

OKIN, HOLLANDER & DeLUCA, L.L.P.

One Parker Plaza
Fort Lee, New Jersey 07024
(201) 947-7500
Paul S. Hollander (PH-2681)
Gregory S. Kinoian (GK-7386)

PILLSBURY WINTHROP SHAW PITTMAN LLP

1540 Broadway
New York, New York 10036
(212) 858-1000
Richard L. Epling (*pro hac vice* admission)
Leo T. Crowley (*pro hac vice* admission)
Kerry A. Brennan (*pro hac vice* admission)
Karen B. Dine (*pro hac vice* admission)

Attorneys for Congoleum Corporation, et al.,
Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

CONGOLEUM CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 03-51524 (KCF)
Jointly Administered

**DEBTORS' MOTION FOR ORDER PURSUANT TO SECTION 364 OF THE
BANKRUPTCY CODE APPROVING ELEVENTH AMENDMENT TO
POST-PETITION FINANCING AGREEMENT**

Congoleum Corporation, Congoleum Sales, Inc. and Congoleum Fiscal, Inc.

(collectively, the "Debtors"), by and through their counsel, hereby move this Court for entry of an order, substantially in the form submitted herewith, further amending that certain Final Order (1) Authorizing Debtors' Use of Cash Collateral, (2) Authorizing Debtors to Obtain Post-Petition Financing, (3) Granting Senior Liens and Priority Administrative Expense Status Pursuant to 11 U.S.C. §§105 and 364(c), (4) Modifying the Automatic Stay Pursuant to 11 U.S.C. §362, and (5) Authorizing Debtors to Enter into Agreements with Congress Financial Corporation, which

was approved on February 2, 2004 (ECF Doc. # 435, 438) (the “Final Financing Order”), and the Financing Agreements (as defined in the Final Financing Order), by authorizing the Debtors to enter into “Amendment No. 11 to Ratification and Amendment Agreement and Amendment No. 13 to Loan and Security Agreement,” a true and correct copy of the form of which is annexed hereto as **Exhibit A** (the “Eleventh Ratification Amendment”), with Wachovia Bank, National Association, successor by merger to Congress Financial Corporation (“Lender”). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O).

2. The statutory predicate for the relief requested herein is Section 364(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014.

BACKGROUND

3. On December 31, 2003 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the District of New Jersey (the “Court”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. Prior to the commencement of the Debtors’ Chapter 11 cases, Congress Financial Corporation, now Wachovia Bank, National Association, successor by merger to Congress Financial Corporation (“Wachovia” or “Lender”) made loans, advances, and other credit accommodations to Congoleum Corporation (“Congoleum” or “Borrower”) pursuant to

the terms and conditions of the Loan Agreement and certain other pre-petition agreements, documents, and instruments.

5. A full discussion of the Debtors' pre-petition and post-petition financing relationship with Congress (now Wachovia) is set forth in the Debtors' Motion for Interim and Final Orders Pursuant to Sections 363(c) and 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001 (1) Authorizing the Use of Cash Collateral, (2) Authorizing Debtors to Obtain Interim Post-Petition Financing, (3) Granting Senior Liens and Priority Administrative Expense Status, (4) Modifying the Automatic Stay, (5) Authorizing Debtors to Enter Into Agreements with Congress Financial Corporation, and (6) Prescribing Form and Manner of Notice and Time for Final Hearing Under Bankruptcy Rule 4001(c) filed with this Court on January 2, 2004 (ECF Doc. # 17) (the "DIP Motion"). Said discussion is incorporated herein by reference.

6. The instruments and agreements comprising the Financing Agreements have been filed as a separate pleading in these cases as an Exhibit Supplement to the Debtors' Interim Order (1) Authorizing the Use of Cash Collateral, (2) Authorizing Debtors to Obtain Interim Post-Petition Financing, (3) Granting Senior Liens and Priority Administrative Expense Status, (4) Modifying the Automatic Stay, (5) Authorizing Debtors to Enter Into Agreements with Congress Financial Corporation (ECF Doc. # 20 and 21). Said instruments and agreements are incorporated herein by reference.

