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PROFESSIONAL CORPORATION
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7 General Insolvency Counsel for
8 Debtor and Debtor-in-Possession

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**
13

14 In re:

15 5TH AVENUE PARTNERS, LLC,
16 a California limited liability company,

17 Debtor and
18 Debtor-in-Possession.

Case No. 8:10-bk-18667-ES

Chapter 11 Proceeding

**DEBTOR'S NOTICE OF MOTION AND
MOTION FOR ORDER AUTHORIZING
DEBTOR TO ENTER INTO INSURANCE
PREMIUM FINANCE AGREEMENT AND TO
GRANT SECURITY INTEREST IN
UNEARNED PREMIUMS; MEMORANDUM
OF POINTS AND AUTHORITIES AND
DECLARATION OF JOHN D. BAILEY IN
SUPPORT THEREOF**

[No Hearing Required]

1 5th Avenue Partners, LLC, a California limited liability company, dba Sè San Diego
2 Hotel, the debtor and debtor-in-possession, hereby moves (the “Motion”) this Court to enter an
3 order, pursuant to Section 364(c)(2) of the Bankruptcy Code, authorizing the Debtor to enter
4 into the insurance Premium Finance Agreement (“Agreement”) with AFCO (Credit or
5 Acceptance) Corp. (“AFCO”) in substantially the form attached to the Declaration of John D.
6 Bailey (the “Bailey Declaration”) as Exhibit “1” and approving the terms thereof.

7 The Motion is based upon these moving papers, the Memorandum of Points and
8 Authorities and the Bailey Declaration attached hereto, the pleadings and documents filed in this
9 case, and the arguments and representations of counsel presented at the time of the hearing
10 hereon, if any.

11 **IF YOU DO NOT OPPOSE THE MOTION DESCRIBED ABOVE, YOU NEED**
12 **TAKE NO FURTHER ACTION. HOWEVER, IF YOU OBJECT TO THE MOTION,**
13 **PURSUANT TO LOCAL BANKRUPTCY RULE 9013-1(o), OBJECTIONS MUST BE**
14 **FILED WITH THE COURT WITHIN FOURTEEN (14) DAYS OF THE DATE OF**
15 **SERVICE OF THIS MOTION. YOU MUST FILE YOUR OBJECTION AND REQUEST**
16 **FOR A HEARING WITH THE CLERK OF THE UNITED STATES BANKRUPTCY**
17 **COURT, LOCATED AT 411 WEST FOURTH STREET, SUITE 2030, SANTA ANA, CA**
18 **92701. YOU MUST SERVE A COPY OF YOUR OBJECTION TO THE MOTION, AND**
19 **REQUEST FOR A HEARING, UPON THE DEBTOR’S COUNSEL AT THE MAILING**
20 **ADDRESS INDICATED IN THE UPPER LEFT CORNER OF THE FIRST PAGE OF**
21 **THE MOTION, AND UPON THE OFFICE OF THE UNITED STATES TRUSTEE**
22 **LOCATED AT 411 WEST FOURTH STREET, SUITE 9041, SANTA ANA, CA**
23 **92701-8000. UPON RECEIPT OF A WRITTEN OBJECTION AND REQUEST FOR A**
24 **HEARING, THE DEBTOR’S COUNSEL WILL OBTAIN A HEARING DATE AND GIVE**
25 **APPROPRIATE NOTICE THEREOF. ANY FAILURE TO TIMELY FILE AND SERVE**
26 **OBJECTIONS MAY RESULT IN ANY SUCH OBJECTIONS BEING WAIVED.**

1 **WHEREFORE**, the Debtor prays that this Court enter its order granting the following
2 relief:

3 1. Authorizing the Debtor to enter into the Agreement pursuant to 11 U.S.C. §
4 364(c)(2) of the Bankruptcy Code;

5 2. Approving the terms of the Agreement, including all rights and privileges granted to
6 AFCO therein;

7 3. Authorizing AFCO to exercise all or its rights without first securing an order of the
8 Court;

9 4. Preserving AFCO's rights under the Agreement in the event this case is converted to
10 a case under Chapter 7 of the Bankruptcy Code;

11 5. In the event the Debtor defaults in the repayment of the financed amount and the
12 security provided to AFCO is not sufficient to repay AFCO in full, providing to AFCO an
13 administrative expense claim for any shortfall by the Debtor on the repayment of the financed
14 amount; and

15 6. Granting such other and further relief as this Court deems just and proper.

