

POST-PETITION LOAN AND SECURITY AGREEMENT

Dated: \_\_\_\_\_, 2009

Between

BALLAMOR GOLF HOLDINGS, INC.

(Borrower)

and

CHESTER J. OTTINGER, JR.

(Lender)

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## LOAN AGREEMENT

THIS AGREEMENT made and entered into \_\_\_\_\_, 2009, between BALLAMOR GOLF HOLDINGS, INC, (“Ballamor”) and CHESTER J. OTTINGER, JR. (“Lender”).

### SECTION 1. DEFINITIONS.

1.1 General Provisions. Unless expressly provided otherwise in this Agreement or in the Loan Documents, or unless the context requires otherwise:

(a) all accounting terms used in this Agreement and in the Loan Documents shall have the meanings given to them in accordance with GAAP;

(b) all terms used herein and in the Loan Documents that are defined in the New Jersey Uniform Commercial Code, as amended from time to time, shall have the meanings set forth therein;

(c) all capitalized terms defined in this Agreement shall have the defined meanings when used in the Loan Documents and in any other documents made or delivered pursuant to this Agreement;

(d) the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders;

(e) all references to any particular party defined herein shall be deemed to refer to each and every person defined herein as such party individually, and to all of them, collectively, jointly and severally, as though each were named wherever the applicable defined term is used;

(f) all references to “Sections,” “Subsections,” “Paragraphs” and “Subparagraphs” shall refer to provisions of this Agreement;

(g) all references to time herein shall mean Eastern Standard Time or Eastern Daylight Time, as then in effect; and

(h) all references to sections, subsections, paragraphs or other provisions of statutes or regulations shall be deemed to include successor, amended, renumbered and replacement provisions.

1.2 Defined Terms. As used herein, the following terms shall have the meanings indicated, unless the context otherwise requires:

“Agreement” shall mean this Agreement and any future amendments, restatements, modifications or supplements hereof or hereto.

“Avoidance Actions” shall mean all causes of action of the Debtor arising under Chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, Title 11 of the United States Code, as amended, or any successor law thereto, and any rules promulgated in connection therewith.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Jersey or any other court having competent jurisdiction over the Reorganization Case.

“Base Rate” shall mean six percent (6%) per annum.

“Borrower” shall mean Ballamor Golf Holdings, Inc..

“Business Day” shall mean a day other than a Saturday, Sunday or legal holiday under the laws of the State of New Jersey.

“Closing Date” shall mean the date the Interim DIP Order is entered.

“Collateral” shall mean, collectively, all properties in which a lien, security interest, or other right is granted to and in favor of the Lender pursuant to this Agreement or pursuant to any other Loan Document.

“Default Rate” shall mean eight percent (8%) per annum.

“Event of Default” shall mean any event specified in Section **4.I**, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“Existing Encumbrance” shall mean a Lien on Collateral existing as of the Petition Date, including Liens in favor of Textron Financial Corporation and Golf Cart Services,

Inc., in each case only to the extent such Lien has attached and is perfected as of the Petition Date.

“Final DIP Order” shall mean an order of the Bankruptcy Court entered in the Reorganization Case granting final approval of this Agreement and the other Loan Documents and granting the Liens and super-priority claims set forth in Section **2.10**, substantially in the form of Exhibit A or otherwise in form and substance satisfactory to the Borrower and Lender.

“Interim DIP Order” shall mean that certain order of the Bankruptcy Court authorizing the Borrower to enter into this Agreement subject to certain limitations applicable until entry of the Final DIP Order, substantially in the form of Exhibit B or otherwise in form and substance satisfactory to the Borrower and Lender.

“Interim Facility” shall mean this Agreement, as authorized and limited by the Interim DIP Order.

“Lender” shall mean Chester J. Ottinger.

“Lien” shall mean, collectively, any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind, including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof.

“Line of Credit” shall mean the line of credit facility described in Section **2.1**.