7. After the Debtors filed their chapter 11 Cases, the Debtors and Lender desired to ratify, extend, adopt and amend its pre-petition financing arrangements and convert such financing arrangements into post-petition, debtor-in-possession financing, which this Court approved on February 2, 2004 (the "Final Financing Order") (ECF Doc. # 435).¹

¹ On February 2, 2004, the Court approved the Final Financing Order from the bench. Notwithstanding the Court's bench Order, the Final Financing Order was not docketed until March 5, 2004 (ECF

8. Paragraph 12 of the Final Financing Order provides that the Financing Agreements may be further amended and modified, subject to the terms of that paragraph.

Paragraph 12 reads as follows:

Debtors and Lender are hereby authorized to implement after entry of this Final Order, in accordance with the terms of the Financing Agreements, any amendments to and modifications of any of the Financing Agreements without further order of the Court on the following conditions: (a) the amendment or modification does not constitute a material change to the terms of the Financing Agreements (and, for purposes hereof, a “material change” shall mean a change that operates to increase the rate of interest other than as currently provided in the Financing Agreements, add specific events of default or enlarge the nature and extent of default remedies available to Lender following an event of default) and (b) copies of the amendment or modification must be served upon counsel for the Committee, if any, and the U.S. Trustee. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court.

See Final Financing Order at ¶ 12 (ECF Doc. #435).

9. Since entry of the Final Financing Order, the Financing Agreements have been further amended and modified, with both material and non-material changes, from time to time in accordance with Paragraph 12. The following describes each of those amendments and modifications:

- a. On December 14, 2004, the Court entered an order in the above-captioned case, approving the terms of, and authorizing the Debtors to enter into, Amendment No. 1 to Ratification and Amendment Agreement and Amendment No. 3 to Loan and Security Agreement (the “First Ratification Amendment”) with Lender.
- b. On January 13, 2005, the Debtors and Lender executed the Amendment No. 2 to Ratification and Amendment and Amendment No. 4 to Loan and Security Agreement (the “Second Ratification Amendment”) and, thereafter, on January 20, 2005, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation to notify all parties of the execution of the Second Ratification Amendment.

Doc. #435). By order dated March 8, 2004, the court approved the Final Financing Order nunc pro tunc to February 2, 2004 (ECF Doc. # 438).

- c. On June 7, 2005, the Court entered an order in the above-captioned case, approving the terms of, and authorizing the Debtors to enter into, Amendment No. 3 to Ratification and Amendment Agreement and Amendment No. 5 to Loan and Security Agreement (the “Eleventh Ratification Amendment”) with Lender.
- d. On December 20, 2005, the Court entered an order in the above-captioned case, approving the terms of, and authorizing the Debtors to enter into, Amendment No. 4 to Ratification and Amendment Agreement and Amendment No. 6 to Loan and Security Agreement (the “Fourth Ratification Amendment”) with Lender.
- e. On September 27, 2006, the Debtors and Lender executed the Amendment No. 5 to Ratification and Amendment and Amendment No. 7 to Loan and Security Agreement (the “Fifth Ratification Amendment”), and thereafter, on October 10, 2006, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation to notify all parties of the execution of the Fifth Ratification Amendment.
- f. On November 16, 2006, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation regarding Amendment No. 6 to Ratification and Amendment and Amendment No. 8 to Loan and Security Agreement (the “Sixth Ratification Amendment”) to notify all parties of the Debtors agreement in principle with the Lender regarding the Sixth Ratification Amendment, which was signed as of November 27, 2006.
- g. On June 1, 2007, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation regarding Amendment No. 7 to Ratification and Amendment and Amendment No. 9 to Loan and Security Agreement (the “Seventh Ratification Amendment”) to notify all parties of the Debtors agreement in principle with the Lender regarding the Seventh Ratification Amendment, which was signed as of June 12, 2007.
- h. On November 27, 2007, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation regarding Amendment No. 8 to Ratification and Amendment and Amendment No. 10 to Loan and Security Agreement (the “Eighth Ratification Amendment”) to notify all parties of the Debtors agreement in principle with the Lender regarding the Eighth Ratification Amendment, which was signed as of December 11, 2007.

- i. On May 9, 2008, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation regarding Amendment No. 9 to Ratification and Amendment and Amendment No. 11 to Loan and Security Agreement (the “Ninth Ratification Amendment”) to notify all parties of the Debtors agreement in principle with the Lender regarding the Ninth Ratification Amendment, which was signed as of June 3, 2008.
- j. On September 5, 2008, the Debtors filed a Notice of Non-Material Modification to Ratification and Amendment Agreement Between Debtors-In-Possession and Congress Financial Corporation regarding Amendment No. 10 to Ratification and Amendment and Amendment No. 12 to Loan and Security Agreement (the “Tenth Ratification Amendment”) to notify all parties of the Debtors agreement in principle with the Lender regarding the Tenth Ratification Amendment, which was signed as of October 7, 2008.