16 DATED: December 14, 2010

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

18 By: /s/ Payam Khodadadi

19 Marc J. Winthrop

20 Garrick A. Hollander

 Payam Khodadadi

21 General Insolvency Counsel for Debtor and Debtor-
22 in-Possession

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

The Debtor owns and operates Sè San Diego Hotel, a premier luxury boutique hotel located in downtown San Diego's financial district ("Hotel"). The Hotel offers 184 guestrooms, including 37 suites and three penthouse suites, a 5,500-square foot spa, one restaurant, a rooftop bar and lounge, approximately 20,000 square feet of banquet space and meeting rooms, a rooftop outdoor pool, and a fitness center. Within the Hotel structure are 23 unsold condominium units. The Debtor also owns a 31,000 square foot building adjacent to the Hotel, which is home to San Diego's House of Blues. In addition to being the landlord of House of Blues San Diego, LLC ("House of Blues"), the Debtor is a party to a profit participation agreement with House of Blues, whereby they share 50% of all profits generated by House of Blues. The Debtor currently employs approximately 224 persons.

In the ordinary course of the Debtor's business, the Debtor must maintain general liability insurance policy. Pursuant to the Debtor's proposed commercial insurance policy, the Debtor's insurance coverage limits for commercial general liability, including products and completed operations liability insurance, will be \$1 million per occurrence.

The Debtor has been unable to locate any source of unsecured premium financing. However, the Debtor has been able to locate secured premium financing for the unpaid premiums for the policy through AFCO. AFCO has required the Debtor to enter into the Agreement in substantially the form attached as Exhibit "1" to the Bailey Declaration, which includes a Security Agreement that grants to AFCO a secured interest in the gross unearned premiums which would be payable in the event of cancellation of the insurance policies and which further authorizes AFCO to cancel the financed insurance policies and obtain the return of any unearned premiums in the event of a default in the payment of any installment due.

The policy will bear total premiums of \$132,923.38, the payment of which would substantially impair negatively the Debtor's cash flow, to the detriment of the Debtor's estate. The Debtor will make a down payment of \$48,148.00, with the balance paid in 7 monthly installments

1 equal to approximately \$84,775.38. The annual percentage rate of interest charged is estimated to
2 be 4.230% resulting in total finance charges of \$1,199.53. In the event the Debtor defaults in the
3 repayment of the financed amount and the security provided to AFCO is not sufficient to repay
4 AFCO in full, AFCO has requested that it be provided with an administrative expense claim for
5 any shortfall by the Debtor on the repayment of the financed amount.

6 The policy is extremely valuable and it is essential to maintain it in the interest of the
7 preservation of the property, assets and business of the Debtor. The policy cannot presently be
8 obtained for the Debtor unless the premiums are financed.

9 The Debtor believes that it would be in the best interests of the Debtor's estate and
10 creditors to allow the Debtor to enter into the Agreement since the Debtor must maintain insurance
11 coverage and the Agreement will aid the Debtor's cash flow by financing the insurance premiums.

12 **II.**

13 **CAUSE EXISTS TO AUTHORIZE THE DEBTOR TO ENTER INTO**

14 **THE PREMIUM FINANCE AGREEMENT WITH AFCO**

15 Section 364(c) of the Bankruptcy Code provides, in pertinent part, as follows:

16 If the trustee is unable to obtain unsecured credit allowable under
17 section 503(b)(1) of this title as an administrative expense, the court,
18 after notice and a hearing, may authorize the obtaining of credit or the
incurring of debt --

19 . . .

20 (2) secured by a lien on property of the estate that is not
otherwise subject to a lien. . . .

