

**ALJ REGIONAL HOLDINGS, INC.**

**244 Madison Avenue  
PMB #358  
New York, New York 10016**

**(212) 883-0083**

**Quarterly Report for the  
Period Ended  
June 30, 2015**

## ALJ REGIONAL HOLDINGS, INC.

### CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Statements in this Quarterly Report for the Period Ended June 30, 2015 (the "Report") regarding future financial performance, results and conditions and other statements that are not historical facts, including, among others, statements regarding demand for the services offered by each of Faneuil, Inc. ("Faneuil") and Floors-N-More, LLC, dba Carpets N' More ("Carpets"), the ability of Faneuil and Carpets to generate additional sales, manage their expenses and expand their respective businesses, the effect of any legal proceedings, the expectation that potential losses related to a fixed price project will be reimbursed by insurance companies or the general contractor, the ability of the Company's stockholder rights plan to protect its net operating losses, the Company not paying cash dividends in the foreseeable future, the Company's ability to continue to fund its operations and service its indebtedness, the adequacy of the Company's accrual for tax liabilities, management's projection of continued taxable income, and the Company's ability to offset future income against net operating loss carryovers, constitute forward-looking statements. The words "can," "could," "may," "will," "would," "plan," "future," "believes," "intends," "expects," "anticipates," "estimates," and similar expressions are also intended to identify forward-looking statements. These forward-looking statements are based on current expectations and are subject to risks and uncertainties. Actual results or events could differ materially from those set forth or implied by such forward-looking statements and related assumptions due to certain important factors, including, without limitation, the risks set forth under the caption "Risk Factors" below, which are incorporated herein by reference. The Company is also subject to general business risks, including its success in continuing to settle the Company's outstanding obligations from its prior business activities, results of tax audits, adverse state, federal or foreign legislation and regulation, changes in general economic factors, the Company's ability to attract and retain key employees, acts of war or global terrorism, and unexpected natural disasters. Any forward-looking statements included in this Report are made as of the date hereof, based on information available to the Company as of the date hereof, and the Company assumes no obligation to update any forward-looking statements.

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**ITEM 1. EXACT NAME OF THE ISSUER AND THE ADDRESS OF ITS PRINCIPAL EXECUTIVE OFFICES**

ALJ Regional Holdings, Inc. (“ALJ” or the “Company”) has its principal mailing address at:

244 Madison Avenue, PMB #358  
New York, NY 10016  
Phone: (212) 883-0083

References to the “Company,” “we,” “us” and “our” are to the consolidated operations of ALJ, including the operations of its subsidiaries, except to the extent the context is intended to refer only to ALJ.

The Company maintains a website at [www.aljregionalholdings.com](http://www.aljregionalholdings.com).

The Company’s investor relations contact is T. Robert Christ, the CFO of the Company. Mr. Christ can be reached at (888) 486-7775.

The Company’s transfer agent is American Stock Transfer & Trust Company, LLC, whose address and phone number are as follows:

American Stock Transfer & Trust Company, LLC  
Operations Center  
6201 15th Avenue  
Brooklyn, NY 11219  
(718) 921-8293

**ITEM 2. SHARES OUTSTANDING**

The Company has only has one class of outstanding stock, the details of which are disclosed in the table below.

	Common Stock		
	Period End Date		
	June 30, 2015	September 30, 2014	September 30, 2013
<b>Number of Shares Authorized</b>	100,000,000	100,000,000	100,000,000
<b>Number of Shares Outstanding</b>	32,863,666	31,278,660	26,744,913

As of June 30, 2015, there were 147 holders of record of the Company’s common stock.

On July 10, 2015, Anna Van Buren, the Chief Executive Officer of Faneuil, and Tarsha Leherr, the Vice President of Operations of Faneuil, exchanged their 32,857 and 3,286 shares of common stock of Faneuil, respectively, for 1,500,000 shares and 150,000 shares of common stock of ALJ, respectively, using an exchange ratio of 45.65 shares of ALJ common stock for each share of Faneuil common stock.

On July 10, 2015, Steve Chesin, the Chief Executive Officer of Carpets, exchanged his 750,000 Class B Preferred Units with a preference amount equal to \$750,000, 75,000 Common Units and 40,000 Equity Award Units of Carpets for 150,000 shares of common stock of ALJ.

On July 10, 2015, Marc Reisch, the Chairman of Phoenix purchased 400,000 shares of common stock of ALJ in a private placement for an aggregate consideration of \$1,520,000.

As a result, the pro forma common shares of ALJ outstanding as of August 15, 2015 were 35,113,666.

**ITEM 3. INTERIM FINANCIAL STATEMENTS**

**ALJ REGIONAL HOLDINGS, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**

	<u>June 30, 2015</u>	<u>September 30, 2014</u>
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 7,070,940	\$ 10,078,301
Accounts receivable, less allowance for doubtful accounts of \$2,134,247 at June 30, 2015 and \$1,615,964 at September 30, 2014	25,654,637	25,441,827
Inventory	2,828,897	1,999,028
Prepaid expenses and other current assets	6,366,856	5,680,490
Deferred taxes	-	-
Total current assets	\$ 41,921,330	\$ 43,199,646
Property, plant and equipment	27,221,576	19,687,285
Less accumulated depreciation and amortization	(13,945,697)	(10,626,241)
Property, plant and equipment, net	13,275,879	9,061,044
<b>Other assets:</b>		
Goodwill	22,283,308	22,283,308
Intangible assets, net of amortization	15,198,454	16,779,458
Other assets	119,279	183,513
Investment in Bellator	102,077	102,077
Deferred loan costs, net	155,474	215,072
Deferred tax asset	5,446,581	5,446,581
Total other assets	43,305,173	45,010,009
<b>Total assets</b>	<b>\$ 98,502,382</b>	<b>\$ 97,270,699</b>

(continued on following page)

**ALJ REGIONAL HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**

(continued)

	June 30, 2015	September 30, 2014
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 4,169,278	\$ 5,852,612
Accrued expenses	7,068,466	8,480,239
Income taxes payable	203,325	251,206
Current portion of notes payable	3,800,000	4,656,789
Current portion of deferred revenue	491,110	2,294,667
Current portion of capital lease obligations	823,928	43,388
Current portion of workmen's compensation reserve	709,434	709,234
Customer deposits	1,419,463	437,921
Other liabilities	935,771	427,175
Liabilities related to discontinued operations	298,466	298,466
<b>Total current liabilities</b>	<b>\$ 19,919,241</b>	<b>\$ 23,451,697</b>
<b>Non-current liabilities:</b>		
Line of credit	2,332,958	-
Workmen's compensation reserve, less current portion	1,234,025	1,240,600
Unearned revenue	28,358	112,607
Notes payable, less current portion	12,350,000	16,400,000
Deferred revenue, less current portion	260,421	596,395
Deferred tax liability	5,446,581	5,446,581
Other liabilities	734,043	813,413
Capital lease obligations, less current portion	1,317,641	-
Non-controlling interest	1,585,833	1,381,959
<b>Total liabilities</b>	<b>\$ 45,209,101</b>	<b>\$ 49,443,252</b>
<b>Commitments and contingencies</b>		
<b>Stockholders' equity (deficiency):</b>		
Common stock, \$0.01 par value; authorized - 100,000,000 shares; 32,863,666 and 31,278,660 issued and outstanding at June 30, 2015 and September 30, 2014	328,626	312,786
Additional paid-in capital	267,109,096	267,917,729
Accumulated deficit	(214,115,413)	(219,586,160)
Treasury stock - 25,000 shares at June 30, 2015 and 138,627 shares at September 30, 2014, at cost	(29,028)	(816,908)
<b>Total stockholders' equity</b>	<b>53,293,281</b>	<b>47,827,447</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 98,502,382</b>	<b>\$ 97,270,699</b>

See accompanying notes to condensed consolidated financial statements.

**ALJ REGIONAL HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**

	Nine Months Ended June 30,		Three Months Ended June 30,	
	2015	2014	2015	2014
NET REVENUE	\$ 151,763,653	\$ 105,566,565	\$ 48,711,313	\$ 43,324,978
<b>COSTS AND EXPENSES</b>				
Cost of revenue	121,502,911	81,127,810	39,450,854	32,978,587
Selling, general and administrative	18,396,536	10,905,814	6,603,133	4,607,079
Depreciation and amortization	4,698,759	2,793,263	1,608,148	1,145,015
Total cost of operations	144,598,206	94,826,887	47,662,135	38,730,681
Income from operations	7,165,447	10,739,678	1,049,178	4,594,297
<b>OTHER INCOME (EXPENSE)</b>				
Interest and dividend income	10,546	14,484	7,567	3,252
Interest expense	(693,969)	(952,100)	(233,937)	(372,276)
Other expense	(121,370)	-	(31,370)	-
Total other income (expense)	(804,793)	(937,616)	(257,740)	(369,024)
INCOME FROM OPERATIONS BEFORE INCOME TAXES AND NON-CONTROLLING INTEREST	6,360,654	9,802,062	791,438	4,225,273
INCOME TAXES	(686,034)	(705,026)	(114,384)	(261,019)
INCOME BEFORE NON-CONTROLLING INTEREST	5,674,620	9,097,036	677,054	3,964,254
NON-CONTROLLING INTEREST	(203,873)	(310,142)	(27,982)	(126,892)
NET INCOME	5,470,747	8,786,894	649,072	3,837,362
<b>NET INCOME (LOSS) PER COMMON SHARE -</b>				
Basic	\$0.17	\$0.31	\$0.02	\$0.13
Dilutive	\$0.16	\$0.27	\$0.02	\$0.11
<b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING</b>				
Basic	32,071,163	28,244,913	33,014,350	30,444,913
Dilutive	34,483,663	32,328,247	34,464,350	33,832,413

See accompanying notes to condensed consolidated financial statements.

