

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-11960 (BLS)
: (Jointly Administered)
Debtors. :

**APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 327 AND 328
AUTHORIZING EMPLOYMENT AND RETENTION OF CRG PARTNERS
GROUP LLC AS FINANCIAL ADVISOR TO THE DEBTORS
NUNC PRO TUNC TO THE PETITION DATE**

Alset Owners, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 327 and 328 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Delaware Bankruptcy Local Rules (the “Local Rules”), hereby seek entry of an order approving this Application (the “Application”) for an order under 11 U.S.C. §§ 327 and 328 authorizing the employment and retention of CRG Partners Group LLC (“CRG”) as financial advisors for the Debtors. In support of this Application, the Debtors rely on the Affidavit of Gene Baldwin (the “Baldwin Affidavit”) filed concurrently herewith. In further support of the Application, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, Florida 33432.

JURISDICTION

1. This Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 327, 328, and 1107(b), Bankruptcy Rules 2014 and 2016, and Local Rule 2014-1.

BACKGROUND

2. On June 5, 2009 (the "Petition Date"), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. A first day hearing was held on June 9, 2009, which resulted in the entry of certain first day relief. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession, pursuant to Bankruptcy Code sections 1107(a) and 1108.

3. No trustee or examiner has been appointed in these chapter 11 cases. On June 24, 2009, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee") in the Debtors' cases.

4. Additional facts and circumstances concerning the Debtors and the events leading to the bankruptcy filing are described in further detail in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the "Levitsky Declaration").

RELIEF REQUESTED

5. By this Application, the Debtors seek entry of an order (a) authorizing the Debtors to retain CRG as their financial advisors, *nunc pro tunc* to the Petition Date, in accordance with the terms of the engagement letter dated June 5, 2009 between the Debtors and CRG, a copy of which is attached to this Application as Exhibit A (the "Engagement Letter"); (b)

approving the terms of CRG's employment, including the proposed fee structure and indemnification provisions set forth in the Engagement Letter; and (c) granting such other and further relief as the Court deems appropriate.

BASIS FOR RELIEF

6. The Debtors seek to retain CRG as their financial advisors because, among other things, CRG and its senior professionals have an excellent reputation for providing high quality services to debtors and creditors in bankruptcy reorganizations. CRG is a national turnaround management firm and specializes in assisting and advising companies in need of financial and operational turnaround and workout assistance, both in and out of court. CRG's services have included assistance in developing/analyzing turnaround plans and financial restructurings, analyzing and evaluating their business impact, negotiating plans of reorganization and testifying regarding restructuring, feasibility and other relevant issues.

7. CRG served as the Debtors' pre-petition financial advisor pursuant to an engagement letter dated May 15, 2009 (the "Pre-Petition Engagement Letter"). In its capacity as the Debtors' pre-petition financial advisor, CRG worked closely with the Debtors' management and other professionals and became well-acquainted with the Debtors' operations, debt structure, business and related matters. Consequently, the Debtors believe that CRG has developed significant relevant experience and expertise regarding the Debtors and their current situation and is thus both well-qualified and uniquely suited to provide effective and efficient services in these chapter 11 cases.

8. The Debtors ultimately determined that, due to the breadth and scope of their operations, the Debtors required the services of an experienced financial advisor to assist them in their restructuring efforts.

A. Services to be Provided by CRG

9. The terms of the Engagement Letter provide that CRG will provide the following services, among others:²

- (a) Assistance with Cash Collateral and DIP Financing Reporting and Monitoring;
- (b) Assistance with preparation of bankruptcy schedules and reports;
- (c) Assistance with landlord negotiations;
- (d) Assistance with secured lender negotiations;
- (e) Assistance with bankruptcy communications with employees and vendors;
- (f) Assistance to the sales advisor in connection with the pending sale process, as needed; and
- (g) Assistance with communications with the Committee.

10. The Debtors believe that CRG is well-qualified and able to provide the foregoing services to the Debtors. If this Application is granted, the Debtors' employment of CRG will continue until such time as the parties determine that the services of CRG are no longer needed.³ Additionally, the Debtors have been advised by CRG that it will endeavor to coordinate with the other retained professionals in these bankruptcy cases to eliminate unnecessary duplication or overlap of work.