10. By this Motion, the Debtors and Wachovia again seek to modify the terms of the Financing Agreements through the execution of the Eleventh Ratification Amendment, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

11. On February 26, 2009, the Court entered an Order of Dismissal Effective Twenty Days from the Date of this Order (ECF Doc. #7219) (the “Dismissal Order”). On February 27, 2009, this Court entered an Order Granting Motion of First State Insurance Company and Twin City Fire Insurance Company for Summary Judgment Denying Confirmation of the Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of the Debtors, the Official Asbestos Claimants’ Committee and the Official Committee of Bondholders for Congoleum Corporation, et al., dated as of November 14, 2008 (ECF Doc. #7228) (the “Summary Judgment Order”). On February 27, 2009, the Debtors filed Notices of Appeal of the Dismissal Order and the Summary Judgment Order (ECF Doc. #7225 and 7232). On March 3, 2009, the Court entered an Order Granting Stay Pending Appeal with respect to the Dismissal Order (ECF Doc. #7244) (the “Stay Order”). Both appeals are pending as of the date of this Motion.

RELIEF REQUESTED

12. By this Motion, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto: (a) approving the amendments to the Financing Agreements as enumerated in the Eleventh Ratification Amendment; (b) authorizing the Debtors to execute the Eleventh Ratification Amendment; and (c) granting such other and further relief as the Court deems just and proper.

13. On March 6, 2009, the Debtors and Lender agreed in principle to the annexed form of Eleventh Ratification Amendment to amend the Loan Agreement (as defined in the Eleventh Ratification Amendment). In relevant part, the Eleventh Ratification Amendment provides the following: (a) Lender will waive all the Specified Events of Default (as defined in the Eleventh Ratification Amendment), subject to all terms, conditions, and conditions precedent contained in the Eleventh Ratification Amendment, (b) the Interest Rate, as to Prime Rate Loans, will increase to a rate equal to one and three-quarters (1.75%) percent per annum in excess of the Prime Rate, provided, that, the Interest Rate shall mean the rate of three and three-quarters (3.75%) percent per annum in excess of the Prime Rate as to Prime Rate Loans, at Lender's option, if certain events occur, including, without limitation, the occurrence of an Event of Default (as defined in the Eleventh Ratification Amendment), and (c) the Minimum EBITDA covenant as set forth in the Eleventh Ratification Amendment shall be modified.

14. In consideration of the Eleventh Ratification Amendment, the Debtors will pay the Lender a covenant modification fee in the amount of \$30,000 which modification fee shall be fully earned and payable upon the entry of an order by this Court approving and authorizing the Eleventh Ratification Amendment.

DISCUSSION

15. The modifications in the Eleventh Ratification Amendment to the Interest Rate and the Minimum EBITDA under the Financing Agreements constitute material changes to the Financing Agreements, as contemplated by paragraph 12 of the Final Financing Order. Accordingly, in accordance with paragraph 12 of the Final Financing Order, the Debtors and the Lender hereby seek approval of the Eleventh Ratification Amendment.

16. In originally approving the Financing Agreements under the Final Financing Order, this Court found that the Debtors made the requisite showing under Bankruptcy Code § 364 and determined, among other things, that:

- the Debtors were unable to obtain unsecured credit allowable under Bankruptcy Code 503(b)(1);
- no other source of financing existed on terms more favorable than those offered by Lender;
- the Lender extended financing to the Debtors in good faith and was entitled to, on a final basis, the benefits of Bankruptcy Code § 364(e) to the extent of the funds advanced; and
- the Financing Agreements were negotiated at arm's length and in good faith, as that term is defined in Bankruptcy Code § 364(e), and were in the best interests of the Debtors' estates

17. The Debtors desire to maintain the existing Financing Agreements as approved by this Court, subject only to the modifications contained in the First through Eleventh Ratification Amendments. Without the Eleventh Ratification Amendment, the Debtors are in default under Financing Agreements. Accordingly, without the Eleventh Ratification Amendment, the Debtors will not have sufficient available sources of working capital. Having the Financing Agreements in place are critical for the Debtors' ability to continue to operate while the Debtors' appeals of the Dismissal Order, which has been stayed pursuant to the Stay Order, and the Summary Judgment Order are pending.