**ALJ REGIONAL HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENT OF EQUITY (UNAUDITED)**  
**NINE MONTHS ENDED JUNE 30, 2015**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Treasury Stock	Total
	Shares	Amount				
Balances at September 30, 2014	31,278,660	\$ 312,786	\$ 267,917,729	\$ (219,586,160)	\$(816,908)	\$47,827,447
Share-based compensation:			108,901			108,901
Exercise of options	2,041,000	20,400	820,600			841,000
Retirement of treasury stock	(455,994)	(4,560)	(1,738,134)		787,880	(954,814)
Net income				5,470,747		5,470,747
Balances at June 30, 2015	32,863,666	\$ 328,626	\$ 267,109,096	\$ (214,115,413)	\$(29,028)	\$53,293,281

See accompanying notes to condensed consolidated financial statements.



**ALJ REGIONAL HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**

	Nine Months Ended June 30,	
	2015	2014
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 5,470,747	\$ 8,786,894
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	4,698,760	2,013,581
Stock-based compensation	108,901	200,516
Provision for doubtful accounts	118,973	624,888
Amortization of deferred loan costs	59,598	-
Non-controlling interest	203,874	310,134
Loss on the sale of intangible assets	81,700	-
Changes in operating assets and liabilities:		
(Increase) decrease in -		
Accounts receivable, net	(331,783)	(4,897,554)
Net deferred taxes	-	-
Inventories	(829,869)	(1,360,941)
Other assets	64,234	(45,917)
Prepaid expenses and other receivables	(626,366)	211,033
Increase (decrease) in -		
Accounts payable	(1,683,334)	377,646
Accrued expenses	(1,411,773)	2,626,801
Workman's compensation reserve	(6,375)	394,785
Deferred revenue	(2,139,531)	363,333
Unearned revenue	(84,249)	(224,766)
Customer deposits	981,542	384,925
Other liabilities	429,226	110,885
Income taxes payable	(47,881)	705,025
<b>NET CASH (USED IN) PROVIDED BY OPERATING ACTIVITIES</b>	<b>5,056,394</b>	<b>10,581,268</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of Faneuil	-	(19,091,201)
Purchase of Carpets	-	(5,254,104)
Proceeds from the sale of intangible assets	60,000	-
Purchase of fixed assets	(7,534,291)	(2,669,353)
Proceeds from sale of non-controlling interest in Faneuil	-	-
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(7,474,291)</b>	<b>(27,014,658)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Repayment on Faneuil's M&T note payable	(2,850,000)	-
Repayment on ALJ's M&T note payable	(2,000,000)	-
Proceeds from the sale of ALJ Stock	-	2,240,000
Proceeds from the sale of non-controlling interest in Faneuil	-	1,100,000
Repurchase of treasury stock	(954,814)	-
Proceeds from the issuance of M&T note payable to ALJ	-	2,000,000
Capital lease obligations	2,098,181	(263,448)
Repayment on Faneuil's Harland Clarke note payable	-	(2,760,058)
Repayment on Carpet's notes payable	(56,789)	-
Proceeds from exercise of stock options	841,000	-
Proceeds from Carpet's line of credit	2,332,958	-
<b>NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b>	<b>(589,464)</b>	<b>2,316,494</b>
<b>NET CASH (USED IN) OPERATING, INVESTING AND FINANCING ACTIVITIES</b>	<b>(3,007,361)</b>	<b>(14,116,896)</b>
<b>CASH AND CASH EQUIVALENTS</b>		
Net (decrease)	(3,007,361)	(14,116,896)
Balance at beginning of period	10,078,301	27,825,326
Balance at end of period	7,070,940	13,708,430
<b>SUPPLEMENTAL CASH FLOW INFORMATION</b>		
Cash paid for -		
Interest	690,107	577,073
Taxes	1,002,149	-

On October 18, 2013, the Company issued 3,000,000 shares as partial consideration for the purchase of Faneuil.  
On June 30, 2015, the Company retired 455,994 shares of Treasury Stock.

See accompanying notes to condensed consolidated financial statements.

**ALJ REGIONAL HOLDINGS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**  
**JUNE 30, 2015**

**1. Organization and Basis of Presentation**

**Basis of Presentation**

The accompanying consolidated financial statements include the accounts of ALJ Regional Holdings, Inc. (“ALJ” or the “Company”), and its direct and indirect wholly and majority-owned subsidiaries. The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America. All inter-company items and transactions have been eliminated in consolidation.

As described in more detail under Note 3 below, on October 18, 2013, ALJ acquired substantially all of the capital stock of Faneuil from Harland Clarke Holdings Corp., a wholly owned subsidiary of MacAndrews & Forbes Holdings Inc. (“Harland Clarke”), pursuant to a stock purchase agreement, dated October 18, 2013, by and among ALJ, Anna Van Buren, Faneuil’s Chief Executive Officer, as an individual purchaser, and Harland Clarke. On July 10, 2015, ALJ exchanged 100% of the minority interest in Faneuil for common stock in ALJ. As a result, Faneuil is now a wholly owned subsidiary of ALJ. Faneuil is a leading provider of outsourcing and co-sourced services to both commercial and government entities in the healthcare, utility, toll and transportation industries.

Effective April 1, 2014, as further described in Note 4 below, ALJ acquired substantially all of the equity interests of Floors-N-More, LLC, dba, Carpets N’More (“Carpets”). On July 10, 2015, ALJ exchanged 100% of the minority interest in Carpets for common stock in ALJ. As a result, Carpets is now a wholly owned subsidiary of ALJ. Carpets is one of the largest floor covering retailers in Las Vegas and a provider of multiple products for the commercial, retail and home builder markets, including all types of flooring, countertops, cabinets, window coverings and garage/closet organizers, with five retail locations, as well as a stone and solid surface fabrication facility.

Effective August 9, 2015, as further described in Note 5 below, ALJ acquired all of the capital stock of Phoenix Color Corp. (“Phoenix”) from Visant Corporation (“Visant”). Phoenix is a leading manufacturer of book components, educational materials and related products producing value-added components, heavily illustrated books and specialty commercial products using a broad spectrum of materials and decorative technologies.

Therefore, the interim financial statements set forth below reflect the operations of ALJ for the period of October 1, 2013 through October 18, 2013, the consolidated operations of ALJ and Faneuil for the period of October 19, 2013 through March 31, 2014 and the consolidated operations of ALJ, Faneuil and Carpets for the period from April 1, 2014 through June 30, 2015. Since the acquisition of Phoenix occurred after June 30, 2015, ALJ did not include the results of operations of Phoenix in its consolidated financial statements for the period ending June 30, 2015. Beginning August 9, 2015, ALJ will include the results of operations of Phoenix in its consolidated financial statements.

The accompanying condensed consolidated financial statements are unaudited, but in the opinion of Company management, contain all adjustments, which include normal recurring accruals, necessary to present fairly the financial position at June 30, 2015 and September 30, 2014, the results of operations for the nine months ended June 30, 2015 and 2014, and the cash flows for the nine months ended June 30, 2015 and 2014.

Certain information and footnote disclosures normally included in financial statements that have been prepared in accordance with generally accepted accounting principles have been condensed or omitted, although management of the Company believes that the disclosures contained in these financial statements are adequate to make the information presented therein not misleading.

The Company has organized its business and corporate structure along the following business segments: Faneuil, Carpets and Phoenix. ALJ is being reported as corporate overhead.

### **Liquidity and Capital Resources**

For the nine months ended June 30, 2015, the Company recognized net income of \$5.5 million and generated positive cash flow from operating activities of \$5.1 million, offset by cash used in investing activities of \$7.5 million and financing activities of \$0.6 million. The Company had an accumulated deficit of \$214.1 million and stockholder's equity of \$53.3 million at June 30, 2015.

For the nine months ended June 30, 2014, the Company recognized net income of \$8.8 million and generated positive cash flow from operating activities of \$10.6 million and financing activities of \$2.3 million, partially offset by cash used from investing activities of \$27.0 million, primarily related to the use of cash in the purchase of Faneuil of \$19.1 million and in the purchase of Carpets of \$5.3 million. The Company had an accumulated deficit of \$226.4 million and stockholder's equity of \$41.5 million at June 30, 2014.

On July 11, 2015, ALJ entered into a stock purchase agreement with Visant to acquire 100% of the common stock of Phoenix. The transaction closed August 14, 2015, with effect to the acquisition as of August 9, 2015. The aggregate consideration for the acquisition, subject to certain closing adjustments, was \$88.6 million.

Effective August 14, 2015, ALJ entered into a financing agreement with Cerberus Business Finance, LLC ("Cerberus"), to borrow \$105 million in a term loan ("Cerberus Term Loan") and have available up to \$30 million in a revolver ("Cerberus/PNC Revolver"), of which \$2 million was drawn at the close of the stock purchase of Phoenix. The proceeds of these facilities were used together with cash on hand plus the proceeds from the sale of ALJ stock described below to fund the acquisition and refinance the outstanding obligations of ALJ, Faneuil and Carpets and to provide working capital facilities to all three of ALJ's subsidiaries and ALJ.

On July 10, 2015, Marc Reisch, the Chairman of Phoenix purchased 400,000 shares of common stock of ALJ in a private placement for an aggregate consideration of \$1,520,000.

On August 14, 2015, ALJ refinanced its outstanding borrowings and agreements with M&T Bank, including the Faneuil Term Loan for \$15.9 million, Carpets Revolver for \$2.2 million, ALJ Revolver for \$0.3 million and Faneuil Revolver for \$0, with Cerberus and PNC.