“Line of Credit Commitment” shall mean, as at any applicable time, the Borrower’s maximum credit availability under the Line of Credit, as established in Section 2.1(a) whether or not then fully extended.

“Line of Credit Note” shall mean the promissory note described in Section **2.2** and any future amendments, restatements, modifications or supplements thereof or thereto.

“Line of Credit Termination Date” shall mean the earliest of (i) March 1, 2010, (ii) the occurrence of an Event of Default.

“Loan” shall mean the credit facility made available to the Borrower pursuant to this Agreement.

“Loan Documents” shall mean this Agreement, the Line of Credit Note and all other documents executed and delivered to the Lender by or on behalf of the Borrower in connection therewith and any modifications, amendments, restatements, substitutions and replacements of or for any of the foregoing.

“Obligations” shall mean, collectively, all liabilities, duties and obligations of the Borrower to the Lender with respect to any covenants, representations or warranties herein or in the Loan Documents, with respect to the principal of and interest on the Loan, and all other present and future fixed and/or contingent obligations of the Borrower to the Lender hereunder and under the Loan Documents.

“Petition Date” shall mean the date of filing of the Petition for Relief commencing the Reorganization Case.

“Person” shall mean an individual, a corporation, a partnership, a joint venture, a trust or unincorporated organization, a joint stock company or other similar organization, a government or any political subdivision thereof, or any other legal entity.

“Proceeds” shall mean, collectively, whatever is received when any of the Collateral is sold, exchanged, leased, collected, or otherwise disposed of, including cash, insurance proceeds, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, other documents, and other noncash proceeds.

“Reorganization Case” means the bankruptcy case commenced by the Borrower in the Bankruptcy Court.

“Security Documents” shall mean, individually and collectively, any instruments now or hereafter executed and delivered to the Lender to secure, or to assure, payment or performance, of the Obligations, and any future amendments, restatements, modifications or supplements thereof or thereto.

“UCC” means the New Jersey Uniform Commercial Code, as amended from time to time.

## SECTION 2. AMOUNT AND TERMS OF LOAN.

### 2.1 Line of Credit.

(a) Subject to, and in accordance with, the terms and conditions of this Agreement, the Lender agrees to extend credit to the Borrower by making loans to it, from time to time during the period commencing on the Closing Date and ending on the Line of Credit Termination Date, in an aggregate outstanding amount that shall not exceed, at any one time, the lesser of:

(i) Five Hundred Thousand Dollars (\$500,000) in principal; or

(ii) the amount authorized by the Interim DIP Order or Final DIP Order, as applicable.

(b) The Line of Credit Termination Date may be extended or renewed by the Lender, in its sole discretion, on a day-to-day basis or otherwise, based on a letter to such effect from the Lender to the Borrower or by a written agreement between the parties hereto; provided, however, the Lender shall have no duty or obligation, express or implied, to extend the Line of Credit Termination Date or consider any request for such an extension and further provided that an extension of the Line of Credit Termination Date after the occurrence of a Default or Event of Default shall not constitute a waiver of such Default or Event of Default.

2.2 Line of Credit Note. On the Closing Date, the Borrower shall execute and deliver to the Lender its promissory note, which shall evidence the Borrower’s obligation to

repay the principal of, interest on, and other amounts due in connection with the Line of Credit and the Obligations, and which shall:

(a) be dated the Closing Date and be payable to the Lender's order in the principal amount of Five Hundred Thousand Dollars (\$500,000).

(b) require the payment of interest on the unpaid principal amount of any funds advanced and outstanding under the Line of Credit from the dates of such advances and, prior to the occurrence of an Event of Default, at an annual rate equal to the Base Rate and, on and after (i) Line of Credit Termination Date, or (ii) the date of occurrence of an Event of Default, at an annual rate equal to the Default Rate, in each case whether prior to or after judgment against the Borrower;

(c) not require any payment of principal or interest prior to the Line of Credit Termination Date and be payable in full as to the entire unpaid principal balance, all accrued interest and other sums due thereunder on the Line of Credit Termination Date; and

(d) be secured by the Security Documents and the Collateral.