18. In their business judgment, the Debtors believe that Lender, who is the current lender under the Financing Agreements and who is already intimately familiar with the Debtors' business operations, corporate structure, financing arrangements and collateral base, is the lender best able to extend the term of the Financing Agreements on the terms and conditions, and within the time frame, that the Debtors require.

19. Without the liquidity provided by the borrowing and obtaining of loans and letter of credit accommodations under the Financing Agreements, the Debtors will be unable to pay suppliers, employees and other constituencies that are essential to the continued operation of their business and the retention of the value of their. In addition, as with most other large businesses, the Debtors have significant cash needs. Accordingly, continued access to substantial credit will be necessary to meet the substantial day-to-day costs associated with the continued operations of the Debtors' businesses.

20. The Debtors exercised their best business judgment in negotiating the terms of the Eleventh Ratification Amendment. *See In re Curlew Valley Assoc.*, 14 B.R. 506, 513-14 (Courts generally will not contravene a debtor-in-possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the Code.") (footnotes omitted).

21. Accordingly, pursuant to Sections 364 of the Bankruptcy Code and paragraph 12 of the Final Financing Order, the Debtors request that this Court (a) approve the amendments to the Financing Agreements as contained in the Eleventh Ratification Amendment; (b) authorize the Debtors to execute the Eleventh Ratification Amendment; and (c) grant such other and further relief as the Court deems just and proper.

NO PRIOR REQUEST

22. Except as set forth herein, no prior motion for the relief requested herein has been made to this or any other court.

NOTICE

23. Notice of this Motion has been provided to the Master E-Mail Service List,² which includes notice to, among others, the following parties: (i) the Office of the United States Trustee; (ii) the Asbestos Claimants' Committee; (iii) the Bondholders' Committee; and (iv) the Futures Representative. The Debtors submit that such notice complies with the requirements of paragraph 12 of the Final Financing Order. In light of the nature of the relief requested in this Motion, the Debtors submit that no other or further notice is required.

² See Order (1) Amending the Order Establishing Case Management and Administrative Procedures Entered on February 25, 2004 and the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Entered on February 10, 2004 and (2) Allowing Notice by E-Mail and Establishing Procedures Therefor entered on September 6, 2005 (Docket No. 2945).

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter an Order, substantially in the form submitted herewith, granting the relief sought herein and grant such other and further relief as the Court deems just and proper.

Dated: March 6, 2009

Respectfully submitted,

OKIN, HOLLANDER & DeLUCA, L.L.P.

By: /s/ Gregory S. Kinois

One Parker Plaza

Fort Lee, New Jersey 07024

(201) 947-7500

Paul S. Hollander (PH-2681)

Gregory S. Kinois (GK-7386)

and

**PILLSBURY WINTHROP SHAW PITTMAN
LLP**

1540 Broadway

New York, New York 10036

(212) 858-1000

Richard L. Epling (*pro hac vice* admission)

Kerry A. Brennan (*pro hac vice* admission)

Attorneys for Congoleum Corporation, *et al.*,
Debtors and Debtors-in-Possession

EXHIBIT A

ELEVENTH RATIFICATION AMENDMENT

AMENDMENT NO. 11 TO RATIFICATION AND AMENDMENT AGREEMENT AND
AMENDMENT NO. 13 TO LOAN AND SECURITY AGREEMENT

AMENDMENT NO. 11 TO RATIFICATION AND AMENDMENT AGREEMENT AND AMENDMENT NO. 13 TO LOAN AND SECURITY AGREEMENT, dated as of March __, 2009 (this "Eleventh Ratification Amendment"), by and among CONGOLEUM CORPORATION, a Delaware corporation, as debtor and debtor-in-possession ("Borrower"), CONGOLEUM FISCAL, INC., a New York corporation, as debtor and debtor-in-possession ("CFI"), CONGOLEUM SALES, INC., a New York corporation, as debtor and debtor-in-possession ("CSI" and together with CFI, collectively, "Guarantors" and each individually, a "Guarantor"), and WACHOVIA BANK, NATIONAL ASSOCIATION, successor by merger to Congress Financial Corporation ("Lender").