On July 10, 2015, Anna Van Buren, the Chief Executive Officer of Faneuil, and Tarsha Leherr, the Vice President of Operations of Faneuil, exchanged their 32,857 and 3,286 shares of common stock of Faneuil, respectively, for 1,500,000 shares and 150,000 shares of common stock of ALJ, respectively, using an exchange ratio of 45.65 shares of ALJ common stock for each share of Faneuil common stock. In addition, on July 10, 2015, Ms. Van Buren entered into an amended and restated employment agreement with Faneuil and waived her option to purchase 60,000 shares of Faneuil's common stock.

On July 10, 2015, Steve Chesin, the Chief Executive Officer of Carpets, exchanged his 750,000 Class B Preferred Units with a preference amount equal to \$750,000, 75,000 Common Units and 40,000 Equity Award Units of Carpets for 150,000 shares of common stock of ALJ.

As a result of these three exchanges and the purchase of Phoenix, ALJ now owns 100% of each of its subsidiaries.

Since October 1, 2014, ALJ has used \$954,814 to repurchase 235,383 shares of its common stock under its repurchase program.

ALJ believes that its current cash resources will be adequate to fund its operations through June 30, 2016. However, to the extent the Company's estimates are inaccurate or its assumptions are incorrect, the Company may not have sufficient cash resources to fund its operations. In such event, the Company may have to seek additional financing for the business.

A portion of our current borrowings, namely the Cerberus Term Loan and Cerberus/PNC Revolver (\$105 million and \$2.2 million as of the closing date of the Phoenix acquisition), and potential future borrowings, are and may continue to be at variable rates of interest, thus exposing us to interest rate risk. If interest rates increase, our debt service obligations on our variable rate indebtedness would increase even if the amount borrowed remained the same, resulting in a decrease in our net income. For example, if interest rates increased in the future by 100 basis points, based on our current borrowings as of August 14, 2015, we would incur approximately an additional \$1.1 million per annum in interest expense.

## **2. Nature of Operations and Summary of Significant Accounting Policies**

### **Nature of Operations**

ALJ is a holding company, whose primary assets as of June 30, 2015 were substantially all of the outstanding capital stock of Faneuil and Carpets. ALJ acquired Faneuil on October 18, 2013 and acquired Carpets effective April 1, 2014. Effective August 9, 2015, ALJ acquired all of the capital stock of Phoenix. As a result the Company has now organized its business and corporate structure along the following three business segments: Faneuil, Carpets and Phoenix.

Faneuil is a leading provider of call center services, back office operations, staffing services, and toll collection services to government and regulated commercial clients across the United States. The Company is headquartered in Hampton, Virginia.

Carpets is one of the largest floor covering retailers in Las Vegas and a provider of multiple products for the commercial, retail and home builder markets including all types of flooring, countertops, cabinets, window coverings and garage/closet organizers, with five retail locations, as well as a stone and solid surface fabrication facility.

Phoenix is a leading manufacturer of book components, educational materials and related products producing value-added components, heavily illustrated books and specialty commercial products using a broad spectrum of materials and decorative technologies. The Company is headquartered in Hagerstown, Maryland.

### **Cash and Cash Equivalents**

Cash and equivalents include all cash, demand deposits and money market accounts with original maturities of six months or less.

### **Accounts Receivable**

The Company grants credit to its customers generally in the form of short-term trade accounts receivable. Management evaluates the credit risk of its customers utilizing historical data and estimates of future performance.

Accounts receivable are stated at the amount management expects to collect from outstanding balances. When appropriate, management provides for probable uncollectible amounts through a provision for doubtful accounts and an adjustment to the valuation allowance. Management reviews and adjusts this allowance periodically based on the aging of accounts receivable balances, historical write-off experience, customer concentrations, customer creditworthiness and current industry and economic trends. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to accounts receivable.

## Stock-Based Compensation

The Company recognizes compensation expense for its equity awards on a straight-line basis over the requisite service period of the award based on the estimated portion of the award that is expected to vest and applies estimated forfeiture rates based on analyses of historical data, including termination patterns and other factors. The Company uses the quoted closing market price of its common stock on the grant date to measure the fair value of restricted stock awards and the Black-Scholes option pricing model to measure the fair value of stock option awards. The expected volatility is based on historical volatilities of the Company's common stock over the most recent period commensurate with the estimated expected term of the awards. The expected term of an award is equal to the midpoint between the vesting date and the end of the contractual term of the award. The risk-free interest rate is based on the rate on U.S. Treasury securities with maturities consistent with the estimated expected term of the awards. The Company has not paid dividends and does not anticipate paying a cash dividend in the foreseeable future and, accordingly, uses an expected dividend yield of zero.

## Inventory

*Carpets.* Inventory, which consists of carpet, wood, vinyl, tile and granite is stated at the lower of cost or market. Cost is determined by using the first-in, first-out (FIFO) method of accounting for inventory, and market represents the lower of cost or estimated net realizable value. Faneuil does not maintain meaningful inventory.

## Property, Plant and Equipment

The Company records property, plant and equipment at cost less accumulated depreciation. Expenditures for maintenance and repairs are charged to expense as incurred. Expenditures for additions, improvements and replacements that extend the useful life of an asset are capitalized. Depreciation is provided on a straight-line basis over the estimated useful lives of such assets. The Company eliminates cost and accumulated depreciation applicable to assets retired or otherwise disposed of from the accounts and reflects any gain or loss on such disposition in operating results.

Depreciation is provided principally over the following useful lives:

Computer and office equipment	3–7 years
Computer software	3–6 years
Furniture and fixtures	7–10 years
Leasehold improvements	Lease term
Equipment under capital leases	Lease term
Equipment	5 years
Vehicles and commercial trucks	5 years

Assets under capital leases include computer equipment and software. Amortization of capital leases is included in depreciation expense in the consolidated statements of income.

## Customer Deposits

*Carpets.* In conjunction with certain of Carpets' residential sales contracts, some customers are required to remit 50% of the contract sales price as a deposit when a sales order is initiated. At any given time, the customer deposits account represents sales orders which span over several months. Upon completion of installation on any job, the Company recognizes the related deposit as revenue.

## Revenue Recognition

*Faneuil.* Revenues associated with outsourcing services are generally recognized by the Company during the period in which the services are rendered. Revenues from time and material contracts are recognized at the contracted rates as labor hours and direct expenses are incurred and charged to costs of revenue. Revenue for call center contracts is recognized at the time calls are received based on the contracted rate per call. Revenues are generally based on staff hours, call time, call volume or number of transactions processed, and are presented net of any allowance or discounts. Payments for development activities are recognized as revenue when earned, over the period of effort.

Revenues from non-refundable up-front payments attributable to contract implementation, though not tied to achieving a specific performance milestone, are recognized over the initial term of the contract. At-risk milestone payments, which are based on achieving a specific performance milestone, are recognized as revenue when the milestone is achieved and the related payment is due, provided there is no future service obligation associated with that milestone.

Deferred revenue represents amounts billed to the customer in excess of amounts earned. In situations where the Company receives payment in advance of the performance of services, such amounts are recorded as deferred revenue and recognized as revenue during the period in which the related services are performed.

Receipt of funding under grant agreements are evaluated for appropriate recognition as revenue, based on the specific terms of the related grant or agreement. Grant funding received in advance of compliance with the grant conditions is recorded as deferred revenue. The Company recognizes grant income once it has complied with the conditions attached to the grant received.

*Carpets.* The Company recognizes revenue and invoices customers upon completion of installation of product. The Company is not obligated to perform significant activities after installation is complete. Payments received by customers prior to installation are recorded as customer deposits. Sales taxes collected and remitted are recorded on a net basis.

## **Insurance Reserves**

*Faneuil.* The Company maintains general liability insurance coverage, which is subject to certain deductibles. The Company is self-insured for workers' compensation claims up to \$250,000 per incident, and maintains insurance coverage for costs above the specified limit. The Company is self-insured for health insurance claims up to \$150,000 per incident, and maintains insurance coverage for costs above the specified limit. Reserves have been provided for workers' compensation and health claims based upon insurance coverages, third party actuarial analysis and management's judgment.

## **Goodwill and Intangible Assets**

Goodwill represents the excess of the purchase price over the fair value of identifiable net assets acquired. Intangible assets are recorded at fair value as of the date acquired. Goodwill and other intangibles determined to have an indefinite life are not amortized, but are tested for impairment annually, or when events or changes in circumstances indicate that the assets might be impaired, such as a significant adverse change in the business climate. If impaired, the asset's carrying value is reduced to fair value.

Intangible assets that are deemed to have a finite life are amortized over their estimated useful life generally using straight-line or accelerated methods that are based on expected cash flows.

*Faneuil.* Amortization is provided principally over the following useful lives:

Customer relationships	12.5 years
Internal software	6 years
Trade name	15 years

*Carpets.* Amortization is provided principally over the following useful lives:

Customer relationships	15 years
Non-Compete	6 years
Contract backlog	1 year
Trade name	15 years

### **Loan Costs**

The Company amortized its loan costs from the origination date through the loan maturity date. The loan cost amortization expense was \$24,414, and \$0, for the nine months ended June 30, 2015 and 2014, respectively.

### **Income Taxes**

The Company uses the asset and liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax-credit carryforwards, and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amount of assets and liabilities and their tax bases.