C. Professional Compensation

11. CRG's fees for professional services are based upon its standard hourly rates, which are periodically adjusted. According to the terms of the Engagement Letter, the

² The description of the Engagement Letter herein is a summary. To the extent that this Application and the terms of the Engagement Letter are inconsistent, the terms of the Engagement Letter will control.

³ Under the terms of the Engagement Letter, the Debtors have the option to cancel the agreement at any time and for whatever reason upon written or oral notice to CRG. If the agreement is cancelled by the Debtors, CRG would be entitled to payment of its professional fees and expenses incurred through cancellation and the confidentiality and indemnity provisions of the agreement would survive cancellation.

CRG personnel will be compensated by the Debtors at the rate of \$175 - \$625 an hour depending on the staff member assigned to the project.

12. These are CRG's hourly rates for work of this nature and are subject to periodic adjustments to reflect economic and other conditions. The Debtors understand that other advisors and staff at CRG may serve the Debtors from time to time in connection with these chapter 11 cases.

13. Consistent with CRG's policy with respect to its other clients, and subject to this Court's approval (or pursuant to any administrative procedure established by order of this Court), the Debtors will reimburse CRG for all reasonable, out-of-pocket expenses incurred in connection with this case including, but not limited to, travel, lodging, postage, long distance telephone, and facsimile charges. CRG will request compensation and reimbursement of expenses upon proper application pursuant to applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and orders of this Court.

14. As set forth in the Baldwin Affidavit, CRG has not shared or agreed to share any of its compensation from the Debtors with any other persons, other than a managing director, professional or employee of CRG, as permitted by section 504 of the Bankruptcy Code.

D. Indemnification

15. Pursuant to the Engagement Letter, the Debtors have agreed to indemnify and hold harmless CRG, its officers, directors, agents, employees and any successors and assigns (each, an "Indemnified Party") from any and all claims, liabilities, losses, damages and expenses (or actions in respect thereof) related to or arising out of or in connection with CRG's engagement by the Debtors, including, without limitation, such Indemnified Parties' reasonable expenses incurred in connection with investigating, preparing, defending or settling any action or

claim arising from or relating to such liabilities (including legal fees and expenses) other than as a primary result of such Indemnified Parties' bad faith, willful misconduct or gross negligence

E. CRG's Relationship To Debtors and Disinterestedness

16. To the best of the Debtors' knowledge, information, and belief, CRG has no connection with, and holds no interest adverse to, the Debtors, their creditors, or any other party in interest, or their respective attorneys or accountants, the United States Trustee or any person employed in the Office of the United States Trustee, in the matters for which CRG is proposed to be retained except as disclosed in this Application or the Baldwin Affidavit. The Debtors believe that CRG is a "disinterested person" as defined in the Bankruptcy Code.

17. The Debtors initially retained CRG prior to the Petition Date pursuant to the Pre-Petition Engagement Letter. Pursuant to that engagement letter, and prior to the Petition Date, the Debtors paid CRG in full for all fees and expenses incurred prior to the Petition Date, as set forth below.

F. Prepetition Payments to CRG

18. In connection with the retention by the Debtors, CRG received a retainer in the aggregate amount of \$50,000 (the "Retainer"). CRG will hold the Retainer for application in accordance with the Engagement Letter; any unearned portion of the Retainer will be returned to the Debtor upon the cancellation of the engagement. Estimated fees and expenses of approximately \$61,694.81 were incurred through the Petition Date for prepetition services and were paid prior to the commencement of these cases (collectively, the "Prepetition Payments"). The Prepetition Payments represent the advisory fees for the period from May 15, 2009 through the Petition Date, plus the reimbursement of out-of-pocket expenses for such period. CRG has advised the Debtors that at no time prior to the Petition Date was CRG owed any amounts in excess of the Retainer

APPLICABLE AUTHORITY

19. The Debtors request authority to retain CRG under the terms of the Engagement Letter pursuant to sections 327(a) and 328(a) of the Bankruptcy Code. Section 327(a) authorizes the Debtors, with the Court's approval, to employ professionals that do not hold or represent an interest adverse to the estate and that are disinterested persons. 11 U.S.C. § 327(a). Section 328(a) provides in relevant part that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis" 11 U.S.C. § 328(a). Accordingly, section 328 permits the compensation of professionals, including financial advisors on flexible terms that reflect the nature of their services and market conditions.