21 As is set forth in the Bailey Declaration attached hereto, the Debtor does not have
22 sufficient cash to purchase adequate insurance coverage and maintain appropriate working capital.
23 Therefore, the Debtor needs to finance the purchase of its insurance policies.

24 The Debtor realizes that it makes prudent business sense to maintain insurance coverage
25 against possible loss. Further, without the existence of insurance coverage, the Debtor's estate
26 cannot comply with the insurance requirements set forth by the Office of the United States Trustee
27 and therefore could be faced with a substantial risk of irreparable harm.

28 Therefore, the Debtor respectfully submits that it is appropriate under the circumstances of
this case for the Court to approve the Agreement. The Debtor believes that obtaining insurance

1 coverage and arranging for financing of the premiums are acts that are essential to the operation of
2 the Debtor's business and are, therefore, authorized by the provisions of the Bankruptcy Code
3 11 U.S.C. Sections 1107 and 1108.

4 AFCO requires an order of the Court before it will enter into the Agreement with the
5 Debtor. Therefore, unless this Court approves the Agreement, there is a substantial risk that the
6 Debtor must operate its business without insurance coverage, thereby placing the Debtor and the
7 assets of the estate at risk of liability, or otherwise impairing substantially the Debtor's cash flow.
8 Moreover, if this Court approves the Agreement, creditors of the estate will suffer no prejudice
9 because the terms of the Agreement are commercially reasonable and in the best interests of the
10 estate. In addition, the entry of an order approving the Agreement will allow the Debtor to comply
11 with the requirements of the Office of the United States Trustee with respect to insurance
12 coverage.

13 **IV.**

14 **CONCLUSION**

15 Based on the foregoing, the Debtor prays that the Court enter an order granting the relief
16 requested herein.

17 DATED: December 14, 2010

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

19 By: /s/ Payam Khodadadi
20 Marc J. Winthrop
21 Garrick A. Hollander
22 Payam Khodadadi
23 General Insolvency Counsel for Debtor and Debtor-
24 in-Possession
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DECLARATION OF JOHN D. BAILEY

I, John D. Bailey, hereby declare as follows:

1. I am the Chief Restructuring Officer of 5th Avenue Partners, LLC ("Debtor"), and have personal knowledge of the facts set forth herein, and if called upon to testify to such facts, I could and would testify competently thereto.

2. The Debtor owns and operates Sè San Diego Hotel, a premier luxury boutique hotel located in downtown San Diego's financial district ("Hotel"). The Hotel offers 184 guestrooms, including 37 suites and three penthouse suites, a 5,500-square foot spa, one restaurant, a rooftop bar and lounge, approximately 20,000 square feet of banquet space and meeting rooms, a rooftop outdoor pool, and a fitness center. Within the Hotel structure are 23 unsold condominium units.

3. The Debtor also owns a 31,000 square foot building adjacent to the Hotel, which is home to San Diego's House of Blues. In addition to being the landlord of House of Blues San Diego, LLC ("House of Blues"), the Debtor is a party to a profit participation agreement with House of Blues, whereby they share 50% of all profits generated by House of Blues. The Debtor currently employs approximately 224 persons.

4. In the ordinary course of the Debtor's business, the Debtor must maintain general liability insurance policy. Pursuant to the Debtor's proposed commercial insurance policy, the Debtor's insurance coverage limits for commercial general liability, including products and completed operations liability insurance, will be \$1 million per occurrence.

5. The Debtor has been unable to locate any source of unsecured premium financing. However, the Debtor has been able to locate secured premium financing for the unpaid premiums for the policy through AFCO (Credit or Acceptance) Corp. ("AFCO"). AFCO has required the Debtor to enter into the Premium Finance Agreement (the "Agreement") in substantially the form attached as Exhibit "1" hereto, which includes a Security Agreement that grants to AFCO a secured interest in the gross unearned premiums which would be payable in the event of cancellation of the insurance policies and which further authorizes AFCO to cancel the financed insurance

1 policies and obtain the return of any unearned premiums in the event of a default in the payment of
2 any installment due.