The Company's judgments relative to the current provision for income taxes take into account current tax laws, the Company's interpretation of current tax laws and possible outcomes of current and future audits conducted by tax authorities. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions and is subject to U.S. federal tax and state tax examinations for years ranging from 2006 to 2014. The Company's judgments relative to the value of deferred tax assets and liabilities take into account estimates of the amount of future taxable income. Actual operating results and the underlying amount of income in future years could render the Company's current estimates of recoverable net deferred taxes inaccurate. Any of the judgments mentioned above could cause the Company's actual income tax obligations to differ from its estimates, thus materially impacting the Company's financial position and results of operations.

If the Company takes a recognized tax position or has taken a recognized tax position on a tax return that more likely than not would be sustained upon examination by tax authorities, then the Company will recognize the potential asset or liability in the financial statements. A recognized tax position is then measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. Management believes that the Company has appropriate support for the income tax positions taken and to be taken on its tax returns and that its accrual for tax liabilities are adequate for all open years on assessment of many factors including past experience and interpretation of tax law applied to the facts of each matter.

### **Use of Estimates and Assumptions**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes, including the collectability of receivables and the realizability of assets such as fixed assets, goodwill, other intangible assets and deferred taxes. Actual results could differ from such estimates.

### **Concentrations**

The Company maintains its cash balances with a number of financial institutions. The balances are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000. At times these balances are in excess of the FDIC insured balances.



*Faneuil.* For the nine months ended June 30, 2015, the Company had three customers associated with five contracts that accounted for approximately 32.2%, 14.3%, and 13.5% of net revenue, of which approximately \$5.1 million, \$2.0 million, and \$1.9 million were included in accounts receivable at June 30, 2015. For the nine months ended June 30, 2014, the Company had one customer that accounted for approximately 38.0% of net sales, of which approximately \$4.1 million was included in accounts receivable at June 30, 2014.

For the nine months ended June 30, 2015, the Company had eight contracts in which each contract independently contributed to more than 5% of total revenue. In the aggregate these contracts accounted for \$96.3 million, or 80.7% of total revenue. Three of these contracts independently contributed to more than 10% of revenue, at 18.6%, 14.3%, and 13.5% for each contract.

For the nine months ended June 30, 2014, the Company had seven contracts in which each contract independently contributed to more than 5% of total revenue. In the aggregate these contracts accounted for \$83.2 million, or 80.8% of total revenue. Two of these contracts independently contributed to more than 10% of revenue, at 23.6% and 16.7% for each contract.

For the three months ended June 30, 2015, the Company had nine contracts that each independently contributed more than 5% of total revenue. In the aggregate these contracts accounted for \$30.9 million, or 85.4% of total revenue. Three of these contracts independently contributed more than 10% of revenue, at 20.4%, 12.1%, and 10.3% of revenue respectively.

For the three months ended March 31, 2015, the Company had eight contracts that each independently contributed more than 5% of total revenue. In the aggregate these contracts accounted for \$35.1 million, or 83.0% of total revenue. Three of these contracts independently contributed more than 10% of revenue, at 20.4%, 17.3%, and 13.2% of revenue respectively.

For the three months ended June 30, 2014, the Company had seven contracts that each independently contributed more than 5% of total revenue. In the aggregate these contracts accounted for \$27.8 million, or 79.6% of total revenue. Two of these contracts independently contributed more than 10% of revenue, at 21.9% and 17.7% of revenue respectively.

*Carpets.* For the nine months ended June 30, 2015, the Company had four customers that accounted for approximately 27.8%, 23.3%, 6.4% and 5.3% of net revenue, of which approximately \$0.7 million, \$1.0 million, \$0.5 million and \$0.5 million, respectively, were included in accounts receivable at June 30, 2015.

For the nine months ended June 30, 2015, the Company had three suppliers that accounted for approximately 18.4%, 16.4% and 15.2% of inventory purchases, of which approximately \$0.7 million, \$1.0 million and \$0.3 million, respectively, were included in accounts payable at June 30, 2015.

### **Earnings Per Share**

Basic net income or loss per share is computed by dividing net income or loss by the weighted average number of shares of common stock outstanding for the period. Nonvested shares of restricted stock are not included in the computation of basic net income per share until vested. Diluted net income per share includes the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. Diluted net income per share also includes the dilutive effect of nonvested shares of restricted stock.

The following table summarizes the basic and diluted weighted average shares for the three and nine months ended June 30, 2015 and 2014:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2015	2014	2015	2014
Weighted average shares outstanding, basic	33,014,350	30,444,913	32,071,163	28,244,913
Dilutive effect of:				
Options to purchase common stock	1,450,000	3,387,500	2,412,500	3,383,334
Weighted average shares outstanding, diluted	34,464,350	33,832,413	34,483,663	32,328,427

### 3. Acquisition of Faneuil

On October 18, 2013, ALJ acquired substantially all of the capital stock of Faneuil from Harland Clarke pursuant to a stock purchase agreement, dated October 18, 2013, by and among ALJ, Anna Van Buren, Faneuil's Chief Executive Officer, as an individual purchaser, and Harland Clarke. ALJ and Ms. Van Buren collectively acquired all of the capital stock of Faneuil from Harland Clarke for aggregate consideration of \$53.0 million, consisting of \$25.0 million in cash, a contribution of \$500,000 in cash for working capital purposes, 3,000,000 shares of ALJ common stock valued at \$2,500,000 and the Harland Clarke Note for \$25.0 million. ALJ acquired 96.43% of Faneuil's outstanding capital stock and the remaining 3.57% was acquired by Ms. Van Buren. Following the closing of ALJ's acquisition of Faneuil on October 18, 2013, ALJ sold 3,286 shares of Faneuil's common stock to Tarsha Leherr, Faneuil's Vice President of Operations. As a result, ALJ held substantially all of the capital stock of Faneuil, and Ms. Van Buren and Ms. Leherr held a minority interest in Faneuil. On July 10, 2015, Ms. Van Buren and Ms. Leherr exchanged 32,857 and 3,286 shares of Faneuil's common stock, respectively, for 1,500,000 shares and 150,000 shares of common stock of ALJ, respectively. As a result, as of July 10, 2015, ALJ owned 100% of the outstanding stock in Faneuil.

A Voting and Investor Rights Agreement was signed on October 18, 2013, by and among ALJ, Harland Clarke, Faneuil, Ms. Van Buren and Mr. Ravich, in his capacity as a stockholder of ALJ, which provides: (i) Harland Clarke certain rights to nominate a director to ALJ's Board, (ii) that Mr. Ravich shall vote his shares of ALJ common stock in favor of such nominee, (iii) certain rights of first refusal, co-sale and piggyback registration with respect to ALJ's shares of common stock held by Harland Clarke, and (iv) certain information rights with respect to Faneuil. Additionally, a Separation Agreement was signed on October 18, 2013, by and among ALJ, Harland Clarke, Faneuil and Scantron Corporation ("Scantron"), which agreement unwound certain affiliate arrangements between Faneuil, on the one hand, and Harland Clarke and Scantron, on the other hand, and provides for certain transition services to be provided by Scantron to Faneuil.

In connection with the acquisition of Faneuil, ALJ's Board was expanded from five to seven members. Ms. Van Buren was appointed to the Board as a Class III director. In addition, Michael Borofsky, a representative of Harland Clarke, was appointed to the Board as a Class III director.

### 4. Acquisition of Carpets

Effective April 1, 2014, ALJ acquired all of the equity interests of Floors N' More, dba Carpets N' More ("Carpets") pursuant to a purchase and sale agreement, dated April 14, 2014, by and among ALJ, the seller and Carpets. ALJ paid \$5.25 million in cash to the seller for all of the equity interests in Carpets. Concurrent with the closing, ALJ invested \$240,000 in Carpets for a total ownership percentage of 100.00% (basic) or 93.19% (fully diluted) and Mr. Chesin, the Chief Executive Officer of Carpets, received an ownership percentage of 0.00% (basic) or 6.81% (fully diluted) of Carpets by way of the issuance of 40,000 Equity Award Units, 10,000 which vested on each of June 30, 2015, 2016 and 2017. On July 1, 2014, each of the Limited Liability Company Operating Agreement and the Members' Agreement of

Carpets were amended and restated to provide Mr. Chesin with an allocation of 750,000 Class B Preferred Units and 75,000 Common Units. On July 10, 2015, Mr. Chesin exchanged his 750,000 Class B Preferred Units with a preference amount equal to \$750,000, 75,000 Common Units and 40,000 Equity Award Units of Carpets for 150,000 shares of common stock of ALJ. As a result, as of July 10, 2015, ALJ owned 100% of the equity interests in Carpets.

## 5. Acquisition of Phoenix

Effective August 9, 2015, ALJ acquired all of the capital stock of Phoenix Color Corp. (“Phoenix”) pursuant to a stock purchase agreement, dated July 11, 2015, from Visant Corporation (“Visant”). ALJ paid \$88.6 million in cash to Visant for all of the capital stock in Phoenix, subject to certain adjustments at closing.

In connection with the closing of the acquisition of Phoenix Color, Mr. Marc Reisch became the Chairman of Phoenix, and is becoming a Class I Director of ALJ.

## 6. Discontinued Operations

As of June 30, 2015 and September 30, 2014, the Company maintained an estimated accrual of liabilities associated with discontinued operations of \$298,000, remaining from its previously discontinued businesses. The accrued liabilities consist primarily of severance, lease payments, tax payments and other costs related to the operations of the previously discontinued businesses.

