing the Company’s previous purchase of the Pettit National Ice Center and surrounding real property (the “**Facility**”).
- (b) No part of the proceeds of any Loan made hereunder will be used to “purchase” or “carry” any “margin stock” or to extend credit to others for the purpose of “purchasing” or “carrying” any “margin stock” (as such terms are defined in the Regulation U of the Board of Governors of the Federal Reserve System), and the assets of the Company do not include, nor does the Company have any present intention of acquiring, any such security.

### **Section 1.04 Termination or Reduction of the Commitment.**

The Company shall have the right, upon five Business Days’ prior written notice to the Bank, to reduce in part the Revolving Commitment, provided, however, that no reduction shall reduce the Revolving Commitment to an amount less than the aggregate amount of the Revolving Loans outstanding hereunder at the time. The entire Revolving Commitment may be terminated in full at any time upon five Business Days’ prior written notice to the Bank.

### **Section 1.05 Mandatory Prepayment.**

Commencing in 2018, the Company is required to make principal payments on the Term Note on February 1st of each calendar year to pay down such note to the following amounts:

- |                     |              |
|---------------------|--------------|
| 1. February 1, 2018 | \$264,951.88 |
| 2. February 1, 2019 | \$164,951.88 |
| 3. February 1, 2020 | \$64,951.88  |

On February 1, 2021, all unpaid principal under the Term Note shall be due and owing. The principal payments required hereunder may be made from the revenue generated by the Company's operations as long as the Company has a Debt Service Coverage Ratio of 1.2 to 1.00 during such twelve month period. Such principal payments may not be made from the Revolving Credit Loans.

If at any time the aggregate amount of the outstanding Revolving Loans shall exceed the available Revolving Commitment, the Company shall immediately repay Revolving Loans in the amount necessary to eliminate such excess, together with accrued interest on such amount to the date of payment.

## **ARTICLE II**

### **ADMINISTRATION OF CREDIT**

#### **Section 2.01 Rate of Interest on Loans.**

(a) The unpaid principal balance of the Revolving Credit Note (and the Revolving Loans evidenced thereby) shall bear interest at a rate per annum equal to the greater of (i) the TCF Base Rate, as it may be adjusted from time to time; or (ii) four and one-half percent (4.5%).

(b) The unpaid principal balance of the Term Note (and the Term Loan evidenced thereby), shall bear interest at a rate per annum equal to the greater of (i) the TCF Base Rate, as it may be adjusted from time to time, plus one-half of one percent (.5%) or (ii) five percent (5%).

#### **Section 2.02 Borrowing Procedure.**

The Company will request a Loan hereunder by written notice in form and substance acceptable to the Bank, or by telephonic notice (which notice shall be confirmed in writing if the Bank so requests), which notices will be irrevocable, to the Bank not later than 10:00 a.m., Milwaukee time, on the proposed Borrowing Date. In the event of any inconsistency between the telephonic notice and the written confirmation thereof, the telephonic notice will control. Each such request will be effective upon receipt by the Bank and will specify (i) the amount of the requested Loan and (ii) the proposed Borrowing Date.

#### **Section 2.03 Increased Costs.**

If any Regulatory Change,

- (a) shall subject the Bank to any tax, duty or other charge with respect to any of its Loans hereunder, or shall change the basis of taxation of payments to the Bank of the principal or interest on its Loans hereunder, or any other amounts due under this Agreement in respect of such Loans, or its obligation to make Loans hereunder (except for changes in the rate of tax on the overall net income of the Bank);

- (b) shall impose, modify or make applicable any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Bank; or
- (c) shall impose on the Bank any other condition affecting its Loans hereunder;

and the result of any of the foregoing is to increase the cost to (or in the case of Regulation D or any other analogous law, rule or regulation, to impose a cost on) the Bank of making or maintaining any Loans hereunder, or to reduce the amount of any sum received or receivable by the Bank under this Agreement and any document or instrument related hereto; then upon notice from the Bank (which notice shall be accompanied by a statement setting forth in reasonable detail the basis of such increased cost or other effect on the Loans), the Company shall pay directly to the Bank, on demand, such additional amount or amounts as will compensate the Bank for such increased cost or such reduction.

#### **Section 2.04 Capital Adequacy.**

If any Regulatory Change affects the treatment of any Loan hereunder as an asset of the Bank or other item included for the purpose of calculating the appropriate amount of capital to be maintained by the Bank or any corporation controlling the Bank and has the effect of reducing the rate of return on the Bank's or such corporation's capital as a consequence of the obligations of the Bank hereunder to a level below that which the Bank or such corporation could have achieved but for such Regulatory Change (taking into account the Bank's or such corporation's policies with respect to capital adequacy) by an amount deemed in good faith by the Bank to be material, then the Company shall pay to the Bank, on demand, such additional amount or amounts as will compensate the Bank or such corporation, as the case may be, for such reduction.

#### **Section 2.05 Optional Prepayment.**

The Loans may be prepaid by the Company in whole or in part at any time without penalty.

#### **Section 2.06 Conclusiveness of Statements; Survival of Provisions.**

Determinations and statements of the Bank pursuant to sections 2.03 and 2.04 shall be rebuttably presumptive evidence of the correctness of the determinations and statements and shall be conclusive absent manifest error. The provisions of section 2.03 and 2.04 shall survive the obligation of the Bank to extend credit under this Agreement and the repayment of the Loans.

#### **Section 2.07 Computations of Interest.**

All computations of interest and other amounts due under the Notes and fees and other amounts due under this Agreement will be based on a 360-day year using the actual

number of days occurring in the period for which such interest, fees or other amounts are payable.

**Section 2.08 Payments.**

Interest on all Loans will be due and payable (i) on the first day of each month commencing February 1, 2016; and (ii) at the respective maturity of such Loan, whether by acceleration or otherwise. All payments and prepayments of principal, interest and fees under this Agreement and the Notes shall be made to the Bank prior to 2:00 p.m., Milwaukee time, in immediately available funds.

If the scheduled payment date for principal or interest is not a Business Day, such payment shall be due on the first Business Day following such scheduled payment date and interest shall continue to accrue until such payment is actually received.

**Section 2.09 Interest Following Event of Default.**

From and after the occurrence and during the continuance of an Event of Default, the unpaid principal amount of all Loans and all other amounts due and unpaid under this Agreement and the Notes will bear interest until paid computed at a rate equal to six percent (6%) per annum in excess of the rate or rates otherwise payable hereunder.