2.3 Computation of Interest. Interest shall be calculated on the basis of a 360-day year for actual days elapsed. Any change in the interest rate on the Note resulting from a change from the Base Rate to the Default Rate shall become effective as of the opening of business on the day on which such change shall occur.

2.4 Maximum Legal Rate. Borrower shall not be obligated to pay and Lender shall not collect interest on any Obligation at a rate in excess of the maximum permitted by law or the maximum that will not subject Lender to any civil or criminal penalties. If, because of the acceleration of maturity, the payment of interest in advance or any other reason, any Borrower is required, under the provisions of any Loan Document or otherwise, to pay interest at a rate in excess of such maximum rate, the rate of interest under such provisions shall immediately and automatically be reduced to such maximum rate, and any payment made in excess of such maximum rate, together with interest thereon at the rate provided herein from the date of such

payment, shall be immediately and automatically applied to the reduction of the unpaid principal balance of the Obligations as of the date on which such excess payment was made. If the amount to be so applied to reduction of the unpaid principal balance exceeds the unpaid principal balance, the amount of such excess shall be refunded by Lender to Borrower.

2.5 Payments. All payments by the Borrower hereunder shall be made at the Lender's address set forth in Section 5.2, or such other place or places as the Lender may direct, prior to 5:00 P.M. on the date of payment, in lawful money of the United States of America, and in immediately available funds.

2.6 Application of Payments. All payments shall be applied first to the payment in full of any expenses incurred by the Lender and permitted to be charged to the Borrower, including (without limitation) reasonable attorneys' fees, then to the payment in full of any late charges, then to the payment in full of accrued, unpaid interest and finally to the reduction of the unpaid principal balance.

2.7 Mandatory Payments. If the unpaid principal balance of the Line of Credit Note thereon exceeds the Line of Credit Commitment at any time, the Borrower shall immediately pay to the Lender for application to the Line of Credit Note an amount equal to such excess. All Obligations shall be due and payable in full on the Line of Credit Termination Date.

2.8 Additional Security. In addition to the security provided herein and in the Security Documents, Borrower also grants Lender, as further security for payment of the Obligations, a lien upon and security interest in any and all debts or other obligations Lender may owe to Borrower from time to time.

2.9 Administrative Status of Obligations. In addition to being secured by the Collateral, the Obligations shall be allowed administrative expenses in the Reorganization Case, pursuant to Section 503(b)(1) of the Bankruptcy Code, with priority over all other administrative expenses, pursuant to Section 364(c)(1) of the Bankruptcy Code.

2.10 Grant of Security Interest. To secure the payment to the Lender and the prompt performance of the Obligations, the Borrower hereby grants to Lender (i) a first priority security interest in all of the Borrower' personal property not subject to an Existing Encumbrance, including all such presently owned or hereafter acquired Accounts, Chattel Paper, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, and insurance policies and all Products and Proceeds (including cash collateral, as defined in Section 363 of the Bankruptcy Code) but excluding all interests of the Borrower in Avoidance Actions, and (ii) a security interest in all personal property assets of the Borrower subject to Existing Encumbrances, but excluding all interests of the Borrower in Avoidance Actions, junior only to such Existing Encumbrances (collectively, items (i) and (ii) above are referred to as the "Collateral"). The Borrower agrees that the aforesaid grant of security interests is intended as a contemporaneous exchange for value given to the Borrower.

2.11 Perfection of Security Interests. The Interim DIP Order and the Final DIP Order shall, without the necessity of any further action or filings by the Lender, the Debtor or any other Person, perfect the Lender's security interests in the Collateral. The foregoing notwithstanding, the Borrower shall, at its cost and expense, execute and deliver to Lender, concurrently with the execution of this Agreement, and at any time or times hereafter at the request of the Lender, all financing statements and other agreements, instruments and documents that the Lender may reasonably request, in form and substance satisfactory to the Lender, and shall take any and all other steps reasonably requested by the Lender, in order to perfect and maintain the security interest and liens granted herein by the Borrower to the Lender and in order to fully consummate all of the transactions contemplated herein and under any other Loan Documents.