## 7. Accounts Receivable

Accounts receivable at June 30, 2015 and September 30, 2014 consisted of the following:

	<b>June 30, 2015</b>	<b>September 30, 2014</b>
	<b>Unaudited</b>	
Accounts receivable	\$ 24,474,535	\$ 24,518,566
Unbilled receivables	2,914,349	2,539,225
Escrow receivables	400,000	
Less: Allowance for doubtful accounts	(2,134,247)	(1,615,964)
Total	\$ 25,654,637	\$ 25,441,827

## 8. Property, Plant and Equipment

Property, plant and equipment at June 30, 2015 and September 30, 2014 consisted of the following:

	<b>June 30, 2015</b>	<b>September 30, 2014</b>
	<b>Unaudited</b>	
Computer and office equipment	\$ 9,166,780	\$ 6,869,347
Computer software	9,206,825	6,749,582
Furniture and fixtures	3,420,044	2,446,621
Leasehold improvements	4,920,235	3,093,982
Warehouse equipment	178,061	139,078
Construction in progress	315,870	380,077
Automobiles	13,761	8,598
Total	27,221,576	19,687,285
Less: Accumulated depreciation and amortization	(13,945,697)	(10,626,241)
	\$ 13,275,879	\$ 9,061,044

Depreciation expense was \$3,319,455 for the nine months ended June 30, 2015.

## 9. Intangible Assets

Intangible assets at June 30, 2015 and September 30, 2014 consisted of the following:

	<b>June 30, 2015</b>	<b>September 30, 2014</b>
	<b>Unaudited</b>	
Customer relationships	\$ 13,570,000	\$ 13,570,000
Trade name	2,020,000	2,020,000
Internal software	580,014	580,014
Non-compete agreements	1,810,000	2,020,000
Contract backlog	80,000	80,000
Total	<u>18,060,014</u>	<u>18,270,014</u>
Less: Accumulated amortization	<u>(2,861,560)</u>	<u>(1,490,556)</u>
	<u>\$ 15,198,454</u>	<u>\$ 16,779,458</u>

Amortization expense was \$1,379,304 for the nine months ended June 30, 2015.

Estimated future amortization expenses are as follows:

For the twelve months ending:

2016	\$ 1,679,591
2017	1,679,591
2018	1,679,591
2019	1,512,341
2020	1,316,002
Thereafter	<u>7,331,338</u>
	<u>\$ 15,198,454</u>

## 10. Goodwill

Goodwill at June 30, 2015 and September 30, 2014 consisted of the following:

	<b>June 30, 2015</b>	<b>September 30, 2014</b>
	<b>Unaudited</b>	
Trained and assembled workforce	\$ 11,400,000	\$ 11,400,000
Residual goodwill	10,883,308	10,883,308
Total	<u>\$ 22,283,308</u>	<u>\$ 22,283,308</u>

## 11. Business Segment Information

As of June 30, 2015, the Company had organized its business along two reportable segments together with a corporate group for certain support services. The Company's operations are aligned on the basis of products, services and industry. Management measures and evaluates the reportable segments based on operating income. The current segments and their principal activities consist of the following:

- Faneuil is a leading provider of outsourcing and co-sourced services to both commercial and government entities in the healthcare, utility, toll and transportation industries.
- Carpets is one of the largest floor covering retailers in Las Vegas and a provider of multiple products for the commercial, retail and home builder markets, including all types of flooring, countertops, cabinets, window coverings and garage/closet organizers, with five retail locations, as well as a stone and solid surface fabrication facility.

As discussed in Note 2, the Company made business segment changes effective April 1, 2014. For future reporting periods, the Company will provide business segment information for the results of operations. The results of operations for the three months ended June 30, 2015 and 2014 are as follows:

	Three Months Ended June 30, 2015		Three Months Ended June 30, 2014	
Net revenue				
Faneuil	36,231,027	74%	34,999,228	81%
Carpets	12,480,286	26%	8,325,750	19%
Consolidated	48,711,313	100%	43,324,978	100%
Cost of revenue				
Faneuil	28,992,051	80%	26,676,250	76%
Carpets	10,458,803	84%	6,302,337	76%
Consolidated	39,450,854	81%	32,978,587	76%
Gross profit				
Faneuil	7,238,976	20%	8,322,978	24%
Carpets	2,021,483	16%	2,023,413	24%
Consolidated	9,260,459	19%	10,346,391	24%
Selling, general and administrative				
Faneuil	4,369,751	12%	3,068,408	9%
Carpets	1,970,731	16%	1,358,804	16%
Consolidated	6,340,482	13%	4,427,212	10%
Depreciation and amortization				
Faneuil	1,401,296	4%	1,043,777	3%
Carpets	206,852	2%	101,238	1%
Consolidated	1,608,148	3%	1,145,015	3%
Segment operating profit				
Faneuil	1,467,929	4%	4,210,793	12%
Carpets	(156,100)	(1%)	563,371	7%
Consolidated	1,311,829	3%	4,774,163	11%
Parent company expenses	262,651	1%	179,867	0%
Operating income	1,049,178	2%	4,594,297	11%
Non-cash stock-based compensation	36,300	0%	36,299	0%
Consolidated adjusted EBITDA*	2,693,627	6%	5,775,611	13%

\* Consolidated adjusted EBITDA means net income plus depreciation and amortization, non-cash stock based compensation, net interest expense, other income (loss), and income tax (expense) benefit. Consolidated adjusted EBITDA is not calculated in accordance with GAAP and should not be considered as an alternative to net income/(loss), operating income or any other performance measures derived in accordance with GAAP or to cash flows from operating, investing or financing activities as an indicator of cash flows or as a measure of liquidity. This non-GAAP measure is provided as a supplement to financial results prepared in accordance with GAAP because management believes that it is a useful performance measure and management uses it for reviewing financial results and for budgeting and planning purposes. EBITDA measures are not calculated in the same manner by all companies and, accordingly, may not be an appropriate measure for comparison. A reconciliation of Consolidated adjusted EBITDA to operating income, the most directly comparable GAAP measure, can be obtained by subtracting depreciation and amortization and non-cash stock based compensation from Consolidated adjusted EBITDA.

The results of operations for the nine months ended June 30, 2015 and 2014 are as follows:

	Nine Months Ended June 30, 2015		Nine Months Ended June 30, 2014	
<b>Net Revenue</b>				
Faneuil	119,326,928	79%	97,240,815	92%
Carpets	32,436,725	21%	8,325,750	8%
Consolidated	151,763,653	100%	105,566,565	100%
<b>Cost of revenue</b>				
Faneuil	94,261,078	79%	74,825,473	77%
Carpets	27,241,833	84%	6,302,337	76%
Consolidated	121,502,911	80%	81,127,810	77%
<b>Gross profit</b>				
Faneuil	25,065,850	21%	22,415,342	23%
Carpets	5,194,892	16%	2,023,413	24%
Consolidated	30,260,742	20%	24,438,755	23%
<b>Selling, general and administrative</b>				
Faneuil	12,525,891	10%	8,883,187	9%
Carpets	5,048,410	16%	1,358,804	16%
Consolidated	17,574,301	12%	10,241,991	10%
<b>Depreciation and amortization</b>				
Faneuil	4,108,172	3%	2,692,025	3%
Carpets	590,587	2%	101,238	1%
Consolidated	4,698,759	3%	2,793,263	3%
<b>Segment operating profit</b>				
Faneuil	8,431,787	7%	10,840,130	11%
Carpets	(444,105)	(1%)	563,371	7%
Consolidated	7,987,682	5%	11,403,501	11%
Parent company expenses	822,235	1%	663,824	1%
Operating income	7,165,447	5%	10,739,677	10%
Non-cash stock-based compensation	108,901	0%	200,516	0%
Consolidated adjusted EBITDA*	11,973,107	8%	13,733,456	13%
<b>Total assets</b>				
Faneuil	80,001,616		76,454,424	
Carpets	13,390,558		12,014,998	
ALJ	5,110,208		1,970,459	
Consolidated	98,502,382		90,439,881	
<b>Total liabilities</b>				
Faneuil	34,901,429		39,857,829	
Carpets	8,220,048		4,996,653	
ALJ	2,087,624		4,109,560	
Consolidated	45,209,101		48,964,042	

\* Consolidated adjusted EBITDA means net income plus depreciation and amortization, non-cash stock based compensation, net interest expense, other income (loss), and income tax (expense) benefit. Consolidated adjusted EBITDA is not calculated in accordance with GAAP and should not be considered as an alternative to net income/(loss), operating income or any other performance measures derived in accordance with GAAP or to cash flows from operating, investing or financing activities as an indicator of cash flows or as a measure of liquidity. This non-GAAP measure is provided as a supplement to financial results prepared in accordance with GAAP because management believes that it is a useful performance measure and management uses it for reviewing financial results and for budgeting and planning purposes. EBITDA measures are not calculated in the same manner by all companies and, accordingly, may not be an appropriate measure for comparison. A reconciliation of Consolidated adjusted EBITDA to operating income, the most directly comparable GAAP measure, can be obtained by subtracting depreciation and amortization and non-cash stock based compensation from Consolidated adjusted EBITDA.

## 12. Line of Credit and Notes Payable – Faneuil

### *Line of credit and term loan with M&T Bank*

On September 30, 2014, Faneuil refinanced its \$25.0 million Harland Clarke Note and its \$5 million Senior Credit Facility with M&T Bank (see below). Faneuil owed \$21.6 million inclusive of accrued interest remaining on the Harland Clarke Note, and at closing paid down \$2.6 million from cash on hand, leaving \$19.0 million, which was refinanced under a term loan (“Term Loan”) with M&T Bank. The \$19.0 million Term Loan amortizes over a period of 60 months at \$316,667 per month plus accrued interest at a rate of Libor plus 3.75%, declining to Libor plus 2.50% upon obtaining certain ratios. Faneuil also refinanced its \$5.0 million revolving senior credit facility (“Revolver”) with M&T Bank, which, as refinanced, has a two-year term and accrues interest at a rate of Libor plus 2.50%. On May 1, 2015, Faneuil modified its Revolver with M&T Bank to increase the amount available from \$5.0 million to \$10.0 million. The Term Loan and Revolver are guaranteed by Faneuil and secured by a lien on all of the corporate assets of Faneuil. Faneuil owed \$16.2 million and \$19.0 million on the Term Loan as of June 30, 2015 and September 30, 2014, respectively. As of June 30, 2015 and September 30, 2014, Faneuil did not owe anything on the Revolver.