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**Section 2.10 Deposits; Set Off.**

The Company has previously granted to the Bank, as security for the Notes, a lien and security interest in any and all monies, balances, accounts and deposits (including certificates of deposit) of the Company at the Bank now or at any time hereafter. If any Event of Default occurs hereunder or any attachment of any balance of the Company occurs, the Bank may offset and apply any such security toward the payment of the Notes, whether or not such Notes, or any part thereof, shall then be due. Promptly upon its charging any account of the Company pursuant to this section, the Bank shall give the Company notice thereof.

**Section 2.11 Late Payment Fee; Authorization to Charge Company's Account.**

If a payment (other than the final payment on a Note) is five (5) Business Days or more late, the Company shall pay to the Bank a late fee of five percent (5%) of the past due amount of such payment or Twenty-five Dollars (\$25), whichever is greater, up to the maximum amount of One Thousand Dollars (\$1,000). The Company further agrees to pay to the Bank a charge of Thirty Four Dollars (\$34) for each check issued by the Company, as maker, which is presented to the Bank for payment that is returned unsatisfied. The Bank may charge any account of the Borrower at the Bank for any payment due under the Notes (including prepayments), or any fee or other amount payable under this Agreement, on or after the date due; provided that the Bank may charge the Contributions Account only for payments due under the Term Note.

## ARTICLE III

### CONDITIONS OF BORROWING

Without limiting any of the other terms of this Agreement, the Bank shall not be required to make any Loan to the Company hereunder:

#### **Section 3.01 Representations.**

Unless the representations and warranties contained in Article IV hereof continue to be true and correct on the date of such Loan, and no Default or Event of Default hereunder shall have occurred and be continuing.

#### **Section 3.02 Guaranty.**

Unless The Lynde and Harry Bradley Foundation, Inc. (the "**Guarantor**") shall have executed and delivered to the Bank a reaffirmation of its guaranty agreement in respect to the Term Loan in form and substance acceptable to the Bank (the "**Guaranty**").

#### **Section 3.03 Filings.**

Unless any documents (including, without limitation, financing statements) required to be filed, registered or recorded in order to create, in favor of the Bank, perfected security interests in the collateral shall have been properly filed, registered or recorded in each office in each such jurisdiction in which such filings, registrations and recordations are required; the Bank shall have received acknowledgment copies of all such filings, registrations and recordations stamped by the appropriate filing, registration or recording officer (or, in lieu thereof, other evidence satisfactory to the Bank that all such filings, registrations and recordations have been made); and the Bank shall have received such evidence as it may deem satisfactory that all necessary filing, recording and other similar fees, and all taxes and other expenses related to such filings, registrations and recordings have been paid in full.

#### **Section 3.04 Priority.**

Unless the Bank shall have received, in form and substance satisfactory to the Bank, such lien searches, title insurance policies and other evidence of lien priority covering the mortgages and security interest granted to the Bank hereunder and under the Mortgage as the Bank may require.

#### **Section 3.05 Insurance Certificate.**

Unless the Bank shall have received evidence satisfactory to it that the Company maintains hazard and liability insurance coverage as required by the Bank's existing Mortgage and Security Agreement dated January 5, 2007, and as amended by that certain Amendment to Mortgage and Security Agreement dated January 5, 2012 (the "**Mortgage**") and as is reasonably satisfactory to the Bank.

**Section 3.06 Counsel Opinion.**

Unless the Bank shall have received from Company's counsel satisfactory opinions as to such matters relating to the Company, the validity and enforceability of this Agreement, the Loans to be made hereunder and the other documents required by this Article III as the Bank shall reasonably require. The Company shall execute and/or deliver to the Bank or its counsel such documents concerning its corporate status and the authorization of such transactions as may be requested.

**Section 3.07 Proceedings Satisfactory.**

Unless all proceedings taken in connection with the transactions contemplated by this Agreement, and all instruments, authorizations and other documents applicable thereto, shall be satisfactory in form and substance to the Bank and its counsel.

**Section 3.08 Violation of Environmental Laws.**

If in the opinion of the Bank there exists any uncorrected violation by the Company of an Environmental Law or any condition which requires, or may require, a cleanup, removal or other remedial action by the Company under any Environmental Laws.

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**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES**

In order to induce the Bank to make the Loans as provided herein, the Company represents and warrants to the Bank as follows as of the date of this Agreement, and each request by the Company for a Loan or other extension of credit hereunder shall constitute a representation and warranty by the Company that all such representations and warranties remain true on and as of the date of such requested Loan or extension of credit:

**Section 4.01 Incorporation by Reference.**

The representations and warranties of the Company set forth in Article III of the Bond Purchase Agreement dated January 5, 2007, by and among the City of Milwaukee, the Bank and the Company, as amended by that certain First Amendment to Financing and Bond Purchase Agreement dated January 5, 2012 (the "**Bond Purchase Agreement**") are hereby made a part of this Agreement as if fully set forth herein.

**Section 4.02 Organization.**

The Company is a nonstock, nonprofit corporation duly organized and existing in good standing or active status under the laws of the State of Wisconsin, and has all requisite power and authority, corporate or otherwise, to conduct its business and to own its properties. The Company has no Subsidiary. The Company is duly licensed or qualified to do business in all jurisdictions in which such qualification is required, and failure to so qualify could have a

material adverse effect on the property, financial condition or business operations of the Company.

#### **Section 4.03 Authority.**

The execution, delivery and performance of this Agreement, the Notes and the documents required by Article III (the "**Collateral Documents**") are within the corporate powers of the Company, have been duly authorized by all necessary corporate action and do not and will not (i) violate any provision of the articles of incorporation or by-laws of the Company or of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Company; (ii) require the consent or approval of, or filing or registration with, any governmental body, agency or authority; or (iii) result in a breach of or constitute a default under, or result in the imposition of any lien, charge or encumbrance upon any property of the Company pursuant to, any indenture or other agreement or instrument under which the Company is a party or by which it or its properties may be bound or affected. This Agreement constitutes, and each of the Notes and the Collateral Documents when executed and delivered hereunder will constitute, legal, valid and binding obligations of the Company or other signatory enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the enforceability of creditors' rights generally.