W I T N E S S E T H:

WHEREAS, Lender, Borrower and Guarantors have entered into financing arrangements pursuant to which Lender may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated December 10, 2001, between Lender and Borrower, as amended by Amendment No. 1 to Loan and Security Agreement, dated September 19, 2002, between Lender and Borrower, Amendment No. 2 to Loan and Security Agreement, dated as of February 27, 2003, among Lender, Borrower and Guarantors, and as further amended and ratified by the Ratification and Amendment Agreement, dated as of January 7, 2004 (the "Ratification Agreement"), between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 1 to Ratification Agreement and Amendment No. 3 to Loan and Security Agreement, dated as of December 14, 2004, between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 2 to Ratification Agreement and Amendment No. 4 to Loan and Security Agreement, dated as of January 13, 2005, between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 3 to Ratification Agreement and Amendment No. 5 to Loan and Security Agreement, dated as of June 7, 2005, between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 4 to Ratification Agreement and Amendment No. 6 to Loan and Security Agreement, dated as of December 19, 2005, as acknowledged by Guarantors, Amendment No. 5 to Ratification Agreement and Amendment No. 7 to Loan and Security Agreement, dated as of September 27, 2006 between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 6 to Ratification Agreement and Amendment No. 8 to Loan and Security Agreement, dated as of November 27, 2006 between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 7 to Ratification Agreement and Amendment No. 9 to Loan and Security Agreement dated as of June 12, 2007 between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 8 to Ratification and Amendment Agreement and Amendment No. 10 to Loan and Security Agreement dated as of December 11, 2007, between Lender and Borrower, as acknowledged by Guarantors, Amendment No. 9 to Ratification and Amendment Agreement and Amendment No. 11 to Loan and Security Agreement dated as of June 4, 2008, between Lender and Borrower, as acknowledged by Guarantors, and Amendment No. 10 to Ratification and Amendment Agreement and Amendment No. 12 to Loan and Security Agreement dated as of October 6, 2008, between Lender and Borrower, as acknowledged by Guarantors, permitting debtor and debtor-in-possession financing for Borrower and Guarantors,

as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced (all of the foregoing, as amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, collectively, the "Loan Agreement", and together with all agreements, documents and instruments at any time executed and/or delivered in connection therewith or related thereto, including the Reaffirmation and Amendment of Guarantor Documents, dated as of January 7, 2004, between Lender and Guarantors, as from time to time amended, modified, supplemented, extended, renewed, restated or replaced, collectively, the "Financing Agreements");

WHEREAS, Borrower and each Guarantor have each commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey and have each retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses as a debtor-in-possession;

WHEREAS, Borrower and Guarantors have notified Lender that as of December 31, 2008, Borrower and Guarantors will be unable to comply with the Minimum EBITDA covenant as set forth in Section 9.23(c) of the Loan Agreement;

WHEREAS, Borrower and Guarantors hereby acknowledge and agree that the foregoing constitutes an Event of Default under the Loan Agreement and/or the other Financing Agreements (the "Specified Event of Default");

WHEREAS, Borrower and Guarantors have requested that Lender (i) waive the Specified Event of Default, and (ii) make certain amendments to the Loan Agreement, and Lender is willing to agree to such request, subject to the terms and conditions contained herein;

WHEREAS, by this Eleventh Ratification Amendment, Lender, Borrower and Guarantors desire and intend to evidence such amendments;

WHEREAS, this Eleventh Ratification Amendment has been filed with the Bankruptcy Court and notice thereof has been served upon all parties that have requested notice in the Borrower's and Guarantors' bankruptcy cases pursuant to the Final Order (1) Authorizing Debtors' Use of Cash Collateral, (2) Authorizing Debtors to Obtain Post-Petition Financing, (3) Granting Senior Liens and Priority Administrative Expense Status Pursuant to 11 U.S.C. §§105 and 364(c), (4) Modifying the Automatic Stay Pursuant to 11 U.S.C. §362, and (5) Authorizing Debtors to Enter Into Agreements with Congress Financial Corporation (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Final DIP Financing Order"), which was approved by the Bankruptcy Court on February 2, 2004;

WHEREAS, no objection has been filed by any interested party to the terms and conditions of this Eleventh Ratification Amendment and Borrower and Guarantors are authorized to execute and deliver this Eleventh Ratification Amendment in accordance with the terms of the Final DIP Financing Order; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Lender, Borrower and Guarantors hereby covenant, warrant and agree as follows:

1. DEFINITIONS.

1.1 Additional Definition. “Eleventh Ratification Amendment” shall mean this Eleventh Ratification Amendment, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.2 Amendments to Definitions in Financing Agreements.