See **Section 18 - Subsequent Events** for modifications made to the Term Loan and Revolver.

### Future maturities for the next five fiscal years are as follows:

2016	\$	3,800,000
2017		3,800,000
2018		3,800,000
2019		3,800,000
2020		950,000
	\$	<u>16,150,000</u>

### *Historical Notes Payable*

On October 18, 2013, Faneuil entered into the initial credit facility agreement, providing for the asset-based \$5.0 million Revolver with M&T Bank. The Revolver was subject to customary conditions precedent as well as a borrowing base limitation. The Revolver accrued interest at Libor plus 2.5% and was secured by substantially all of Faneuil’s assets. The Revolver contained customary representations, warranties and covenants, including a financial covenant requiring the borrowers to maintain a certain debt service coverage ratio.

A Subordination and Intercreditor Agreement was also signed on October 18, 2013, by and among Faneuil and Harland Clarke Holdings Corp. (Harland Clarke), pursuant to which the Harland Clarke Note was subordinated to the Revolver. This agreement was terminated with the pay-off of the Harland Clarke Note on September 30, 2014. In conjunction with the acquisition of Faneuil, the \$25.0 million Harland Clarke Note was issued by Faneuil. The Harland Clarke Note provided for a two-year maturity with interest in the first year at five percent (5%) and interest in the second year at seven and one-half percent (7.5%). The Harland Clarke Note had mandatory payments of \$1,000,000 per quarter with an annual cash flow sweep based on a defined free cash calculation. Faneuil’s obligations under the Harland Clarke Note were secured by a pledge of the Faneuil stock held by ALJ, subject to certain limitations.

## 13. Line of Credit and Notes Payable – Carpets

### *Line of Credit*

On September 30, 2014, Carpets executed a \$3.0 million Senior Credit Facility with M&T Bank (“Carpets Revolver”). The Carpets Revolver carries a term of 24 months and accrues interest at a rate of Libor plus 4.00%. The Carpets Revolver is secured by a first lien on all corporate assets of Carpets and its subsidiaries. The Carpets Revolver is guaranteed by Faneuil and secured by a lien on all of the corporate

assets of Faneuil. Carpets owed \$2.3 million and \$0 under the Carpets Revolver as of June 30, 2015 and September 30, 2014, respectively.

See **Section 18 - Subsequent Events** for changes to the Carpets Revolver.

#### *Intercompany Note Payable*

In April 2014, Carpets issued ALJ a note (“Note Payable”) for the aggregate principal amount of \$1.0 million. Interest accrues at 4.0% on the available balance and is due in full on December 15, 2015. Carpets owed \$1.0 million under the Note Payable plus accrued interest of \$46,667 and \$16,500 as of June 30, 2015 and September 30, 2014, respectively. These amounts have been eliminated through an intercompany adjustment.

#### *Other Long-Term Agreements*

Carpets had other agreements that consist of amounts due to third party vendors and tax agencies. The amounts are unsecured and non-interest bearing. Carpets owed \$0 and \$56,789 under these agreements as of June 30, 2015 and September 30, 2014, respectively.

### **14. Note Payable – ALJ**

#### *M&T Note Payable and Line of Credit*

On May 1, 2015, ALJ executed a \$1.5 million senior credit facility with M&T Bank (“ALJ Revolver”). The ALJ Revolver carries a term of 17 months and accrues interest at a rate of Libor plus 3.75%. The ALJ Revolver is secured by a first lien on all corporate assets owned by ALJ. The ALJ Revolver is guaranteed by Faneuil and secured by a lien on all of the corporate assets of Faneuil. On May 1, 2015, ALJ retired the ALJ Term Loan with M&T Bank. ALJ used \$1.0 million of cash and \$533,000 under its ALJ Revolver to pay off all outstanding amounts owed under the term loan. The balance on the ALJ Revolver as of June 30, 2015 was \$0.

See **Section 18 - Subsequent Events**

#### *Historical Notes Payable*

#### *Libra Note Payable*

ALJ entered into a \$2.0 million promissory note payable with Libra Securities Holdings, LLC, a related party, on April 7, 2014, which was refinanced on September 30, 2014. The promissory note, which was approved by the disinterested directors on the board of directors of ALJ, carried a 5-year maturity with a balloon payment due April 2019 and a 10% annual interest rate.

On September 30, 2014, ALJ refinanced its note payable of \$2.0 million due to a related party with a \$2.0 million term loan with M&T Bank (“ALJ Term Loan”). The ALJ Term Loan amortized over a period of 30 months at \$66,667 per month plus accrued interest at a rate of Libor plus 3.75%. The ALJ Term Loan was secured by a first lien on all corporate assets owned by ALJ. The ALJ Term Loan was guaranteed by Faneuil and secured by a lien on all of the corporate assets of Faneuil. The ALJ Term Loan was refinanced with the ALJ Revolver on May 1, 2015.

### **15. Commitments and Contingencies**

The Company leases real estate, equipment, and vehicles under noncancelable operating leases. Future minimum payments under noncancelable operating leases with initial or remaining terms of one year or more are presented below:

For the twelve months ending:

2016	\$	4,001,440
2017		3,444,659
2018		2,256,169



2019	1,217,105
Thereafter	427,357
Total	\$ 11,346,730

During the nine months ended June 30, 2015, rental expense under operating leases was \$3,216,519.

The Company also leases equipment under noncancelable capital leases. Future minimum payments under noncancelable capital leases with initial or remaining terms of one year or more are presented below and are included in current and noncurrent other liabilities in the consolidated balance sheet:

July 1, 2015 to June 30, 2016	\$ 878,715
July 1, 2016 to June 30, 2017	878,715
July 1, 2017 to June 30, 2018	471,824
Total minimum payments required	2,229,254
Less executory (maintenance) costs	0
Net minimum lease payments	2,229,254
Less imputed interest at rates ranging from 0% to 5.22%	87,685
Present value of net minimum lease payments	\$ 2,141,569

During the nine months ended June 30, 2015, Carpets completed a fixed price job for a client and during the process it was deemed that some of the materials used in completing the work were faulty. As a preventative measure, Carpets and the general contractor repaired most of the work it had completed including a portion that may or may not have included faulty materials. The total amount of expenses incurred to repair the issues was \$509,000, of which management believes it is probable that at least \$229,058 will be reimbursed by insurance companies. As a result, Carpets has recognized a \$392,837 loss on this portion of the contract and has recorded a reserve of that amount in their financial statements as of June 30, 2015.

## 16. Income Taxes

Deferred tax assets and liabilities are included in the financial statements at currently enacted income tax rates applicable to the period in which the deferred tax assets or liabilities are expected to be realized or settled. As changes in tax laws or rates are enacted, deferred tax assets and liabilities are adjusted through the provision for income taxes.

The Company files income tax returns in the U.S. federal jurisdiction and various states. The Company is subject to tax examinations for periods post 2005 by federal, state and local tax authorities for various tax liabilities incurred by the parent entity and its subsidiaries, including any discontinued businesses. The amount of any tax assessments and penalties may be material and may negatively impact the Company's operations. Given the uncertainty in the amount and the difficulty in estimating the probability of the assessments arising from future tax examinations, the Company has not made any accruals for such tax contingencies.

In assessing the realization of deferred tax assets, the Company performed an analysis of the available evidence to determine whether it is more likely than not that some portion or all of the deferred tax assets can be realized. One factor considered is the ability of the Company to generate consistent future taxable income in the periods in which the temporary differences become deductible. The main component of the deferred tax assets is the net operating loss carry-forward. There has been significant positive evidence established by the Company to justify that only a partial valuation allowance is necessary. The Company has shown consistent profitability over the past six years. Management also projects continued taxable income. Management believes it will be able to recognize a portion of its NOLs over the coming years. A valuation allowance of \$54,760,149 has been established against the net deferred tax asset of \$54,760,149 as of June 30, 2015.

In general, the Company recognizes interest accrued related to unrecognized tax benefits in tax expense. The Company has not recognized or accrued any interest or penalties for the periods ended June 30, 2015 and September 30, 2014, respectively.

At June 30, 2015, the Company has net operating loss carry-forwards for federal income tax purposes of approximately \$164 million that expire from 2020 through 2028. The use of approximately \$36 million of these net operating losses in future years may be restricted under Section 382 of the Internal Revenue Code. The realization of the benefits of the net operating losses is dependent upon sufficient taxable income in future years. Lack of consistent future earnings, a change in ownership of the Company, or the application of the alternative minimum tax (“AMT”) rules could adversely affect the Company’s ability to utilize these net operating losses.

The income tax provision is computed by applying the following rates to taxable income before income taxes for the nine months ended June 30, 2015:

Tax at federal statutory rate	35.0%
Tax rate offset by our NOLs	(35.0%)
AMT rate on taxable income	2.0%
State income taxes	3.0%
Total	5.0%

## 17. Share-based Compensation and Stock Options

### ALJ

The Company determines the fair value of all stock-based compensation, including stock options and warrants, by using the Black-Scholes option-pricing model. In selling, general and administrative expenses for the nine months ended June 30, 2015 and 2014, the Company recognized share-based compensation expense of \$39,754 and \$46,852, respectively.