3 6. The policy will bear total premiums of \$132,923.38, the payment of which would
4 substantially impair negatively the Debtor's cash flow, to the detriment of the Debtor's estate.
5 The Debtor will make a down payment of \$48,148.00, with the balance paid in 7 monthly
6 installments equal to approximately \$84,775.38. The annual percentage rate of interest charged is
7 estimated to be 4.230% resulting in total finance charges of \$1,199.53. In the event the Debtor
8 defaults in the repayment of the financed amount and the security provided to AFCO is not
9 sufficient to repay AFCO in full, AFCO has requested that it be provided with an administrative
10 expense claim for any shortfall by the Debtor on the repayment of the financed amount.

11 7. The policy is extremely valuable and it is essential to maintain it in the interest of
12 the preservation of the property, assets and business of the Debtor. The policy cannot presently be
13 obtained for the Debtor unless the premiums are financed.

14 8. I believe that it would be in the best interests of the Debtor's estate and creditors to
15 allow the Debtor to enter into the Agreement since the Debtor must maintain insurance coverage
16 and the Agreement will aid the Debtor's cash flow by financing the insurance premiums.

17 9. The Debtor does not have sufficient cash to purchase adequate insurance coverage
18 and maintain appropriate working capital. Therefore, the Debtor needs to finance the purchase of
19 its insurance policies.

20 10. It makes prudent business sense to maintain insurance coverage against possible
21 loss. Further, without the existence of insurance coverage, the Debtor's estate cannot comply with
22 the insurance requirements set forth by the Office of the United States Trustee and therefore could
23 be faced with a substantial risk of irreparable harm.

24 11. Therefore, it is appropriate under the circumstances of this case for the Court to
25 approve the Agreement. Obtaining insurance coverage and arranging for financing of the
26 premiums are acts that are essential to the operation of the Debtor's business.

27 12. AFCO requires an order of the Court before it will enter into the Agreement with
28 the Debtor. Therefore, unless this Court approves the Agreement, there is a substantial risk that

1 the Debtor must operate its business without insurance coverage, thereby placing the Debtor and
2 the assets of the estate at risk of liability, or otherwise impairing substantially the Debtor's cash
3 flow.

4 13. Moreover, if this Court approves the Agreement, creditors of the estate will suffer
5 no prejudice because the terms of the Agreement are commercially reasonable and in the best
6 interests of the estate. In addition, the entry of an order approving the Agreement will allow the
7 Debtor to comply with the requirements of the Office of the United States Trustee with respect to
8 insurance coverage.

9 I declare that the foregoing is true and correct under the penalty of perjury.

10 Executed this 14~~th~~ day of December 2010, in Dallas, Texas.


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12 _____
13 John D. Bailey
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EXHIBIT “1”

FILE NO. 1829



Premium Finance Agreement - Promise of Repayment

8885 Rio San Diego Drive, Suite 347, San Diego, CA 92108
TEL. NOS. 619-209-5210 800-288-7920

(CHECK APPROPRIATE BOX)

☐ PERSONAL
☒ COMMERCIAL

Page 1 of 2

Agent (Name and Address) Marsh Risk & Insurance Services Attn : Pam Petersen 4695 MacArthur Court Suite 700 Newport Beach, CA 92660 949-399-5800	10054160	Insured (Name and Address as shown on the policy) 5th Avenue Partners LLC Attn : Brandon Vieyra 1047 Fifth Ave. San Diego, CA 92101
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A) Total Premiums	B) Down Payment	C) Amount Financed	D) Finance Charge	E) Total Payments
\$132,923.38	\$48,148.00	\$84,775.38	\$1,199.53	\$85,974.91
F) Annual Percentage Rate	No. of Payments	Amount of Payments	First Installment Due	Installment Due Dates
4.230 %	7 (Monthly)	\$12,282.13	01/01/2011	1st

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
TQ059	12/01/2010	Affiliated FM Insurance Company Fee	PROP FEE	12 NRef	50,000.00 2,500.00
XHO 5002772 01	12/01/2010	Insurance Company of the West	DIC	12	59,825.00
13963184	12/01/2010	Chartis Specialty Insurance Company Tax	POLL TAX	12 NRef	19,950.00 648.38