#### **Section 4.04 Employee Retirement Income Security Act.**

All Plans, if any, are in compliance in all material respects with the applicable provisions of ERISA. The Company has not incurred any material "accumulated funding deficiency" within the meaning of section 302(a)(2) of ERISA in connection with any Plan. There has been no Reportable Event for any Plan, the occurrence of which would have a materially adverse effect on the Company, nor has the Company incurred any material liability to the Pension Benefit Guaranty Corporation under section 4062 of ERISA in connection with any Plan. There are no Unfunded Liabilities with respect to any Plan. The Company is not a member of any Multiemployer Plan.

#### **Section 4.05 Financial Statements.**

All financial statements furnished to the Bank by the Company are true, accurate and correct in all material respects as of the date thereof and have or will have, with respect to the financial statements hereafter furnished to the Bank, been prepared in accordance with generally accepted accounting principles, consistently applied. Such financial statements fairly represent the financial condition of the Company, as of the date of such statements, and the results of its operations for the fiscal period then ended and there has been no material adverse change, financial or otherwise, in its condition since the date of the last financial statement furnished to the Bank.

#### **Section 4.06 Liens.**

The Company has good and marketable title to all of its assets, real and personal, free and clear of all liens, security interests, mortgages and encumbrances of any kind, except Permitted Encumbrances. All owned and leased buildings and equipment of the Company are in good condition, repair and working order in all material respects and, to the best of the



Company's knowledge and belief, conform in all material respects to all applicable laws, regulations and ordinances.

**Section 4.07 Contingent Liabilities.**

The Company does not have any guarantees or other contingent liabilities outstanding (including, without limitation, liabilities by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss), except those permitted by section 5.09 hereof.

**Section 4.08 Absence of Litigation.**

The Company is not a party to any litigation or administrative proceeding, nor so far as is known by the Company is any litigation or administrative proceeding threatened against it, which in either case (i) relates to the execution, delivery or performance of this Agreement, any of the Notes, or any of the Collateral Documents, or (ii) could, if adversely determined, cause any material adverse change in its property, financial condition or the conduct of its business.

**Section 4.09 No Burdensome Agreements.**

Except for the Bond Purchase Agreement, the ancillary documents required thereby, and the Option to Purchase, the Company is not a party to any agreement, instrument or undertaking, or subject to any other restriction, (i) which materially adversely affects or may in the future so affect the property, financial condition or business operations of the Company, or (ii) under or pursuant to which the Company is or will be required to place (or under which any other person may place) a lien upon any of its properties securing indebtedness either upon demand or upon the happening of a condition, with or without such demand.

**Section 4.10 Trademarks, etc.**

The Company possesses adequate trademarks, trade names, copyrights, patents, permits, service marks and licenses, or rights thereto, for the present and planned future conduct of its business substantially as now conducted, without any known conflict with the rights of others which might result in a material adverse effect on the Company.

**Section 4.11 Leases.**

On the date hereof, the Company is not a party to any lease or similar arrangement, as lessee, except those permitted by section 5.09 hereof.

**Section 4.12 Partnerships; Joint Ventures.**

The Company is not a member of any partnership or joint venture.

**Section 4.13 Full Disclosure.**

No information, exhibit or report furnished by the Company to the Bank in connection with the negotiation or execution of this Agreement contained any material misstatement of fact as of the date when made or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading as of the date when made.

**Section 4.14 Fiscal Year.**

The fiscal year of the Company ends on August 31 of each year.

**ARTICLE V**

**NEGATIVE COVENANTS**

While any part of the credit granted to the Company is available, while any part of the principal of or interest on any Note remains unpaid, and until termination of the Bond Purchase Agreement in accordance with Section 14.09 thereof, the Company shall not do any of the following, without the prior written consent of the Bank:

**Section 5.01 Restriction of Indebtedness.**

Create, incur, assume or have outstanding any Indebtedness for borrowed money or the deferred purchase price of any asset (including obligations under Capitalized Leases), except:

- (a) the Notes issued under this Agreement;
- (b) obligations of the Company pursuant to the Bond Purchase Agreement; and
- (c) Indebtedness secured by Permitted Liens described in clause (vi) of the definition of "**Permitted Liens**" in Section 1.01 of the Mortgage (*i.e.*, purchase money Indebtedness), provided such Indebtedness does not exceed Fifty Thousand Dollars (\$50,000) in principal amount outstanding at any time.

**Section 5.02 Amendments and Prepayments.**

Agree to any amendment, modification or supplement, or obtain any waiver or consent in respect of compliance with any of the terms of, or call or redeem, or make any purchase or prepayment of or with respect to, any instrument or agreement evidencing or relating to any Indebtedness for borrowed money or for the deferred purchase price of any asset, including Capitalized Leases.

### **Section 5.03 Restriction on Liens.**

Unless waived in writing by the Bank, create or permit to be created or allow to exist any mortgage, pledge, encumbrance or other lien upon or security interest in any property or asset now owned or hereafter acquired by the Company, except Permitted Encumbrances.

### **Section 5.04 Sale and Leaseback.**

Enter into any agreement providing for the leasing by the Company of property which has been or is to be sold or transferred by the Company to the lessor thereof, or which is substantially similar in purpose to property so sold or transferred.

### **Section 5.05 Acquisitions and Investments.**

Acquire any other business or make any loan, advance or extension of credit to, or investment in, any other person, corporation or other entity, including investments acquired in exchange for stock or other securities or obligations of any nature, or create or participate in the creation of any subsidiary, except:

- (a) investments in (i) bank repurchase agreements; (ii) savings accounts or certificates of deposit in a financial institution of recognized standing; (iii) obligations issued or fully guaranteed by the United States; and (iv) prime commercial paper maturing within 90 days of the date of acquisition by the Company;
- (b) loans and advances made to employees and agents in the ordinary course of business, such as travel and entertainment advances and similar items; and
- (c) investments outstanding on the date hereof, and shown on the financial statements referred to in section 4.05 above, provided that such investments shall not be increased.

### **Section 5.06 Corporate Existence; Mergers.**

Sell, assign, transfer or otherwise dispose of all or any part of the Facility or all or any substantial part of its assets, or merge with or into or consolidate with or into any other corporation or entity, without the prior written consent of the Bank, or fail to maintain its status as a non-profit corporation or its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

### **Section 5.07 Accounts Receivable.**

Discount or sell with recourse, or sell for less than the face amount thereof, any of its notes or accounts receivable, whether now owned or hereafter acquired.

**Section 5.08 Contingent Liabilities.**

Guarantee or become a surety or otherwise contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) for any obligations of others, except pursuant to the deposit and collection of checks and similar items in the ordinary course of business.