All share-based payments to employees are recognized in the financial statements as compensation expense based on the fair value on the date of grant. The Black-Scholes model requires input of certain assumptions, including volatility, expected term, risk-free interest rates, and dividend yield. The Company did not issue any stock options during the nine months ended June 30, 2015. The Company issued options to purchase 100,000 shares of common stock during the nine months ended June 30, 2014.

The summary of stock option activity for the nine months ended June 30, 2015 is as follows:

	Number of Options	Weighted Average Exercise Price per Share	Weighted Average Contractual Term
Balance outstanding as of September 30, 2014	3,475,000	\$0.65	3.9 years
Exercised	2,041,000	\$0.41	2.9 years
Balance outstanding as of June 30, 2015	1,434,000	\$0.98	5.2 years
Options vested as of June 30, 2015	1,384,000	\$0.96	5.1 years

In January 2015, Jess Ravich, the Company’s Executive Chairman, exercised a portion of his stock options to purchase 2,000,000 shares of common stock for \$800,000. His shares were fully vested and had a strike price of \$0.40 per share.

In May 2015, Hal Byer, a Director, net exercised a portion of his stock options to purchase 41,000 shares of common stock. These shares were repurchased by the Company and retired.

### Faneuil

On October 18, 2013, the board of directors of Faneuil adopted the Faneuil, Inc. 2013 Stock Incentive Plan (the “Plan”). The aggregate number of shares of Faneuil’s common stock which may be issued pursuant to awards under the Plan is 80,000 shares. Faneuil recognized share-based compensation expense of

\$69,147 and \$153,664 included in the selling, general and administrative expenses for the nine months ended June 30, 2015 and June 30, 2014, respectively.

On October 18, 2013, the board of directors of Faneuil granted an option to purchase 60,000 shares of Faneuil's common stock under the Plan to Ms. Van Buren, the chief executive officer of Faneuil. Such option vested with respect to one-third of the shares subject to the option on October 18, 2013, one-third of the shares subject to the option on October 18, 2014 and the remaining unvested shares would vest on October 18, 2015, conditioned on Ms. Van Buren's continuous service to Faneuil. Such option expired on October 18, 2023. On July 10, 2015, Ms. Van Buren's option was canceled.

See **Section 18 - Subsequent Events**

## **18. Subsequent Events**

On July 11, 2015, ALJ entered into a stock purchase agreement with Visant to acquire 100% of the common stock of Phoenix. The transaction closed on August 14, 2015 giving effect to the acquisition as of August 9, 2015. The aggregate consideration for the acquisition, subject to certain closing adjustments, was \$88.6 million.

Effective August 14, 2015, ALJ entered into a financing agreement with Cerberus Business Finance, LLC ("Cerberus"), to borrow \$105 million in a term loan ("Cerberus Term Loan") and have available up to \$30 million in a revolver ("Cerberus/PNC Revolver"), of which \$2.2 million was drawn at the close of the stock purchase of Phoenix. The proceeds of these facilities were used together with cash-on-hand plus the proceeds from the sale of ALJ stock described below to fund the acquisition and refinance the outstanding obligations of ALJ, Faneuil and Carpets and to provide working capital facilities to all three of ALJ's subsidiaries and ALJ.

On August 14, 2015, ALJ refinanced its outstanding borrowings and agreements with M&T Bank, including the Faneuil Term Loan for \$15.9 million, Carpets Revolver for \$2.2 million, ALJ Revolver for \$0.3 million and Faneuil Revolver for \$0, with Cerberus and PNC.

On July 10, 2015, Marc Reisch, the Chairman of Phoenix purchased 400,000 shares of common stock of ALJ in a private placement for an aggregate consideration of \$1,520,000. In connection with the closing of the acquisition of Phoenix Color, Mr. Reisch is joining the board of ALJ as a Class I Director.

On July 10, 2015, Anna Van Buren, the Chief Executive Officer of Faneuil, and Tarsha Leherr, the Vice President of Operations of Faneuil, exchanged their 32,857 and 3,286 shares of common stock of Faneuil, respectively, for 1,500,000 shares and 150,000 shares of common stock of ALJ, respectively, using an exchange ratio of 45.65 shares of ALJ common stock for each share of Faneuil common stock. In addition, on July 10, 2015, Ms. Van Buren entered into an amended and restated employment agreement with Faneuil and waived her option to purchase 60,000 shares of Faneuil's common stock.

On July 10, 2015, Steve Chesin, the Chief Executive Officer of Carpets, exchanged his 750,000 Class B Preferred Units with a preference amount equal to \$750,000, 75,000 Common Units and 40,000 Equity Award Units of Carpets for 150,000 shares of common stock of ALJ.

As a result of these three exchanges and the purchase of Phoenix, ALJ now owns 100% of each of its subsidiaries.

## **ITEM 4. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION**

### **GENERAL OVERVIEW**

Commencing October 18, 2013, the Company has included the operations of Faneuil in its consolidated financial statements. Beginning April 1, 2014, the Company has included the results of operations of Carpets in its consolidated financial statements. The Company did not include the results of operations for Phoenix, since the acquisition was executed after June 30, 2015.

### **Critical Accounting Policies and Estimates**

The Company prepared its financial statements in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Management periodically evaluates the estimates and judgments made. Management bases its estimates and judgments on historical experience and on various factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates as a result of different assumptions or conditions.

### **Revenue Recognition**

Revenues associated with outsourcing services are generally recognized by the Company during the period in which the services are rendered. Revenues from time and material contracts are recognized at the contracted rates as labor hours and direct expenses are incurred and charged to costs of revenue. Revenue for call center contracts is recognized at the time calls are received based on the contracted rate per call. Revenues are generally based on staff hours, call time, call volume, or number of transactions processed, and are presented net of any allowance or discounts. Payments for development activities are recognized as revenue when earned, over the period of effort.

Revenues from non-refundable up-front payments attributable to contract implementation, though not tied to achieving a specific performance milestone, are recognized over the initial term of the contract. At-risk milestone payments, which are based on achieving a specific performance milestone, are recognized as revenue when the milestone is achieved and the related payment is due, provided there is no future service obligation associated with that milestone.

### **Income Taxes**

The Company uses the asset and liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax-credit carryforwards, and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amount of assets and liabilities and their tax bases.

The Company's judgments relative to the current provision for income taxes take into account current tax laws, the Company's interpretation of current tax laws and possible outcomes of current and future audits conducted by tax authorities. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions and is subject to U.S. federal tax and state tax examinations for years ranging from 2006 to 2014. The Company's judgments relative to the value of deferred tax assets and liabilities take into account estimates of the amount of future taxable income. Actual operating results and the underlying amount of income in future years could render the Company's current estimates of recoverable net deferred taxes inaccurate. Any of the judgments mentioned above could cause the Company's actual income tax obligations to differ from its estimates, thus materially impacting the Company's financial position and results of operations.

If the Company takes a recognized tax position or has taken a recognized tax position on a tax return that more likely than not would be sustained upon examination by tax authorities, then the Company will

recognize the potential asset or liability in the financial statements. A recognized tax position is then measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. Management believes that the Company has appropriate support for the income tax positions taken and to be taken on its tax returns and that its accrual for tax liabilities are adequate for all open years based on an assessment of many factors, including past experience and interpretation of tax law applied to the facts of each matter.

## Results of Operations for the Three Months Ended June 30, 2015 and 2014

The following table sets forth selected unaudited consolidated statements of operations data for each of the periods indicated on an actual basis and as a percentage of total net revenue for the respective periods. The consolidated statements of operations include Faneuil for both periods and Carpets for the three months ended June 30, 2015.

	<u>Three months ended</u> <u>June 30, 2015</u>		<u>Three months ended</u> <u>June 30, 2014</u>	
Net revenue	\$ 48,711,313	100%	\$ 43,324,978	100%
Cost of revenue	39,450,854	81%	32,978,587	76%
Gross profit	9,260,459	19%	10,346,391	24%
Selling, general and administrative	6,603,133	14%	4,607,079	11%
Depreciation and amortization	1,608,148	3%	1,145,015	3%
Income from operations	1,049,178	2%	4,594,297	11%
Dividend and interest income	7,567	0%	3,252	0%
Interest expense	(233,937)	0%	(372,276)	(1%)
Other expense	(31,370)	0%	-	-
Net income before income taxes and non-controlling interest	791,438	2%	4,225,273	10%
Income taxes	(114,384)	0%	(261,019)	1%
Net income before non-controlling interest	677,054	1%	3,964,254	9%
Non-controlling interest	(27,982)	0%	(126,892)	0%
Net income	649,072	1%	3,837,362	9%

The following table sets forth selected unaudited statements of operations data for the three months ended June 30, 2015 and 2014, respectively, on a segment by segment and consolidated basis.