(a) All references to the term “Financing Agreements” in this Eleventh Ratification Amendment and in any of the Financing Agreements shall be deemed and each such reference is hereby amended to include, in addition and not in limitation, this Eleventh Ratification Amendment, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) All references to the term “Ratification Agreement” in this Eleventh Ratification Amendment and in any of the Financing Agreements shall be deemed and each such reference is hereby amended to mean the Ratification Agreement, as amended hereby, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.3 Interpretation. For purposes of this Eleventh Ratification Amendment, unless otherwise defined herein, all capitalized terms used herein, including, but not limited to, those terms used and/or defined in the recitals above, shall have the respective meanings assigned to such terms in the Loan Agreement.

2. WAIVER OF THE SPECIFIED EVENT OF DEFAULT

2.1 Subject to all terms, conditions, and conditions precedent contained in this Eleventh Ratification Amendment, Lender waives the Specified Event of Default.

3. AMENDMENTS TO LOAN AGREEMENT

3.1 Interest Rate. Section 1.41 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“1.41 ‘Interest Rate’ shall mean, as to Prime Rate Loans, a rate equal to one and three-quarters (1.75%) percent per annum in excess of the Prime Rate; provided, that, notwithstanding anything to the contrary contained herein, the Interest Rate shall mean the rate of three and three-quarters (3.75%) percent per annum in excess of the Prime Rate as to Prime Rate Loans, at Lender’s option, without notice, (a) either (i) for the period on and after the date of termination or non-renewal hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (ii) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Lender in good faith and (b) on the Revolving Loans at any time outstanding in excess of the amounts

available to Borrower under Section 2 hereof (whether or not such excess(es) arise or are made with or without Lender's knowledge or consent and whether made before or after an Event of Default)."

3.2 Minimum EBITDA. Section 9.23(c) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"(c) Borrower and its Subsidiaries shall not, for any period set forth below during fiscal year 2009 of Borrower and its Subsidiaries commencing on or after January 1, 2009 (each, a "Test Period"), permit EBITDA of Borrower and its Subsidiaries to be less than the respective amount set forth below opposite such Test Period; provided, that, Borrower and its Subsidiaries shall not be required to comply with this Minimum EBITDA covenant in the event Excess Availability (including any Excess Availability considered in satisfaction of Section 9.18) on each Business Day during the Test Period is greater than \$5,000,000. In the event (A) Excess Availability (including any Excess Availability considered in satisfaction of Section 9.18) is less than \$5,000,000 (x) on any Business Day up to a maximum of three (3) Business Days during the period from the effective date of this Eleventh Ratification Amendment through March 31, 2009 or (y) on any Business Day up to a maximum of four (4) Business Days for the ninety (90) day period ending on June 30, 2009, and (B) Borrower and its Subsidiaries are in possession of at least \$3,000,000 of unrestricted cash during any day that Excess Availability (including any Excess Availability considered in satisfaction of Section 9.18) is less than \$5,000,000, then Borrower and its Subsidiaries shall not be required to comply with the terms of this Minimum EBITDA covenant for such Test Period:

<u>Test Period</u>	<u>Minimum EBITDA</u>
For the month ending January 31, 2009	\$400,000
For the two (2) months ending February 28, 2009	\$900,000
For the three (3) months ending March 31, 2009	\$1,600,000
For the four (4) months ending April 30, 2009	\$2,400,000
For the five (5) months ending May 31, 2009	\$3,350,000
For the six (6) months ending June 30, 2009	\$4,300,000"

4. COVENANT MODIFICATION AND AMENDMENT FEE. In addition to and not in limitation of all other fees, costs and expenses payable to Lender under the Financing Agreements, in consideration of this Eleventh Ratification Amendment, Borrower shall pay Lender a covenant modification and amendment fee (the "Amendment Fee") in the amount of \$30,000, which Amendment Fee shall be fully earned and payable upon the entry of an order

approving and authorizing this Eleventh Amendment. The Amendment Fee may be charged directly to the loan account of Borrower.