**Section 5.09 Leases.**

Incur or permit to be outstanding lease or rental obligations as lessee of real or personal property under leases which are not Capitalized Leases, exceeding in the aggregate for any fiscal year of the Company Twenty-Five Thousand Dollars (\$25,000).

**Section 5.10 Affiliates.**

Suffer or permit any transaction with any Affiliate, except on terms not less favorable to the Company than would be usual and customary in similar transactions with non-affiliated persons.

**Section 5.11 Partnerships; Joint Ventures.**

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Become a member of any partnership or joint venture.

**Section 5.12 Fiscal Year.**

Change its fiscal year (which currently ends on August 31).

**Section 5.13 Derivatives.**

Enter into any interest rate, commodity or foreign currency exchange, swap, collar, cap or similar agreement except to hedge against actual interest rate, foreign currency or commodity exposure.

**ARTICLE VI**

**AFFIRMATIVE COVENANTS**

While any part of the credit granted to the Company is available, while any part of the principal of or interest on any Note remains unpaid, and until termination of the Bond Purchase Agreement in accordance with Section 14.09 thereof, the Company shall, unless waived in writing by the Bank:

**Section 6.01 Financial Covenants.**

(a) Maintain a Debt Service Coverage Ratio, calculated as of the end of each fiscal quarter of each fiscal year for the portion of such fiscal year ending with such quarter, of not less than 1.0 to 1.0; and

(b) Maintain a Tangible Net Worth of not less than (i) for the period commencing on the date hereof and continuing to and including August 31, 2016, Six Million Four Hundred Thirteen Thousand and No/100 US Dollars (\$6,413,000), (ii) for the period commencing on August 31, 2017 and continuing to and succeeding August 31 thereafter, the sum of (A) Fifty Thousand Dollars (\$50,000) plus (B) the actual Tangible Net Worth as of the August 31 immediately preceding the commencement of such period.

All determinations as to compliance with the financial covenants in this Section 6.01 shall be based upon the financial statements of the Company furnished under Sections 6.06(a) and (b) below.

**Section 6.02 Insurance.**

Maintain insurance in such amounts and against such risks as is customary by companies engaged in the same or similar businesses and similarly situated, including, without limitation, all insurance required pursuant to the Mortgage.

**Section 6.03 Corporate Existence; Obligations.**

Do all things necessary to: (i) maintain its corporate existence and all rights and franchises necessary or desirable for the conduct of its business; (ii) comply with all applicable laws, rules, regulations and ordinances, and all restrictions imposed by governmental authorities, including those relating to environmental standards and controls; and (iii) pay, before the same become delinquent and before penalties accrue thereon, all taxes, assessments and other governmental charges against it or its property, and all of its other liabilities, except to the extent and so long as the same are being contested in good faith by appropriate proceedings in such manner as not to cause any material adverse effect upon its property, financial condition or business operations, with adequate reserves provided for such payments.

**Section 6.04 Business Activities; Property Tax Exemption.**

Continue to carry on its business activities in substantially the manner such activities are conducted on the date of this Agreement and not make any material change in the nature of its business, and cause the Facility (including all land and improvements thereon included as part of the Mortgaged Property, as defined in the Mortgage) to be exempt from all real and personal property taxes imposed by any governmental entity; provided that the Company may make payments-in-lieu-of-taxes not to exceed Ten Thousand Dollars (\$10,000) for any calendar year.

### **Section 6.05 Properties.**

Keep its properties (whether owned or leased) in good condition, repair and working order, ordinary wear and tear and obsolescence excepted, and make or cause to be made from time to time all necessary repairs thereto (including external or structural repairs) and renewals and replacements thereof.

### **Section 6.06 Books and Records; Financial Statements and Other Information.**

Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and financial affairs of the Company, in accordance with generally accepted accounting principles, consistently applied. The Bank and its duly authorized agents shall have the right at all reasonable times and upon reasonable written notice to the Company to examine and make copies of the books and records of the Company relating to the Facility. The Company shall furnish to the Bank, and to any financial institution to which Bank has sold a participation in the Bond upon receipt of notice thereof from the Bank, the following:

(a) As soon as available and in any event within 120 days after the last day of each fiscal year of the Company, a copy of the audit report for such year and accompanying financial statements of the Company, as prepared by independent public accountants of recognized standing selected by the Company and satisfactory to the Bank, which audit report shall be accompanied by (i) an unqualified opinion of such accountants in form satisfactory to the Bank, to the effect that the same fairly presents the financial condition of the Company and the results of its operations as of the relevant dates thereof, together with copies of any management letters issued by such accountants in connection with such audit, (ii) a letter of the chief executive officer or the chief financial officer of the Company to the effect that (A) to the best of his or her knowledge, no event has occurred which constitutes or would, with the passage of time or the giving of notice or both, constitute an Event of Default hereunder, or otherwise describing any such event known to such officer, and (B) as shown by calculations set forth in the letter or an attachment, the Company complies with the financial covenants referenced or set forth in Sections 6.01 hereof;

(b) within 20 days after the end of each calendar month (i) a copy of internally prepared, unaudited financial statements of the Company for such month and for the fiscal year to date, including a balance sheet and income statement, and (ii) a letter of the chief financial officer of the Company to the effect that, in the opinion of such officer (A) such unaudited financial statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Company's annual audited financial statements and reflect all eliminations and adjustments (consisting only of normal recurring adjustments, except as noted in such letter) necessary for a fair presentation of the financial position of the Company and its results of operation for such month and the year to date, and (B) no event has occurred which constitutes or would, with the passage of time or the giving of notice or both, constitute an Event of Default hereunder, or otherwise describing any such event known to such officer;

(c) as soon as practicable, but in any event within ten (10) days after the Company becomes aware of such occurrence, notice of any material adverse change in the business or financial condition of the Company;

(d) as soon as practicable, but in any event within ten (10) days of such occurrence, notice of the institution of, or of any material adverse development with respect to, any suit or proceeding against the Company in which the amount of damages which is sought, or which in the Company's reasonable opinion may be at controversy, shall exceed Fifty Thousand Dollars (\$50,000) if uninsured or One Hundred Thousand Dollars (\$100,000) if insured;

(e) as soon as possible, but in any event within ten (10) days after the occurrence, notice of the occurrence of any Event of Default or Taxable Event (as defined in the Bond Purchase Agreement) or of any act, omission, thing or condition which upon the giving of notice or lapse of time, or both, would or might constitute an Event of Default or Taxable Event, which notice shall describe the Event of Default or Taxable Event or other act, omission, thing or condition in question and shall set forth in detail what action the Company proposes to take with respect thereto; and

(f) upon request of the Bank and within a reasonable time thereafter, such other information concerning the Company and its operations, financial condition, business and the Facility and other property of the Company as the Bank may request; and

(g) prior to the beginning of each fiscal year of the Company, a budget for such fiscal year for the Company in form and detail acceptable to the Bank.