2.12 Additional Collateral; Right of Set-Off. Collateral of any nature and the cash and noncash Proceeds thereof owned by the Borrower or in which the Borrower has an interest, which now or hereafter are in the possession or control of the Lender, shall at all times constitute additional security and Collateral for the Obligations and may be set off against the Obligations upon the occurrence of an Event of Default.

2.13 Carve-out. Notwithstanding any other term of this Agreement, the security interests granted to the Lender shall be subordinate to (a) statutory fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and (b) fees payable to the Clerk of the Bankruptcy Court.

### SECTION 3. CONDITIONS OF BORROWING.

3.1 Initial Advance. As a condition precedent to the Lender's obligation to make the initial advance under the Line of Credit, the following conditions shall all be satisfied:

(a) Loan Documents. The Borrower shall have delivered or caused to be delivered to the Lender duly executed copies of each of the Loan Documents.

(b) Financing Statements. A financing statement describing the Collateral shall have been filed in each such jurisdiction and in each such office as shall have been required by the Lender.

(c) Legal Matters. All legal matters incident to the transactions contemplated by this Agreement shall be satisfactory to counsel for the Lender.

(d) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed.

(e) No Default. No Default or Event of Default shall exist as on the date of such initial advance or shall occur as a result of making such initial advance.

3.2 Subsequent Advances. As a condition precedent to the Lenders' obligation to make any advance after the initial advance, the following conditions shall all be satisfied on the date of such Advance:

(a) No Default. No Default or Event of Default shall exist on the date of such advance or shall occur as the result of making such advance.

(b) Representations. Without limiting the generality of Section 4.2(b), the representation contained in Section 3 shall be true and correct on and as of the date of the making of such advance with the same effect as if made on and as of such date.

(c) No Litigation. No litigation, investigation, or proceeding before or by any arbitrator or governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse affect on the Borrower.

3.3 Waiver of Conditions. The Lender may waive any condition in whole or in part.

#### SECTION 4. EVENTS OF DEFAULT, REMEDIES.

4.1 Events of Default. The following shall constitute Events of Default:

(a) Non-Payment. (i) Failure by the Borrower to pay the principal of or accrued interest on the Line of Credit Note or any other instrument evidencing any Obligation when due, or (ii) five (5) days following written notice of the failure of the Borrower to pay any other amount payable to Lender, whether under this Agreement or otherwise, when due;

(b) Unenforceability. (i) Any material provision of any of the Loan Documents shall at any time for any reason cease to be a valid and binding obligation of any Borrower, or shall be declared to be null and void or (ii) the validity or enforceability thereof shall be contested by any Borrower or any other Person, or any Borrower shall deny that it has any further liability or obligation under any Loan Document;

(c) Lender's Liens. The Liens granted by the Borrower to the Lender shall at any time fail to be first priority perfected Liens, subject only to Existing Encumbrances, or the Borrower or any other Person shall so allege in any writing;

(d) Judgments. One or more judgments are entered against any Borrower which have a material adverse affect upon the Collateral or the ability of the Borrower to perform its obligations under this Agreement;

(e) Appointment of Trustee. The Bankruptcy Court shall enter an order appointing a trustee under Section 1104(a) of the Bankruptcy Code in the Reorganization Case of the Borrower;

(f) Entry of Final DIP Order. The Bankruptcy Court shall not have entered the Final DIP Order by January 3, 2010;

(g) Appointment of Examiner. The Bankruptcy Court shall enter an order appointing an examiner for any Borrower with powers beyond those stated in Sections 1106(a)(3) and (4) of the Bankruptcy Code;

(h) Modification of Orders. The Interim DIP Order or the Final DIP Order, as applicable, shall be amended, supplemented, vacated, stayed or otherwise modified without the written consent of the Lender;