20. As described above, the retention of CRG under the terms of the Engagement Letter would greatly benefit the Debtors' estates and creditors. CRG, and in particular, Gene Baldwin, has been involved intimately in the Debtors' restructuring efforts, and has been instrumental in helping the Debtors' position themselves for successful chapter 11 proceedings.

21. The Debtors submit that the fee structure set forth in the Engagement Letter appropriately reflects the nature of the services to be provided by CRG, contains reasonable terms and conditions of employment, and should be approved under section 328 of the Bankruptcy Code. In sum, therefore, the Debtors believe that the fee structure is reasonable in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the chapter 11 context, (c) CRG's substantial experience with respect to financial advisory

services, and (d) the nature and scope of work performed by CRG and Gene Baldwin prior to the Petition Date and to be performed by CRG and Gene Baldwin in these chapter 11 cases.

22. The Debtors believe that the indemnification provisions in the Engagement Letter are customary and reasonable for financial advisory engagements, both out-of-court and in chapter 11. See, e.g., In re New Century TRS Holdings, Inc., Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 25, 2007) (Docket No. 386); In re Foamex Int'l, Ltd., No. 05-12685 (KG) (Bankr. D. Del. Oct. 18, 2005) (Docket No. 203); In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000), aff'd 2000 WL 1800690 (S.D.N.Y. Dec. 6, 2000).

23. The terms and conditions of the Engagement Letter were negotiated by the Debtors and CRG at arm's-length and in good faith. The Debtors respectfully submit that the indemnification provisions contained in the Engagement Letter, viewed in conjunction with the other terms of CRG's proposed retention, are reasonable and in the best interest of the Debtors, their estates and their creditors.

24. Based on the foregoing, the Debtors submit that the relief requested in this Application is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects. No previous motion for the relief requested herein has been made in these chapter 11 cases.

25. The Debtors request that CRG's employment be deemed effective as of the Petition Date, in light of the continuing nature of the services which have been necessary since the Petition Date and which must be performed in order for CRG to perform its financial advisory services to the Debtors and in order to avoid any prejudice resulting from any administrative delay in the filing of this Application or the entry of an order approving the Application.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) authorizing the Debtors to retain CRG as their financial advisors, *nunc pro tunc* to the Petition Date, in accordance with the terms of the Engagement Letter; (b) approving the terms of CRG's employment, including the proposed fee structure and indemnification provisions set forth in the Engagement Letter; and (c) granting such other and further relief as the Court deems appropriate.

Dated June 2, 2009

Aiset Owners LLC, et al.,
Debtors and Debtors-in-Possession



Leonard Levitsky
President and Managing Member

Exhibit A



June 5, 2009

Alset Owners, LLC, Altes, LLC, Setla, LLC and Checkers Michigan, LLC (collectively "Altes/Setla")
1200 N Federal Highway
Suite 111-B
Boca Raton, FL 33432

Dear Lenny:

This letter will confirm our conversation concerning the engagement of CRG Partners Group LLC ("CRG") by Altes/Setla ("Client" or the "Company").

Client shall, by executing this letter of agreement, engage CRG for the purposes of providing business advice and consultation to Client regarding the Company's current challenges. Our focus ("Scope") will include, but not be limited to, the following areas:

- Assistance with Cash Collateral and DIP Financing Reporting and Monitoring
- Assistance with preparation of bankruptcy schedules and reports
- Assistance with landlord negotiations
- Assistance with secured lender negotiations
- Assistance with bankruptcy communications with employees and vendors
- Assistance to the sales advisor in connection with the pending sale process, as needed
- Assistance with communications with Unsecured Creditors Committee

CRG's professional fees for the above services will be at the rate of \$175-\$625 an hour depending on the staff member assigned to the project. All professional fees and prior Client approved expenses will be billed to Client weekly and are payable weekly. There will be a \$50,000 retainer paid to CRG at the execution of this contract (the "Retainer"). This Retainer will be held by CRG and applied to CRG's final bill for fees and expenses hereunder. Any unused Retainer shall be returned to the Client.

Attached in an Appendix to this agreement are CRG's standard terms and conditions. By Client's execution of this agreement, Client acknowledges that it has read these and agrees to be bound by each of these terms and conditions, which are hereby incorporated by reference as if fully set forth herein.