Security Agreement

(1) **DEFINITIONS:** The above named insured (the "Insured") is the borrower. AFCO Acceptance Corporation ("AFCO") is the lender to whom the debt is owed. "Insurance company" or "company", "insurance policy" or "policy" and "premium" refer to those items listed under the "Schedule of Policies". Singular words shall mean plural and vice-versa as may be required in order to give this Agreement meaning. (2) **PROMISE OF REPAYMENT:** The insured (i) requests AFCO to pay the premiums in the Schedule of Policies, less the Down Payment and any installments paid prior to acceptance of this Agreement and (ii) promises to pay to AFCO the amount stated in Block E above, according to the Payment Schedule shown above, subject to the remaining terms of this Agreement. No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. Payments to AFCO are deemed made only upon receipt in good funds. Checks are accepted, subject to collection.

INSURED AGREES TO ALL TERMS SET FORTH ON ALL PAGES OF THIS AGREEMENT AND ANY ADDENDA THERETO.

SIGNATURE OF INSURED(S) OR AUTHORIZED AGENT OF INSURED(S) PRINT NAME TITLE DATE

MARSH's Representations and Undertakings

(1) The form of signature of the agent or broker notwithstanding, these representations and undertakings shall be deemed to be made by MARSH in its corporate capacity and not by the individual broker actually signing the Premium Finance Loan documentation. (2) The policies are in full force and effect and the information in the Schedule of Policies and the premiums are correct. (3) The insured has received a copy of the Premium Finance Loan documentation. (4) (i) MARSH shall hold in trust for AFCO only those funds which have been actually received by MARSH or credited to MARSH's account; (ii) MARSH shall have no liability or obligation with respect to any return premiums or other payments made by the carrier directly to the insured or other third party(ies); (iii) MARSH shall have no liability or obligation to AFCO for remitting return premiums or other payments to parties other than AFCO if such remittance is made pursuant to court order or other legal process and MARSH will use its best efforts to promptly advise AFCO of the service of any such court order or other legal process; (iv) MARSH shall have no obligation to return unearned commissions in the event of the appointment by the insured of a new broker and the mid-term cancellation and rewrite of the policies listed on the Premium Finance Loan documentation, provided however, that AFCO shall not be precluded from enforcing its rights against any insurer under any applicable law or regulation; and (v) MARSH shall have no obligation to refund commissions in the event of a premium reduction required by law unless such law requires the refund of such commissions. (5) AFCO represents that its decision to accept the Premium Finance Loan and to extend credit to the insured is based upon its own judgment as to the creditworthiness of the insured and the carrier and is not based upon any representation of or information supplied by MARSH other than is expressly stated in the Premium Finance Loan documentation. (6) None of the policies is non-cancelable, retrospectively rated, subject to minimum earned premiums or of a deposit premium type, unless AFCO is notified to the contrary by MARSH as part of the underwriting process. (7) The policies can be canceled by the insured and the unearned premiums will be computed on the standard short-rate or pro-rata table, unless AFCO is notified to the contrary by MARSH as part of the underwriting process. (8) MARSH represents on a best knowledge basis only, no independent check or verification having been made, that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named insured. (9) The disclosures required by Section 778.2 of the California Insurance Code have been provided to the Insured.

IF THERE ARE ANY EXCEPTIONS TO THE ABOVE STATEMENTS, THEY ARE LISTED BELOW:

SIGNATURE OF AGENT OR BROKER TITLE DATE

FOR INFORMATION CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS, STATE OF CALIFORNIA

(3) SECURITY INTEREST AND POWER OF ATTORNEY: The Insured assigns and hereby gives a security interest to AFCO as collateral for the total amount payable in this Agreement in (a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy. If any circumstances exist in which all premiums related to any policy could become fully earned in the event of any loss, AFCO shall be named a loss-payee with respect to such policy. AFCO at its option may enforce payment of this debt without recourse to the security given to AFCO. The Insured irrevocably appoints AFCO as its attorney in fact with full authority to (i) cancel all insurance financed by AFCO for the reason set forth in paragraph 11, pursuant to this agreement, (ii) receive all sums hereby assigned to AFCO and (iii) execute and deliver on the Insured's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance in furtherance of this Agreement.