#### **Section 6.07 Maintenance of Deposit Accounts.**

The Company shall establish and maintain the following separate and distinct deposit accounts with the Bank (which, in the case of the Contributions Account and Maintenance Reserve Account, shall be established in the name of the Bank for the benefit of the Company) and shall deposit funds therein as hereinafter provided:

(a) Company's primary operating account(s);

(b) An account into which Company shall promptly deposit all monetary donations, fund raising campaign contributions and proceeds of all pledges to Company (the "**Contributions Account**") except as provided in Section 6.07(c) below; moneys so deposited and interest or other investment earnings thereon shall be applied by Company exclusively as follows: (i) at least quarterly to pay or prepay principal of the Term Loan; or (ii) after payment in full of the Term Loan, to such other purpose as the Bank shall approve in its sole discretion; provided that, on the last Business Day of each fiscal quarter, the Bank shall, and is hereby authorized to, apply any and all funds then remaining in the Contributions Account to prepayment of principal of the Term Loan, without any further direction by or authorization from Company; and

(c) A maintenance reserve account (the "**Maintenance Reserve Account**") into which Company shall make deposits equal to not less than One Hundred Fifty Thousand Dollars (\$150,000) during each calendar year, including not less than Thirty-Five Thousand

Dollars (\$35,000) during each calendar quarter; moneys may be withdrawn by Company from the Maintenance Reserve Account from time to time, with the written approval of the Bank, to pay or reimburse Company for necessary maintenance and repair expenses in respect to the Facility, but only if Company has made all quarterly deposits required pursuant to this paragraph (c) as of the date of such proposed withdrawal. Any funds donated to the Company for capital improvements may be deposited into the Maintenance Reserve Account, instead of the Contributions Account.

**Section 6.08 Compliance with Environmental Laws.**

Timely comply with all applicable Environmental Laws.

**Section 6.09 Orders, Decrees and Other Documents.**

Provide to the Bank, promptly upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree, or other document from any source asserting or alleging a circumstance or condition which requires or may require a financial contribution by the Company or a cleanup, removal, remedial action, or other response by or on the part of the Company under Environmental Laws or which seeks damages or civil, criminal or punitive penalties from the Company for an alleged violation of Environmental Laws.

**Section 6.10 Agreement to Update.**

Advise the Bank in writing promptly after the Company becomes aware of any condition or circumstance which makes the environmental warranties contained in this Agreement incomplete or inaccurate.

## **ARTICLE VII**

### **DEFAULTS**

**Section 7.01 Defaults.**

The occurrence of any one or more of the following events shall constitute an “Event of Default”:

- (a) The Company shall fail to pay any principal or interest due on any Note, or any other amount payable hereunder as and when the same becomes due;
- (b) The Company shall default in the performance or observance of any agreement, covenant, condition, provision or term contained in Article V, Section 6.01, Section 6.06 or Section 6.07 of this Agreement;
- (c) The Company shall default in the performance or observance of any of the other agreements, covenants, conditions, provisions or terms in this Agreement or any of the Collateral Documents continuing for a period of



thirty days after written notice thereof is given to the Company by the Bank;

- (d) Any representation or warranty made by the Company herein or any certificate delivered pursuant hereto, or any financial statement delivered to the Bank hereunder, shall prove to have been false in any material respect as of the time when made or given;
- (e) The Company shall fail to pay as and when due and payable (whether at maturity, by acceleration or otherwise) all or any part of the principal of or interest on any indebtedness of or assumed by it, or of the rentals due under any lease or sublease, or of any other obligation for the payment of money, and such default shall not be cured within the period or periods of grace, if any, specified in the instruments governing such obligations; or default shall occur under any evidence of, or any indenture, lease, sublease, agreement or other instrument governing such obligations, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such indebtedness or other obligation or the termination of such lease or sublease;
- (f) A final judgment which, together with other outstanding final judgments ~~against the Company exceeds an aggregate of Fifty Thousand Dollars (\$50,000)~~ shall be entered against the Company and shall remain outstanding and unsatisfied, unbonded, unstayed or uninsured after 60 days from the date of entry thereof; or any judgment which exceeds Two Hundred Thousand Dollars (\$200,000) shall be entered against the Company;
- (g) The Company or the Guarantor shall: (i) become insolvent; or (ii) be unable, or admit in writing its inability to pay its debts as they mature; or (iii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or (iv) become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code; or (v) become the subject of a creditor's petition for liquidation, reorganization or to effect a plan or other arrangement with creditors; or (vi) apply to a court for the appointment of a custodian or receiver for any of its assets; or (vii) have a custodian or receiver appointed for any of its assets (with or without its consent); or (viii) have any of its assets garnished, seized or forfeited, or threatened with garnishment, seizure or forfeiture; (ix) otherwise become the subject of any insolvency proceedings or propose or enter into any formal or informal composition or arrangement with its creditors; or (x) die;
- (h) This Agreement, any of the Notes or any Collateral Document shall, at any time after their respective execution and delivery, and for any reason, cease to be in full force and effect or be declared null and void, or be revoked or terminated, or the validity or enforceability thereof or hereof

shall be contested by the Company or any shareholder of the Company, or the Company shall deny that it has any or further liability or obligation thereunder or hereunder, as the case may be;

- (i) Any Reportable Event, which the Bank determines in good faith to constitute grounds for the termination of any Plan by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer any Plan, shall have occurred, or any Plan shall be terminated within the meaning of Title IV of ERISA, or a trustee shall be appointed by the appropriate United States District Court to administer any Plan, or the Pension Benefit Guaranty Corporation shall institute proceedings to terminate any Plan or to appoint a trustee to administer any Plan, and in case of any event described in the preceding provisions of this section 7.01(i) the Bank determines in good faith that the aggregate amount of the Company's liability to the Pension Benefit Guaranty Corporation under ERISA shall exceed Fifty Thousand Dollars (\$50,000) and such liability is not covered, for the benefit of the Company, by insurance; or the Company shall become a member of a Multiemployer Plan; or
- (j) An Event of Default shall occur under the Bond Purchase Agreement or the Mortgage and shall not be cured within the period of grace therefore, if any.