If the foregoing accurately sets forth the understanding between us, please so indicate by signing and returning the enclosed copy of this letter to me. By virtue of my signature below, CRG is

committed to providing its best efforts in the areas discussed above. The Company has the option to cancel this agreement at any time and for whatever reason upon written or oral notice to CRG. However, if this agreement is cancelled by the Company, CRG will be entitled to payment of its professional fees and expenses incurred through cancellation and the confidentiality and indemnity provisions of this agreement will survive cancellation.

I very much appreciate the opportunity to present this agreement to you and look forward to working with you on this assignment.

Very truly yours,

Gene R. Baldwin

CRG Partners Group, LLC
By: Gene R. Baldwin

Date: 6/26/09

Agreed and accepted:

Altes/Setla
By: Leonard Levitsky (Managing Member)

Date: _____

committed to providing its best efforts in the areas discussed above. The Company has the option to cancel this agreement at any time and for whatever reason upon written or oral notice to CRG. However, if this agreement is cancelled by the Company, CRG will be entitled to payment of its professional fees and expenses incurred through cancellation and the confidentiality and indemnity provisions of this agreement will survive cancellation.

I very much appreciate the opportunity to present this agreement to you and look forward to working with you on this assignment.

Very truly yours,

CRG Partners Group, LLC
By: Gene R. Baldwin

Date: _____

Agreed and accepted:

Altes/Setla
By: Leonard Levitsky (Managing Member)

Date: 5/27/07

Appendix

General Terms and Conditions

1. Retainer and Compensation.

(a) Client agrees that the Retainer amount is intended to be greater than the amount of fees and expenses due to or incurred by CRG under this Agreement at any given time. If the Client fails at any time or for any reason to pay any amounts due under this Agreement, then CRG may apply the Retainer to such unpaid amounts immediately and without prior notice to the Client. The Client hereby grants a first-priority security interest in the Retainer to CRG to secure payment to CRG of all amounts due under this Agreement. Client shall have a continuing obligation to replenish the Retainer or any increases to the Retainer to the required amount within three (3) days of any CRG request.

(b) To the extent CRG is not actually working while traveling, CRG shall charge travel time for individuals at one-half of the applicable hourly rate. CRG adjusts its hourly rates for services periodically. Client agrees to pay such hourly rates as reasonably adjusted. The Company will be billed for all out-of-pocket expenses reasonably incurred by CRG in the performance of its obligations under this agreement. Such expenses shall include travel, meals and lodging, delivery services, etc. In states where CRG is obligated to collect sales taxes on professional services, such taxes will be invoiced to you.

2. Access to Client Personnel and Information and Client Representation Concerning Information Provided to CRG.

(a) The Client will provide CRG with full access to all Client personnel, books, and records, including those of the Client's attorneys and other agents and third-party representatives. The Client also represents and warrants to CRG that, except as disclosed to CRG in writing, all information provided or made available to CRG by the Client, its directors, officers, employees, representatives, attorneys and agents at any time shall, to the best of the Client's knowledge: a) be complete and correct in all material respects; and b) not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements not misleading in light of the circumstances under which such statements are made. Client agrees that it shall notify CRG if it learns subsequently that any information provided or made available to CRG in accordance with this Agreement is incorrect, inaccurate, or otherwise should not be relied upon.

(b) The services to the Client under this Agreement may include the preparation of recommendations, projections, and other forward-looking statements. The Client acknowledges that numerous factors may affect the Client's actual financial and operational results, and that these results may materially and adversely differ from the recommendations and projections prepared, in whole or in part, by CRG. The Client acknowledges that in rendering its services under this Agreement, CRG will be using and relying upon the information provided by Client, its directors, officers, employees, representatives and agents. Under any of the foregoing circumstances, the Client agrees that CRG shall have no duty to verify independently the reliability, accuracy or completeness of such information. The Client also agrees that CRG shall incur no liability to the Client or any individual or other entity that may arise if any such information proves to be unreliable, inaccurate or incomplete.

3. Confidential Information.

(a) CRG shall not disclose the Client's "Confidential Information." Further, CRG will use the Confidential Information only for the purpose of providing services to the Client pursuant to this Agreement. "Confidential Information" shall consist only of information that is necessary for CRG to perform the Scope under this Agreement, and that is: (i) disclosed to CRG by the Client, its directors, officers, employees, representatives, and agents; (ii) acquired by CRG from any inspection of the Client's property in connection with this Agreement; or (iii) information produced by CRG, from Confidential Information, in connection with providing services to the Client under this Agreement.