(i) Dismissal, Conversion, Priority Administrative Expenses. The Reorganization Case of any Borrower shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or there shall arise, any claim which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code;

(j) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder of any security interest in any material Collateral;

(k) Claims Against Lender. Commencement by the Borrower, or its estate or any other Person of any litigation, arbitration or other proceeding relating to any claim or action

against the Lender arising or alleged to arise out of any conduct in connection with Loan Documents;

#### 4.2 Remedies.

(a) Upon the occurrence of an Event of Default, the Lender may, by written notice to Borrower, terminate immediately and irrevocably the Line of Credit, the Line of Credit Commitment, and any other obligation of the Lender to make any advances to or for the account of the Borrower, and declare the Line of Credit Termination Date to have occurred and the Line of Credit Note, and all other instruments evidencing the Obligations to be due and payable, whereupon the principal amount of the Line of Credit Note and all outstanding Obligations, together with accrued interest thereon and all other amounts payable thereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding;

(b) Upon the occurrence of an Event of Default and following ten (10) days written notice to the Borrower, counsel to the Creditors Committee in the Reorganization Case (if a Creditors Committee exists and has engaged Counsel) and the Office of the United States Trustee, the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Borrower and the Collateral;

(c) Upon the occurrence of an Event of Default the Lender shall have all rights and, subject to obtaining any necessary relief from the automatic stay, all remedies contained in this Agreement or in any other Loan Document, and all the rights and remedies of a secured party under the UCC. In addition to all such rights and remedies, subject to obtaining any necessary relief from the automatic stay, the Lender may sell, lease or otherwise dispose of the Collateral, or any part thereof, at public or private sale, for cash, credit or any combination thereof. The Lender shall have the right to bid and purchase at such sale or sales. The Proceeds of any sale or other disposition of all or any part of the Collateral upon which Lender has a

security interest, after payment of all costs and expenses of sale, including retaking, holding, preparing for sale, selling and the like and also including reasonable attorneys' fees and legal expenses incurred by the Lender, shall be applied by the Lender to the then outstanding balance of the Obligations and any surplus shall be paid by the Lender to the Borrower. The Borrower shall be liable to the Lender for any deficiency;

(d) Upon the occurrence of an Event of Default and subject to obtaining any necessary relief from the automatic stay, the Lender shall have the right to enter and remain upon the various premises of the Borrower without cost or charge to Lender, and to use the same, together with materials, supplies, books and records of the Borrower, for the purpose of preparing for and conducting the sale of Collateral, whether by foreclosure, auction or otherwise. In addition, the Lender may remove from such premises the Collateral and copies of any records with respect thereto, to the premises of the Lender or any designated agent of the Lender for such time as the Lender may desire, in order to effectively collect or liquidate the Collateral;

(e) Upon the occurrence of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments (including Proceeds of Collateral) at any time or times thereafter which may be received by the Lender by or for the benefit of the Borrower.

4.3 Right of Setoff. Upon the occurrence of a Default or an Event of Default, the Lender shall have the right, in addition to all other rights and remedies available to it, to set off against the unpaid balance of the Obligations, any debt owing to any Borrower by the Lender.

4.4 No Marshalling, Etc., Required. If an Event of Default shall have occurred and be continuing, the Lender shall not be required to marshal any present or future security for, or guarantees of, the Obligations or to resort to any such security or guarantee in any particular order and each Borrower waives, to the fullest extent that it lawfully can, (a) any right it might have to require the Lender to pursue any particular remedy before proceeding against it, and (b) any right to the benefit of, or to direct the application of the proceeds of any Collateral until the Obligations have been paid in full.