#### **Section 7.02 Termination of Commitment and Acceleration of Obligations.**

Upon the occurrence of any Event of Default:

- (a) As to any Event of Default (other than an Event of Default under section 7.01(g)) and at any time thereafter, and in each case, the Bank may, by written notice to the Company, immediately terminate its obligation to make loans hereunder and/or declare the unpaid principal balance of the Notes, together with all interest accrued thereon, to be immediately due and payable; and the unpaid principal balance of and accrued interest on such Notes shall thereupon be due and payable without further notice of any kind, all of which are hereby waived, and notwithstanding anything to the contrary herein or in the Notes contained;
- (b) As to any Event of Default under section 7.01(g), the obligation of the Bank to make Loans hereunder shall immediately terminate and the unpaid principal balance of the Notes, together with all interest accrued thereon, shall immediately and forthwith be due and payable, all without presentment, demand, protest, or further notice of any kind, all of which are hereby waived, notwithstanding anything to the contrary herein or in the Notes contained; and

- (c) As to each Event of Default, the Bank shall have all the remedies for default provided by the Collateral Documents, as well as applicable law.

**Section 7.03 Special Provisions Regarding Option to Purchase.**

Any provision of this Agreement or the Mortgage to the contrary notwithstanding, prior to termination of the Option to Purchase, the Bank agrees as follows: (i) if the Company has the right to cure a default under this Agreement or the Mortgage, Seller may, at its option, cure such default on behalf of the Company; (ii) any notice of default given by the Bank to the Company pursuant to this Agreement or the Mortgage shall also be given by the Bank to Seller and Seller shall have sixty (60) days after its receipt of such notice to cure such default; provided that, if the Company has a right to cure such default and fails to do so within the allowed cure period, Bank shall give Seller notice of the Company's failure to cure such default and Seller shall have sixty (60) days after receipt of such notice to cure such default, during which 60-day period the Bank shall not exercise any remedy against the Facility pursuant to the Mortgage; and (iii) prior to commencement of foreclosure or similar proceedings in respect to the Facility following a default by the Company under this Agreement or the Mortgage, the Bank shall give written notice (an "**Event Notice**") of its intent to commence such proceedings to the Company and Seller.

The Bank acknowledges that the Option Price (as defined in the Option to Purchase) is the total amount available from Seller to satisfy any and all liens upon the Facility in the event Seller exercises its Purchase Option (as defined in the Option to Purchase) and acquires the Facility pursuant to the Option to Purchase, and in such event the lien of the Mortgage in respect to the Facility shall be released upon payment to the Bank of the portion of the Option Price to which it is entitled based upon the priority of its lien on the Facility pursuant to the Mortgage.

The Company acknowledges and agrees that, if Seller shall fail to make any payment required pursuant to clause (b) of Section 16 of the Option to Purchase as and when due, the Option to Purchase shall immediately terminate and the Company shall take all actions necessary to obtain written evidence (in recordable form) of such termination from Seller. In the event the Company fails to take such action to the Bank's satisfaction, the Bank may take such action on behalf of the Company.

Compliance by the Seller with the requirements set forth in clause (b) of Section 16 of the Option to Purchase shall not (unless otherwise agreed by the Bank) cause or result in a waiver or rescission of any acceleration of maturity of the Bond (as defined in the Bond Purchase Agreement), the Notes, or the obligations of the Company pursuant to the Bond Purchase Agreement, or preclude the Bank from pursuing a foreclosure or other remedy.

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.01 Accounting Terms; Definitions.

Except as otherwise provided, all accounting terms shall be construed in accordance with generally accepted accounting principles consistently applied and consistent with those applied in the preparation of the financial statements referred to in section 4.05, and financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles. As used herein:

- (a) the term “**Affiliate**” means any person, firm or corporation, which, directly or indirectly, controls, is controlled by, or is under common control with, the Company.
  - (b) the term “**Borrowing Date**” means each date (which must be a Business Day) on which a Loan is made to the Company.
  - (c) the term “**Business Day**” means any date other than a Saturday, Sunday or other day on which banks in the State of Wisconsin are required or authorized to close.
- 
- (d) the term “**Capitalized Lease**” means any lease which is capitalized on the books of the lessee, or should be so capitalized under generally accepted accounting principles.
  - (e) the term “**Collateral Documents**” shall have the meaning set forth in Section 4.03 hereof.
  - (f) the term “**Controlled Group**” means a controlled group of corporations as defined in Section 1563 of the Internal Revenue Code of 1986, as amended, of which the Company is a part.
  - (g) “**Debt Service Coverage Ratio**” means, for any period, the relationship, expressed as a numerical ratio, between:
    - (1) the Net Earnings of the Company for such period plus the sum of (i) depreciation, amortization and all other non-cash deductions arising in the normal course of operations and shown on the Company’s financial statements for such period and (ii) net interest expense on indebtedness of the Company (including the interest component of Capitalized Leases) for such period minus the sum of (iii) non-cash income for such period, (iv) required deposits to the Maintenance Reserve Account for such period pursuant to Section 6.07 hereof and (v) capital expenditures made by the Company during such period with funds other than moneys in the Maintenance Reserve Account

and

- (2) the sum of (i) interest expense, (ii) required principal payments made with respect to Indebtedness of the Company (including the Loans and the obligations of the Company under the Bond Purchase Agreement) and (iii) payments made with respect to Capitalized Lease, for such period,

all as determined, without duplication, in accordance with generally accepted accounting principles.

- (h) the term “**Default**” means any condition or event which with the passage of time or the giving of notice or both would constitute an Event of Default.

- (i) the term “**Environmental Audit**” means a review for the purpose of determining whether the Company complies with Environmental Laws and whether there exists any condition or circumstance which requires or will require a cleanup, removal, or other remedial action under Environmental Laws on the part of the Company including, but not limited to, some or all of the following:

- 
- (1) on site inspection including review of site geology, hydrogeology, demography, land use and population;
  - (2) taking and analyzing soil borings and installing ground water monitoring wells and analyzing samples taken from such wells;
  - (3) taking and analyzing of air samples and testing of underground tanks;
  - (4) reviewing plant permits, compliance records and regulatory correspondence, and interviewing enforcement staff at regulatory agencies;
  - (5) reviewing the Company’s operations, procedures and documentation; and
  - (6) interviewing past and present employees of the Company.