(b) Confidential Information shall not include information that is: (i) now or subsequently becomes generally known or available by publication, commercial or otherwise, through no fault of CRG, its employees, agents, or independent contractors; (ii) already known by CRG at the time of the disclosure, provided that such information did not come from a source known by CRG to be bound by a confidentiality agreement with the Client, or from a source that was otherwise prohibited from disclosing such information under a contractual, legal or fiduciary obligation; (iii) becomes available to CRG on a non-confidential basis from a source other than the Client, provided that, to CRG's knowledge, the source was not prohibited from disclosing such information to CRG under a contractual, legal or fiduciary obligation to the Client; (iv) independently developed by CRG, its employees, agents, or independent contractors primarily from information that is not Confidential Information; (v) information that the Client and CRG agree, orally or in writing, may be disclosed; (vi) information that is reasonably expected to be disclosed as part of CRG's Scope; or (vii) information that CRG reasonably believes, after consultation with its attorneys, it must disclose pursuant to applicable law, or regulatory or administrative process, including stock exchange rules.

(c) CRG may make reasonable disclosures of Confidential Information: (i) to third parties in connection with the performance of its services under this Agreement so long as such disclosures are made pursuant to a confidentiality agreement in form and substance satisfactory to the Client; or (ii) in connection with any dispute between CRG and Client under or concerning this Agreement. If CRG receives any request by order, subpoena, or other legal process to produce any Confidential Information, then unless otherwise prohibited by law or process, CRG will use its best efforts to provide the Client with timely notice of such request. At the Client's request and expense, and unless otherwise prohibited by law, and without relinquishing or modifying CRG's authority to disclose information under the terms of this Agreement, CRG will cooperate reasonably with the Client in actions that the Client deems necessary or appropriate under the circumstances to protect the confidentiality of the Confidential Information.

(d) CRG may disclose Client's name for purposes of internal marketing materials only and will not otherwise disclose information as contemplated under this Section 3.

4. No Third-Party Beneficiaries; Use of CRG's Work Product by Client. The Client acknowledges that all information, whether written or oral, created, prepared, or compiled by CRG in connection with this Agreement is intended solely for the benefit and use of the Client. No other individual or entity shall be entitled to rely on such information for any purpose. Client agrees that such information shall not be reproduced, disseminated, quoted or referred to at any time or in any manner other than to the Client's board of directors, officers,

employees, representatives, attorneys, and other agents who have a need to receive such information, except upon CRG's prior written consent. Without limiting the foregoing, the Client shall not (and shall not authorize any other individual or entity to) use CRG's name or to make available to third parties any information created, prepared, or compiled by CRG under this Agreement for any reason, including obtaining or extending credit, offering or selling securities or other assets, or in any representations to third parties without CRG's prior written consent. It is also expressly agreed that notwithstanding the above restrictions upon the Client's dissemination and use of information and work product, CRG shall have no responsibility or liability relating directly or indirectly to such disclosure (whether authorized or unauthorized) by the Client concerning any information created, prepared, or compiled, in whole or in part, by CRG pursuant to this Agreement, which may be disclosed only after prior written approval by CRG or as required by applicable law, or regulatory or administrative process, including stock exchange rules. The foregoing provisions shall not be construed or interpreted to prohibit references to CRG's engagement under this Agreement in required public filings or court documents.

5. **Independent Contractor Status.** CRG is an independent contractor under this Agreement, and accordingly, this Agreement shall not be an employment agreement. No one on behalf of any CRG Party (as defined below), nor any employees, agents, or independent contractors thereof, shall be considered to be a director, officer, member, manager, partner, control person, employee, representative, agent, or insider of the Client, unless expressly agreed to in a writing signed by Client and CRG. As an independent contractor, CRG will have exclusive control over the management and operation of CRG, including hiring and paying the wages or other compensation of its personnel. Unless expressly provided otherwise in the Scope, the CRG personnel that provide services to the Client under this Agreement may also provide services to other past, present or future CRG clients in connection with unrelated matters. In addition, CRG may utilize the services of its own employees or services of qualified independent contractors to perform this Agreement.