5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS. In addition to the continuing representations, warranties and covenants heretofore made in the Loan Agreement or otherwise and hereafter made by Borrower and Guarantors to Lender, whether pursuant to the Financing Agreements or otherwise, and not in limitation thereof, Borrower and Guarantors hereby represent, warrant and covenant with, to and in favor of Lender the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which, or compliance with, to the extent such compliance does not violate the terms and provisions of the Bankruptcy Code, being a continuing condition of the making of loans by Lender:

5.1 This Eleventh Ratification Amendment has been duly authorized, executed and delivered by Borrower and Guarantors and the agreements and obligations of Borrower and Guarantors contained herein constitute legal, valid and binding obligations of Borrower and Guarantors enforceable against Borrower and Guarantors in accordance with their respective terms.

5.2 Other than the Specified Event of Default, no Default or Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default exists or has occurred as of the date of this Eleventh Ratification Amendment.

6. CONDITIONS PRECEDENT. In addition to any other conditions contained herein or in the Loan Agreement, as in effect immediately prior to the date hereof, with respect to the Loans, Letter of Credit Accommodations and other financial accommodations available to Borrower (all of which conditions, except as modified or made pursuant to this Eleventh Ratification Amendment shall remain applicable to the Loans and be applicable to Letter of Credit Accommodations and other financial accommodations available to Borrower), the following are conditions to Lender's obligation to extend further loans, advances or other financial accommodations to Borrower pursuant to the Loan Agreement:

6.1 Borrower and Guarantors shall execute and/or deliver to Lender this Eleventh Ratification Amendment, and all other Financing Agreements that Lender may request to be delivered in connection herewith, in form and substance satisfactory to Lender;

6.2 No trustee, examiner or receiver or the like shall have been appointed or designated with respect to Borrower or any Guarantor, as debtor and debtor-in-possession, or its business, properties and assets;

6.3 Borrower and Guarantors shall execute and/or deliver to Lender all other Financing Agreements, and other agreements, documents and instruments, in form and substance satisfactory to Lender, which, in the good faith judgment of Lender are necessary or appropriate and implement the terms of this Eleventh Ratification Amendment and the other Financing Agreements, as modified pursuant to this Eleventh Ratification Amendment, all of which contains provisions, representations, warranties, covenants and Events of Default, as are reasonably satisfactory to Lender and its counsel;

6.4 Each of Borrower and Guarantors shall comply in full with the notice and other requirements of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, and the terms and conditions of the Final DIP Financing Order in a manner acceptable to Lender and its counsel;

6.5 No objection has been filed by any interested party to the terms and conditions of this Eleventh Ratification Amendment and Borrower and Guarantors are authorized, in accordance with the terms of the Final DIP Financing Order, to execute, deliver, comply with and fully be bound by this Eleventh Ratification Amendment; and

6.6 Other than the Specified Event of Default, no Default or Event of Default shall be continuing under any of the Financing Agreements, as of the date hereof.

7. MISCELLANEOUS.

7.1 Amendments and Waivers. Neither this Eleventh Ratification Amendment nor any other instrument or document referred to herein or therein may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

7.2 Further Assurances. Each of Borrower and Guarantors shall, at its expense, at any time or times duly execute and deliver, or shall cause to be duly executed and delivered, such further agreements, instruments and documents, and do or cause to be done such further acts as may be necessary or proper in Lender's opinion to evidence, perfect, maintain and enforce the security interests of Lender, and the priority thereof, in the Collateral and to otherwise effectuate the provisions or purposes of this Eleventh Ratification Amendment, any of the other Financing Agreements or the Financing Order.

7.3 Headings. The headings used herein are for convenience only and do not constitute matters to be considered in interpreting this Eleventh Ratification Amendment.

7.4 Counterparts. This Eleventh Ratification Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same agreement.

7.5 Additional Events of Default. The parties hereto acknowledge, confirm and agree that the failure of Borrower or any Guarantor to comply with any of the covenants, conditions and agreements contained herein or in any other agreement, document or instrument at any time executed by Borrower or any Guarantor in connection herewith shall constitute an Event of Default under the Financing Agreements.

7.6 Effectiveness. This Eleventh Ratification Amendment shall become effective upon the execution hereof by Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Eleventh Ratification Amendment to be duly executed as of the day and year first above written.

WACHOVIA BANK, NATIONAL ASSOCIATION,
successor by merger to Congress Financial Corporation

By: _____

Title: _____

CONGOLEUM CORPORATION,
as Debtor and Debtor-in-Possession

By: _____

Title: _____

CONGOLEUM SALES, INC.,
as Debtor and Debtor-in-Possession

By: _____

Title: _____

CONGOLEUM FISCAL, INC.,
as Debtor and Debtor-in-Possession

By: _____

Title: _____