- (j) the term “**Environmental Laws**” means all federal, state and local laws including rules of common law, statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental

Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

- (k) the term “**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be in effect from time to time.
- (l) the term “**Indebtedness**” means all liabilities or obligations of a Person, which would, in accordance with generally accepted accounting principles, be included on the liability portion of a balance sheet, and shall include, without limitation, all (i) indebtedness for borrowed money; (ii) indebtedness for the deferred purchase price of property or services for which the Person is liable, contingently or otherwise, as obligor, guarantor or otherwise; (iii) any commitment by which the Person assures a creditor against loss including, without limitation, contingent reimbursement obligations with respect to letters of credit; (iv) obligations which are evidenced by notes, acceptances or other instruments; (v) indebtedness guaranteed in any manner by the Person, including without limitation ~~guaranties in the form of an agreement to repurchase or reimburse;~~ (vi) any unfunded obligation of the Person to an employee benefit plan; (vii) all liabilities secured by any lien on any property owned by the Person, even though it has not assumed or otherwise become liable for the payment thereof; and (viii) other liabilities or obligations of the Person which would, in accordance with generally accepted accounting principles, be included on the liability portion of a balance sheet.
- (m) the term “**Multiemployer Plan**” means a multiemployer pension plan within the meaning of the Multiemployer Pension Plan Amendment Act, as amended from time to time.
- (n) “**Net Earnings**” means, for any period, all revenues and income derived by Company from operations and fund raising activities in the ordinary course of business (excluding extraordinary gains and profits upon the disposition of investments and fixed assets),

Minus:

all expenses and other proper charges against income (including payment or provision for all applicable income and other taxes, but excluding extraordinary losses and losses upon the disposition of investments and fixed assets).

- (o) the term “**Option To Purchase**” means the Land Use Restriction and Option To Purchase Agreement between the Seller and the Company, as in

effect on the date hereof, and as hereafter amended with the prior written consent of the Bank.

- (p) the term “**Permitted Encumbrances**” shall have the meaning set forth in the Mortgage.
- (q) the term “**Person**” means a natural person, firm, association, corporation, limited liability company, public body or other entity of whatever nature.
- (r) the term “**Plan**” means any employee pension benefit plan subject to Title IV of ERISA maintained by the Company or any member of the Controlled Group, or any such plan to which the Company or any member of the Controlled Group is required to contribute on behalf of any of its employees.
- (s) the term “**TCF Base Rate**” means the rate of interest announced by the Bank as its prime or reference rate for interest rate calculations, as such rate may change from time to time. The TCF Base Rate may not be the lowest rate of interest charged by the Bank.
- (t) the term “**Regulatory Change**” means any change enacted or issued after the date of this Agreement of any (or the adoption after the date of this Agreement of any new) federal or state law, regulation, interpretation, direction, policy or guideline, or any court decision, which affects the treatment of any extensions of credit of the Bank.
- (u) the term “**Reportable Event**” means a reportable event as that term is defined in Title IV of ERISA.
- (v) the term “**Seller**” has the meaning assigned thereto in the Bond Purchase Agreement.
- (w) the term “**Subsidiary**” means a corporation, partnership or other entity of which the Company owns, directly or through another Subsidiary, at the date of determination, more than 50% of the outstanding stock (or other shares of beneficial interest) having ordinary voting power for the election of directors, irrespective of whether or not at such time stock of any other class or classes might have voting power by reason of the happening of any contingency, or holds at least a majority of partnership or similar interests, or is a general partner, and any other Affiliate that is included in consolidated financial statements of the Company furnished to the Bank pursuant to Section 6.06 hereof.
- (x) “**Tangible Net Worth**” means the total of all assets properly appearing on the balance sheet of the Company in accordance with generally accepted accounting principles, less the sum of the following:

- (1) the book amount of all such assets which would be treated as intangibles under generally accepted accounting principles, including, without limitation, all such items as good will, trademarks, trademark rights, trade names, tradename rights, brands, copyrights, patents, patent rights, licenses, deferred charges and unamortized debt discount and expense;
- (2) any write-up in the book value of any such assets resulting from a revaluation thereof subsequent to the date hereof;
- (3) all reserves, including reserves for depreciation, obsolescence, depletion, insurance and inventory valuation, but excluding contingency reserves not allocated for any particular purpose and not deducted from assets;
- (4) all liabilities of the Company shown on such balance sheet, other than liabilities subordinated to Company's obligations under this Agreement and the Bond Purchase Agreement by subordination agreements in form and substance satisfactory to the Bank; and
- (5) all investments in affiliated entities.

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**Section 8.02 Expenses; Indemnity.**

- (a) The Company shall pay or reimburse the Bank for (i) all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) paid or incurred by the Bank in connection with the negotiation, preparation, execution, delivery, and administration of this Agreement, the Notes, the Collateral Documents and any other document required hereunder or thereunder, including without limitation any amendment, supplement, modification or waiver of or to any of the foregoing; (ii) all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) paid or incurred by the Bank before and after judgment in enforcing, protecting or preserving its rights under this Agreement, the Notes, the Collateral Documents and any other document required hereunder or thereunder, including without limitation the enforcement of rights against, or realization on, any collateral or security therefor or in defending against any claim made against the Bank by the Company, any subsidiary or any third party as a result of or in any way relating to any matter referred to in subsection (i) or (ii) of this section; and (iii) any and all recording and filing fees and any and all stamp, excise, intangibles and other taxes, if any, (including, without limitation, any sales, occupation, excise, gross receipts, franchise, general corporation, personal property, privilege or license taxes, but not including taxes levied upon the net income of the Bank by the federal government or the State of Wisconsin), which may be payable or determined to be payable in connection with the negotiation,



preparation, execution, delivery, administration or enforcement of this Agreement, the Notes, the Collateral Documents or any other document required hereunder or thereunder or any amendment, supplement, modification or waiver of or to any of the foregoing, or consummation of any of the transactions contemplated hereby or thereby, whether such taxes are levied by reason of the acts to be performed by the Company hereunder or are levied upon the Bank, the Company, any subsidiary, the property of the Bank or otherwise, including all costs and expenses incurred in contesting the imposition of any such tax, and any and all liability with respect to or resulting from any delay in paying the same, whether such taxes are levied upon the Bank, the Company, any subsidiary, or otherwise.