(4) WARRANTY OF ACCURACY: The Insured (i) warrants that all listed insurance policies are in full force and effect and that it has not and will not assign any interest in the policies except for the interest of mortgagees and loss payees and (ii) authorizes AFCO to insert or correct on this Agreement, if omitted or incorrect, the insurer's name, the policy numbers, and the due date of the first installment and to correct any obvious errors. In the event of any such change, correction or insertion, AFCO will give the Insured written notice thereof.

(5) REPRESENTATION OF SOLVENCY: The Insured represents that it is not insolvent or the subject of any insolvency proceeding.

(6) ADDITIONAL PREMIUMS: The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. If AFCO assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any other agreement(s) identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by AFCO to the totality of such transaction.

(7) SPECIAL INSURANCE POLICIES: If the insurance policy is auditable or is a reporting form policy or is subject to retrospective rating, then the Insured promises to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.

(8) NAMED INSURED: If the insurance policy provides that the first named insured in the policy shall be responsible for payment of premiums and shall act on behalf of all other insureds regarding the policy, then the same shall apply to this Agreement and the Insured represents that it is authorized to sign on behalf of all insureds. If not, then all insureds' names must be shown on this Agreement unless a separate agreement appoints an insured to act for the others.

(9) AGREEMENT BECOMES A CONTRACT: This Agreement becomes a binding contract when AFCO mails the Insured its acceptance and is not a contract until such time. The insured agrees that (i) this Agreement may be transmitted by facsimile, E-mail or other electronic means to AFCO, (ii) any such transmitted Agreement shall be deemed a fully enforceable duplicate original document and (iii) such Agreement, when accepted by AFCO, shall constitute a valid and enforceable contract.

(10) DEFAULT AND DISHONORED CHECK CHARGES: If the Insured is late in making a loan payment to AFCO by 10 or more days, the Insured will pay to AFCO a default charge not to exceed 5% of the delinquent installment, but will be at least \$1. If a check is dishonored, the Insured will pay a dishonored check fee not to exceed \$15.

(11) CANCELLATION: If the Insured does not pay any installment according to the terms of this agreement with AFCO, AFCO may cancel all insurance policies financed by AFCO after giving 10 days notice of its intent to do so and the full balance due to AFCO shall be immediately payable. Payment of unearned premiums shall not be deemed to be payment of installments to AFCO, in full or in part.

(12) AGREED RATE OF CHARGE: The rate of charge for a loan not exceeding \$2,499.99 computed from the earliest effective date of the insurance coverage shall not exceed:

(a) 2% per month on the part of the unpaid principal balance not exceeding \$1,000; 1% per month of any remainder of such unpaid balance in excess of \$1,000; or

(b) 1.6% per month of the unpaid principal balance.

All other rates of charge shall be agreed upon by the parties to the contract. All contracts shall be subject to a minimum charge of \$25.00.

(13) MONEY RECEIVED AFTER NOTICE OF CANCELLATION: Any payments made to AFCO after mailing of AFCO's Notice of Cancellation may be credited to the Insured's account without affecting the acceleration of this Agreement and without any liability or obligation to request reinstatement of a canceled policy. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus paid over to whomever is entitled to the money. No refund of less than \$1.00 shall be made. In the event that AFCO requests, on the Insured's behalf, reinstatement of the policy, such request does not guarantee that coverage will be reinstated.

(14) COLLECTION EXPENSE - ATTORNEY FEES: The Insured agrees to pay AFCO's collection expenses. If AFCO obtains a court judgment against the Insured, the Insured agrees to pay to AFCO court costs and reasonable attorney's fees as allowed by the court in the judgment.