6. **Appointment as Officer and/or Director.** CRG understands that the Client's officers and directors are covered by appropriate D&O insurance policies. Should the Client agree to elect a CRG representative as an officer or director, the Client shall agree to name such CRG representative and CRG as additional insureds under these policies and under "tail" policies that the Company may purchase during CRG's engagement. The Company further agrees to provide evidence of this coverage as soon as it is in place. It is mutually understood that in naming such CRG representative as an officer or director of the Company, that such CRG representative will remain at all times an employee of CRG and not become an employee of the Company and will be compensated solely by CRG. It is further understood by the parties that this engagement letter is not an employment contract.

7. **No Fiduciary Relationship.** Other than with respect to appointment(s) of a CRG Party as an officer and/or director of Client in writing, and otherwise in accord with the provisions of this Agreement, nothing in this Agreement is intended to create, or shall be deemed or construed to create a fiduciary relationship between: (a) the Client, including without limitation, the Client's directors, officers, members, managers, partners, control persons, shareholders, employees, representatives, agents, or creditors, on the one hand; and (b) CRG, CRG's affiliates, and the respective directors, officers, members, managers, partners, control persons, shareholders, employees, representatives, independent contractors, attorneys, agents, successors or assigns of CRG or CRG affiliates (all of the foregoing in this subpart (b) collectively, the "CRG Parties," and each a "CRG Party") on the other hand.

8. **Indemnity by Client.** As part of the consideration for the agreement of CRG to furnish its services pursuant to this engagement letter, the Company agrees to indemnify and hold harmless CRG, its officers, directors, agents and employees any successors and assigns (each, an "Indemnified Party") to the fullest extent lawful from any and all claims, liabilities, losses, damages and expenses (or actions in respect thereof), as incurred, related to or arising out of or in connection with this engagement, including, without limitation, any and all of such Indemnified Parties' reasonable expenses incurred in connection with investigating, preparing, defending or settling any action or claim arising from or relating to such liabilities, including all of such Indemnified Parties' legal fees and expenses; provided, however, that the Company shall not be responsible for any losses, claims, damages, liabilities or expenses of any Indemnified Parties to the extent, and only to the extent, that it is finally judicially determined that they are due primarily to such Indemnified Party's bad faith, willful misconduct or gross negligence. The indemnity and expense reimbursement obligations set forth herein (i) shall be in addition to any liability the Company may have to CRG at common law or otherwise, (ii) shall survive the expiration of CRG's engagement hereunder, (iii) shall apply to any modification of CRG's engagement hereunder and shall remain in full force and effect following the completion or termination of the engagement as amended or modified, and (iv) shall be binding on any successor or assign of the Company and its successors or assigns.

9. **Client's Joint and Several Liability; Contractual Right of Setoff in Favor of CRG.** If the Client consists of one or more individuals or entities, then the Client's obligations under this Agreement shall be joint and several obligations of each individual or entity comprising the "Client." Each such individual or entity shall execute this Agreement. Without limiting any other remedy that may be available to CRG under this Agreement or applicable law, where the "Client" under this Agreement consists of more than one individual or entity, then CRG shall have against each such individual or entity a right of setoff (notwithstanding any lack of mutuality) under which CRG may set off against any claim against CRG by any individual or entity comprising the Client group, all of the claims that CRG may have against any or all of the individuals or other entities that comprise the Client.

10. **Attorneys' Fees and Expenses.** The Client shall pay all costs and expenses, including attorneys' fees and expenses, incurred by CRG to enforce this Agreement, including, but not limited to any indemnity provision of this Agreement. This obligation to pay CRG's attorneys' fees and expenses shall apply whether such fees and expenses are incurred during trial or appeal, or in arbitration, a bankruptcy case, or otherwise. If so required, CRG shall additionally be entitled to reimbursement of reasonable legal expenses associated with any required court approval of this Agreement or enforcement of provisions of this Agreement, including, but not limited to, fee applications. Client shall reimburse CRG for all such expenses upon presentation of the invoice for the same supported by appropriate documentation.

11. **Consent; Entire Agreement.** In any instance under this Agreement where a party's consent is permitted or required to be given, such consent shall not be withheld unreasonably. This Agreement contains the entire Agreement of the parties with respect to its subject matter, and supersedes all prior agreements and understandings between the Client and CRG with respect to such subject matter. The parties

agree that all terms of their agreement and understanding are embodied in this Agreement, and as modified or supplemented from time to time, but only if such modification or supplement is both: (i) in writing, and (ii) signed by all parties.

12. **Multiple Originals.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures or signatures forwarded via email.