4.5 Remedies Cumulative. Lender may exercise any of its rights and remedies set forth in this Loan Agreement and the other Loan Documents. The remedies of Lender shall be cumulative and concurrent, and may be pursued singly, successively, or together, at its sole discretion, and may be exercised as often as the occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

#### SECTION 5. MISCELLANEOUS.

5.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude or require any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender, and then only to the extent specifically set forth in writing. A waiver with respect to one event shall not be construed as continuing or as a bar to or a waiver of any right or remedy with respect to a subsequent event. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

5.2 Notices. All notices and other communications shall have been duly given and shall be effective (i) when delivered, (ii) when transmitted via telecopy (or other facsimile device) to the numbers set forth below, (iii) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third Business Day following the day on which the same is sent by certified or registered mail, post prepaid, in each case to the respective parties at the address or telecopy number set forth below, or at such other address or telecopy number as such party may hereafter specify by written notice to the other party hereof:

The Borrower:	Ballamor Golf Holdings, Inc. 6071 English Creek Ave. Egg Harbor Township, NJ 08234
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with a copy to: Stevens & Lee  
1818 Market Street, 29th Floor  
Philadelphia, PA 19103  
Attention: Robert Lapowsky, Esq.

Lender: Chester J. Ottinger, Jr.  
  
c/o Tedesco Gruccio & Reuss  
727 Landis Avenue  
Vineland, NJ 08360  
Attn: Rocco J. Tedesco

5.3 Reimbursement of Lender. The Borrower hereby agrees to reimburse the Lender for out-of-pocket expenses, including reasonable counsel fees, incurred by the Lender in connection with (a) the development, preparation, execution and approval of this Agreement and all the Loan Documents (in an amount equal to \$2,500), and (b) following the occurrence of an Event of Default and until all Obligations are paid in full, enforcement by the Lender and its rights and remedies hereunder and participation by the Lender in, and monitoring of, the Reorganization Case. Expenses described in Subsection (a) above shall be paid within five (5) days after entry of the Interim DIP Order and all other expenses shall be paid within ten (10) days after notice by the Lender.

5.4 Payment of Expenses and Taxes. In addition to payment of the expenses provided for in Subsection 5.3, the Borrower agrees to pay, and to save the Lender harmless from any delay in paying, stamp and other similar taxes, if any, including, without limitation, all levies, impositions, duties, charges or withholdings, together with any penalties, fines or interest thereon or other additions thereto, which may be payable or determined to be payable in connection with the execution and delivery of this Agreement and the Loan Documents or any modification of any thereof or any waiver or consent under or in respect of any thereof.

5.5 Survival. All provisions of this Agreement and all other Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loans hereunder. The provisions of Section 5 hereof shall survive payment of the Obligations.

5.6 Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights hereunder without the prior written consent of the Lender.

5.7 Construction. This Agreement, all Loan Documents, and the rights and obligations of the parties hereunder and thereunder, shall be governed by and construed and interpreted in accordance with, the domestic internal laws of the State of New Jersey without regard to its rules pertaining to conflict of laws. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.8 Severability. Any provision contained in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.9 Indemnity. To the extent permitted by applicable non-bankruptcy law, the Borrower hereby agrees to pay, assume liability for, and indemnify, protect, defend, save and keep harmless the Lender from and against, any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses (including, but not limited to, legal and investigative fees and expenses) of whatsoever kind and nature, including, but not limited to claims based upon negligence, strict or absolute liability, liability in tort, latent and other defects (whether or not discoverable), and any claim for patent, trademark or copyright infringement which may from time to time be imposed on, incurred by or asserted against the Lender (whether or not any such claim is also indemnified or insured against by any other person) in any way relating to or resulting from this Agreement, any Loan Document, or any of the transactions contemplated herein or therein except to the extent arising out of Lender's gross negligence or willful misconduct. The provisions of this subsection shall survive the payoff,

release, foreclosure or other disposition, as applicable, of this Agreement, the Obligations or the Collateral.

5.10 Waiver of Trial by Jury; Jurisdiction.

(a) To the extent permitted by law, each party to this Agreement agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by either party hereto or any successor or assign of any party on or with respect to this Agreement or any other Loan Document or which in any way relates, directly or indirectly, to the Loans or any event, transaction, or occurrence arising out of or in any way connection with the Loans, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury.

EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. THE BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION 5.10 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT BETWEEN THE PARTIES AND THAT THE LENDER WOULD NOT EXTEND THE LOANS TO THE BORROWER IF THIS WAIVER OF JURY TRIAL SECTION WERE NOT A PART OF THIS AGREEMENT.

(b) To the extent permitted by law, for the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Line of Credit Note or the Loan, the Borrower hereby irrevocably consents and submits to the jurisdiction and venue of the Courts of the State of New Jersey, including, without limitation, the Federal District Court for the District of New Jersey and the United States Bankruptcy Court for the District of New Jersey, and agrees to accept and acknowledge all service of process in connection with any such matter by certified or registered mail or by any other legally permissible means. The Borrower irrevocably waives any objection which it may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon the Borrower. The provisions of this Paragraph 8.11(b) shall

not limit or otherwise affect the right of the Lender to institute and conduct action in any other appropriate manner, jurisdiction or court.

5.11 Actions Against Lender; Release.

(a) Any action brought by the Borrower against the Lender which is based, directly or indirectly, or on this Agreement or any other Loan Document or any matter in or related to this Agreement or any other Loan Document, including but not limited to the making of the Loans or the administration or collection thereof, shall be brought only in the Courts of the State of New Jersey or the Federal District Court or Bankruptcy Court for the District of New Jersey.

(b) Upon full payment and satisfaction of the Loans and the interest thereon, as provided in Section 2 hereof, the parties shall thereupon automatically each be fully, finally, and forever released and discharged from any further claim, liability or obligation in connection with the Loans except as expressly set forth herein, except to the extent an payment received by the Lender is determined to be a preference or similar voidable transfer, in which case the claims of the Lender shall not be released.

5.12 Performance by Lender. If any Borrower shall fail to observe or perform any of the terms, agreements or covenants contained in this Agreement, or in any other Loan Document, the Lender may, in its discretion, but without any obligation or duty to do so, and without waiving any Default, or Event of Default, perform any of such terms, agreements or covenants, in part or in whole, and any money advanced or expended by the Lender in or toward the fulfillment of such terms, agreements or covenants, shall be due on demand and become a part of and be added to the indebtedness due under the Line of Credit Note and secured as herein provided with interest thereon at the rate specified in such Note from the date of the respective advance or expenditure. Lender's rights contained in this Subsection 5.12 shall be in addition to all of Lender's other rights under this Agreement, and Lender may, at its sole election, exercise any one or more, or all, of such rights alternatively or concurrently.

5.13 Counterparts. This Agreement may be executed by facsimile or electronic PDF signature and in any number of counterparts with then same effect as if the signatures thereto and hereto were upon the same instrument, but all of such counterparts taken together shall be deemed to constitute one and the same instrument.

5.14 Further Actions. The Borrower shall execute and deliver such documents and instruments, and take such other actions, as the Lender deems necessary to consummate the transactions described in this Agreement.

5.15 Section 506(c) Waiver. In consideration of the agreements of the Lender stated in the Loan Documents, the Borrower hereby agrees not to assert and affirmatively waives any claim it otherwise might have under Section 506(c) of the Bankruptcy Code and agrees that the Collateral securing the Obligations may not be charged with costs or expenses or administration including Permitted Expenses and other expenses which are permitted uses of the proceeds of the Line of Credit.

5.16 Entire Agreement. This Agreement and the Loan Documents represent the entire agreement between the Lender and the Borrower with respect to the financing transactions to which they relate, and cannot be changed or amended except by an agreement in writing signed by the party against whom enforcement of the change or amendment is sought.

5.17 Bankruptcy Court Approval. Neither this Agreement, nor the Loan Documents, shall be binding upon any party prior to entry of the Interim Final DIP Order.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BALLAMOR GOLF HOLDINGS, INC., DEBTOR  
IN POSSESSION

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

Attest: \_\_\_\_\_

(“Borrower”)

\_\_\_\_\_  
Chester J. Ottinger, Jr.

(“Lender”)