(15) REFUND CREDITS: The Insured will receive (i) a refund credit of part of the finance charge if it voluntarily prepays the outstanding debt in full before the last installment due date according to Section 18629 of the Financial Code and (ii) a refund credit of part of the finance charge if the maturity of the loan is accelerated for any reason according to Section 18642 of the Financial Code. The methods for computing these refund credits are stated below.

(a) Voluntary Prepayment - (i) If prepayment in full is made during the first three months and 15 days after the earliest insurance policy effective date as shown on the front of the contract, AFCO will compute a finance charge by multiplying the agreed rate of charge as stated at the end of this Agreement by the unpaid principal balances for the number of days from the earliest policy effective date to the date of prepayment in full. AFCO will apply each payment made by the Insured, first to finance charge and then to principal. AFCO will then subtract this actual finance charge from the finance charge shown in Box D of the contract to obtain the refund credit. (ii) If prepayment in full is made more than three months and 15 days after the earliest insurance policy effective date, the refund credit shall be computed by the Rule of 78s method.

(b) Acceleration of Maturity - If payment of the unpaid balance of the loan to AFCO is accelerated for any reason, AFCO shall make the same refund or credit as would be required if this loan contract was paid in full on the date of acceleration. Paragraph 15(a) states the method of computing the refund or credit. The unpaid balance remaining after subtracting the refund or credit shall be treated as the unpaid principal balance. The Insured agrees to pay AFCO interest on the unpaid principal balance, computed at the agreed rate of charge stated at the end of this Agreement, until AFCO is actually paid in full, notwithstanding any cancellation of coverage. If AFCO issues a Notice of Cancellation, AFCO may recalculate the total finance charge payable pursuant to this Agreement, and the Insured agrees to pay interest, on the Amount Financed set forth herein, from the first effective date of coverage, at the highest lawful rate of interest.

(16) INSURANCE AGENT OR BROKER: The insurance agent or broker named in this Agreement (the "Agent") is the Insured's agent, not AFCO's and AFCO is not legally bound by anything the agent or broker represents to the Insured orally or in writing. AFCO has not participated in the choice, placement, acquisition or underwriting of any financed insurance. Any disclosures made by the Agent are made in its capacity as the Insured's agent and AFCO makes no representations with respect to the accuracy of any such disclosures.

(17) NOT A CONDITION OF OBTAINING INSURANCE: This Agreement is not required as a condition for obtaining insurance coverage.

(18) SUCCESSORS AND ASSIGNS: All legal rights given to AFCO shall benefit AFCO's successors and assigns. The Insured will not assign this Agreement and/or the policies without AFCO's written consent except for the interest of mortgagees and loss payees.

(19) LIMITATION OF LIABILITY - CLAIMS AGAINST AFCO: AFCO's liability for breach of any of the terms of this agreement or the wrongful exercise of any of its powers shall be limited to the amount of the principal balance outstanding, except in the event of willful misconduct. Any claims against AFCO shall be litigated exclusively in the Supreme Court of the State of New York, County of New York.

(20) DISCLOSURE: The insurance company and any intermediaries and the insurance agent or broker named in this Agreement and their successors are authorized and directed to provide AFCO with full and complete information regarding all financed insurance policy or policies, including, without limitation, the status and calculation of unearned premiums.

(21) ENTIRE DOCUMENT - GOVERNING LAW - ENFORCEMENT VENUE: This document is the entire agreement between AFCO and the Insured and can only be changed in a writing signed by both parties except as stated in paragraph (4). The laws of the state of California will govern this Agreement unless otherwise stated. AFCO may, at its option, prosecute any action to enforce its rights hereunder in the Supreme Court of the State of New York, County of New York, and the Insured (i) waives any objection to such venue and (ii) will honor any order issued by or judgment entered in such Court.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Fl., Newport Beach, CA 92660.

A true and correct copy of the foregoing document described as: DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING DEBTOR TO ENTER INTO INSURANCE PREMIUM FINANCE AGREEMENT AND TO GRANT SECURITY INTEREST IN UNEARNED PREMIUMS; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JOHN D. BAILEY IN SUPPORT THEREOF will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On December 14, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served): On _____, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

December 14, 2010

Susan Connor

Date

Type Name

Signature

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