- (b) The Company agrees to indemnify the Bank against any and all losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Bank arising out of, in any way connected with, or as a result of (i) any acquisition or attempted acquisition of stock or assets of another person or entity by the Company or any Subsidiary, (ii) the use of any of the proceeds of any Loans made hereunder by the Company or any Subsidiary for the making or furtherance of any such acquisition or attempted acquisition, (iii) any breach or alleged breach by the Company or any subsidiary of or any liability or alleged liability of the Company or any subsidiary under any Environmental Law, or any liability or alleged liability incurred by the Bank under any Environmental Law in connection with this Agreement, any Collateral Document or the transactions contemplated hereunder or thereunder, (iv) the negotiation, preparation, execution, delivery, administration, and enforcement of this Agreement, the Notes, the Collateral Documents and any other document required hereunder or thereunder, including without limitation any amendment, supplement, modification or waiver of or to any of the foregoing or the consummation or failure to consummate the transactions contemplated hereby or thereby, or the performance by the parties of their obligations hereunder or thereunder, (v) any claim, litigation, investigation or proceedings related to any of the foregoing, whether or not the Bank is a party thereto; provided, however, that such indemnity shall not apply to any such losses, claims, damages, liabilities or related expenses arising from (A) any unexcused breach by the Bank of its obligations under this Agreement or (B) any commitment made by the Bank to a person other than the Company or any Subsidiary which would be breached by the performance of the Bank's obligations under this Agreement.
- (c) The foregoing agreements and indemnities shall remain operative and in full force and effect regardless of termination of this Agreement, the consummation of or failure to consummate either the transactions contemplated by this Agreement or any amendment, supplement, modification or waiver, the repayment of any Loans made hereunder, the

invalidity or unenforceability of any term or provision of this Agreement or any of the Notes or any Collateral Document, or any other document required hereunder or thereunder, any investigation made by or on behalf of the Bank, the Company or any Subsidiary, or the content or accuracy of any representation or warranty made under this Agreement, any Collateral Document or any other document required hereunder or thereunder.

**Section 8.03 Securities Act of 1933.**

The Bank represents that it is acquiring the Notes without any present intention of making a sale or other distribution of such Notes, provided the Bank reserves the right to sell the Notes or participations therein.

**Section 8.04 Successors.**

The provisions of this Agreement shall inure to the benefit of any holder of one or more of the Notes, and shall inure to the benefit of and be binding upon any successor to any of the parties hereto. No delay on the part of the Bank or any holder of any of the Notes in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein specified are cumulative and are not exclusive of any rights or remedies which the Bank or the holder of any of the Notes would otherwise have.

**Section 8.05 Survival; Continuation of Effectiveness.**

All agreements, representations and warranties made herein shall survive the execution of this Agreement, the making of the Loans hereunder and the execution and delivery of the Notes. The covenants set forth in Articles V and VI of this Agreement shall continue in effect until (i) the Notes are paid in full, (ii) all obligations of the Company under this Agreement are satisfied and (iii) the Bond Purchase Agreement is terminated in accordance with Section 14.09 thereof.

**Section 8.06 Wisconsin Law.**

This Agreement and the Notes issued hereunder shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, except to the extent superseded by federal law.

**Section 8.07 Counterparts.**

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.08 Notices.**

All notices and directions to any party to this Agreement pursuant hereto shall be in writing, and except as otherwise provided, shall be deemed to be sufficiently given if hand

delivered or sent (unless the party to whom it is sent can demonstrate nonreceipt) by first-class mail, electronic mail, or facsimile addressed as follows:

Company

Pettit National Ice Center, Inc.  
500 South 84<sup>th</sup> Street  
Milwaukee, WI 53214  
Attention: President  
Phone: (414) 225-1479  
Fax: (414) 278-3679  
Email: chenderson@dkattorneys.com

Bank

TCF National Bank  
1036 W. Juneau Avenue, Suite 500  
Milwaukee, WI 53223  
Attention: Mark Pietrowiak, Vice President  
Phone: (414) 351-8360  
Fax: (414) 351-8694  
Email: mpietrol@tcfbank.com

or to such other address as the addressee shall have indicated by prior notice to the one giving the notice or direction in question.

**Section 8.09 Sale; Participations.**

The Bank may, at its option, sell and assign all or any part of its interest in this Agreement, the Notes and the Collateral Documents and, in connection with each such sale, and thereafter, disclose to any purchaser or potential purchaser any financial information the Bank may have concerning the Company and its Subsidiaries.

**Section 8.10 Entire Agreement; No Agency.**

This Agreement and the other documents referred to herein contain the entire agreement between the Bank and the Company with respect to the subject matter hereof, superseding all previous communications and negotiations, and no representation, undertaking, promise or condition concerning the subject matter hereof shall be binding upon the Bank unless clearly expressed in this Agreement or in the other documents referred to herein. Nothing in this Agreement or in the other documents referred to herein and no action taken pursuant hereto shall cause the Company to be treated as an agent of the Bank, or shall be deemed to constitute the Bank and the Company a partnership, association, joint venture or other entity.

**Section 8.11 No Third Party Benefit.**

This Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns. No other person or entity shall have any rights under, or because of the existence of, this Agreement.

**Section 8.12 Consent to Jurisdiction.**

The Company hereby consents to the exclusive jurisdiction of any state or federal court situated in Milwaukee County, Wisconsin, and waives any objection based on lack of personal jurisdiction, improper venue or *forum non conveniens*, with regard to any actions, claims, disputes or proceedings relating to this Agreement, any Note, any of the Collateral Documents, or any other document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing. The

Company waives personal service of any and all process upon it, and consents to all such service of process made by mail or by messenger directed to it at the address specified below. Nothing herein shall affect the Bank's right to serve process in any manner permitted by law, or limit the Bank's right to bring proceedings against the Company or its property or assets in the competent courts of any other jurisdiction or jurisdictions.

**Section 8.13 Waiver of Jury Trial.**


The Company and the Bank hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to this Agreement, any Note, any of the Collateral Documents, or any other document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing. The Company and the Bank each represent that this waiver is knowingly, willingly and voluntarily given.

**Section 8.14 Limitation of Liability.**

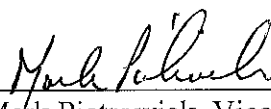
The Company and the Bank hereby waive any right any of them may now or hereafter have to claim or recover from the other any consequential, exemplary or punitive damages.

IN WITNESS WHEREOF, the Bank and the Company have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first set forth above.

PETTIT NATIONAL ICE CENTER, INC.

By:   
Charles Henderson, President

TCF NATIONAL BANK

By:   
Mark Pietrowiak, Vice President