	<u>Three months ended</u> <u>June 30, 2015</u>		<u>Three months ended</u> <u>June 30, 2014</u>	
Net revenue				
Faneuil	\$ 36,231,027		\$ 34,999,227	
Carpets	12,480,286		8,325,750	
Consolidated net revenue	48,711,313		43,324,977	
Cost of revenue				
Faneuil	28,992,051		26,676,250	
Carpets	10,458,803		6,302,337	
Consolidated cost of revenue	39,450,854		32,978,587	
Gross profit				
Faneuil	7,238,976		8,322,977	
Carpets	2,021,483		2,023,413	
Consolidated gross profit	9,260,459		10,346,390	
Selling, general and administrative				
Faneuil	4,369,751		3,068,408	
Carpets	1,970,731		1,358,804	
ALJ	262,651		179,867	
Consolidated selling, general and administrative	6,603,133		4,607,079	
Depreciation and amortization				
Faneuil	1,401,296		1,043,777	
Carpets	206,852		101,238	
Consolidated depreciation and amortization	1,608,148		1,145,015	

### Net Revenue

Net revenue for the Faneuil segment for the three months ended June 30, 2015 was \$36.2 million, an increase of \$1.2 million, or 3.4%, over net revenue of \$35.0 million for the three months ended June 30, 2014. The increase in net revenue was attributable to \$4.4 million related to two new contracts and revenue from existing customers during the period, primarily within the healthcare vertical, partially offset by a

reduction in one-time implementation revenue of \$1.8 million within the healthcare vertical and a reduction in revenue of \$1.4 million from a customer contract that concluded in early 2015. When implementing new contracts, Faneuil experiences one-time contract implementation revenue that is not repeated in subsequent years.

Net revenue for the periods was generated from six verticals with the following contribution levels:

	Three months ended June 30, 2015	Three months ended June 30, 2014
Manual toll collection	26.1%	28.7%
Electronic toll collection	30.7%	25.9%
Healthcare	24.4%	24.2%
Government/municipal	6.4%	10.4%
Utilities	10.7%	9.2%
Commercial	1.7%	1.6%

Net revenue for the Carpets segment for the three months ended June 30, 2015 was \$12.5 million, an increase of \$4.2 million, or 49.9%, over net revenue of \$8.3 million for the three months ended June 30, 2014. The increase in net revenue was attributable to \$2.2 million of revenue related to sales of new cabinet products and \$2.0 million in additional sales to two of our builder clients. Within the past 12 months Carpets began selling cabinets as part of its core offering. Net revenue for the periods was generated from three divisions with the following contribution levels:

	Three months ended June 30, 2015	Three months ended June 30, 2014
Residential	71.5%	68.3%
Commercial	17.5%	20.0%
Retail	11.0%	11.7%

### Cost of Revenue

Cost of revenue for the Faneuil segment for the three months ended June 30, 2015 was \$29.0 million, an increase of \$2.3 million, or 8.6%, over cost of revenue of \$26.7 million for the three months ended June 30, 2014. The increase in cost of revenue was attributable to the operational impact of \$3.4 million in new and expanded customer contracts during the period, partially offset by a \$0.2 million decrease in one-time implementation cost of revenue within the healthcare vertical, and a reduction in cost of revenue of \$0.9 million for a customer contract that concluded in early 2015.

Cost of revenue for the Carpets segment for the three months ended June 30, 2015 was \$10.5 million, an increase of \$4.2 million, or 66.0%, over cost of revenue of \$6.3 million for the three months ended June 30, 2014. The increase in cost of revenue was attributable to an increase in costs associated with higher revenue of \$3.2 million and an increase in overhead costs including supervision and materials of \$0.5 million.

### Gross Profit

Gross profit for the Faneuil segment for the three months ended June 30, 2015 was \$7.2 million, a decrease of \$1.1 million, or 13.3%, over gross profit of \$8.3 million for the three months ended June 30, 2014. The decrease in gross profit was attributable to a \$1.0 million increase in gross profit from new and expanded customer contracts during the period, offset by a \$1.6 million decrease in gross profit from one-time implementation revenues within the healthcare vertical, and a \$0.5 million decrease in gross profit from a customer contract that concluded in early 2015. Gross profit for the Faneuil segment as a percentage of revenue for the three months ended June 30, 2015 was 20%, a decrease of 4% over gross profit as a

percentage of revenue of 24% for the three months ended June 30, 2014. The decrease in gross profit as a percentage of revenue was primarily attributable to higher gross profit earned on set up fees associated within the health care sector for the three months ended June 30, 2014, which did not recur for the three months ended June 30, 2015.

Gross profit for the Carpets segment for the three months ended June 30, 2015 was \$2.0 million, which was similar to gross profit for the three months ended June 30, 2014 of \$2.0 million. Despite the increase in revenue, the Company experienced higher cost of sales during the period. Gross profit for the Carpets segment as a percentage of revenue for the three months ended June 30, 2015 was 16%, a decrease of 8% over gross profit as a percentage of revenue of 24% for the three months ended June 30, 2014. The decrease was primarily attributable to an increase in overhead costs including supervision and materials.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses for the Faneuil segment for the three months ended June 30, 2015 were \$4.4 million, an increase of \$1.3 million, or 42.4% over selling, general and administrative expenses of \$3.1 million for the three months ended June 30, 2014. The increase in selling, general and administrative expenses was primarily related to \$1.3 million in new and expanded customer contracts during the period. The net increases of \$1.3 million were primarily attributable to an increase of \$0.6 million in facility expenses, \$0.5 million in professional/consulting services, and \$0.2 million in communication expenses.

Selling, general and administrative expenses for the Carpets segment for the three months ended June 30, 2015 were \$2.0 million, an increase of \$0.6 million, or 45.0% over selling, general and administrative expenses of \$1.4 million for the three months ended June 30, 2014. The increase was primarily attributable to \$0.4 million in salaries related to increases in headcount.

Selling, general and administrative expenses for the ALJ for the three months ended June 30, 2015 were \$0.3 million, an increase of \$0.1 million, or 46.0% over selling, general and administrative expenses of \$0.2 million for the three months ended June 30, 2014. The increase was primarily attributable to higher professional fees.

### **Depreciation and Amortization Expenses**

Depreciation and amortization expenses for the Faneuil segment for the three months ended June 30, 2015 were \$1.4 million, an increase of \$0.4 million, or 34.3%, over depreciation and amortization expenses of \$1.0 million for the three months ended June 30, 2014. The increase was primarily attributable to \$0.4 million related to new and expanded contracts.

Depreciation and amortization expenses for the Carpets segment for the three months ended June 30, 2015 were \$0.2 million, an increase of \$0.1 million, or 104.3%, over depreciation and amortization expenses of \$0.1 million for the three months ended June 30, 2014. The increase was primarily attributable to higher amortization expense related to the build out of Carpets new retail showrooms.



## Results of Operations for the Nine Months Ended June 30, 2015 and 2014

The following table sets forth selected unaudited consolidated statements of operations data for each of the periods indicated on an actual basis and as a percentage of total net revenue for the respective periods. The consolidated statements of operations include Faneuil for the period of October 18, 2013 through June 30, 2014 and for the nine months ended June 30, 2015, and Carpets for the nine months ended June 30, 2015 only.

	<u>Nine months ended</u> <u>June 30, 2015</u>		<u>Nine months ended</u> <u>June 30, 2014</u>	
Net revenue	\$ 151,763,653	100%	\$ 105,566,565	100%
Cost of revenue	121,502,911	80%	81,127,810	77%
Gross Profit	30,260,742	20%	24,438,755	23%
Selling, general and administrative	18,396,536	12%	10,905,814	10%
Depreciation and amortization	4,698,759	3%	2,793,263	3%
Income from operations	7,165,447	5%	10,739,678	10%
Dividend and interest income	10,546	0%	14,484	0%
Interest expense	(693,969)	0%	(952,100)	(1%)
Other expense	(121,370)	0%	-	-
Net income before income taxes and non-controlling interest	6,360,654	4%	9,802,062	9%
Income taxes	(686,034)	0%	(705,026)	(1%)
Net income before non-controlling interest	5,674,620	4%	9,097,036	9%
Non-controlling interest	(203,873)	0%	(310,142)	0%
Net income	5,470,747	4%	8,786,894	8%

The following table sets forth selected unaudited statements of operations data for the nine months ended June 30, 2015 and 2014, respectively, on a segment by segment and consolidated basis.

	<u>Nine months ended</u> <u>June 30, 2015</u>		<u>Nine months ended</u> <u>June 30, 2014</u>	
Net revenue				
Faneuil	\$ 119,326,928		\$ 97,240,815	
Carpets	32,436,725		8,325,750	
Consolidated net revenue	151,763,653		105,566,565	
Cost of revenue				
Faneuil	94,261,078		74,825,473	
Carpets	27,241,833		6,302,337	
Consolidated cost of revenue	121,502,911		81,127,810	
Gross profit				
Faneuil	25,065,850		22,415,342	
Carpets	5,194,892		2,023,413	
Consolidated gross profit	30,260,742		24,438,755	
Selling, general and administrative				
Faneuil	12,525,891		8,883,187	
Carpets	5,048,410		1,358,804	
ALJ	822,235		663,824	
Consolidated selling, general and administrative	18,396,536		10,905,815	
Depreciation and amortization				
Faneuil	4,108,172		2,692,025	
Carpets	590,587		101,238	
Consolidated depreciation and amortization	4,698,759		2,793,263	

### Net Revenue

Net revenue for the Faneuil segment for the nine months ended June 30, 2015 was \$119.3 million, an increase of \$22.1 million, or 22.7%, over net revenue of \$97.2 million for the nine months ended June 30, 2014. The increase in net revenue was attributable to \$21.1 million in new and expanded contracts,

primarily within the healthcare vertical, and \$5.8 million due to an additional 18 days of Faneuil's operating results being included in the later period, partially offset by a decrease in one-time implementation revenues within the healthcare vertical of \$2.3 million, and a reduction in revenue of \$2.5 million from a customer contract that concluded in early 2015. When implementing new contracts, Faneuil experiences one-time contract implementation revenue that is not repeated in subsequent years.

Net revenue for the periods was generated from six verticals with the following contribution levels:

	Nine months ended June 30, 2015	Nine months ended June 30, 2014
Manual toll collection	24.0%	30.5%
Electronic toll collection	27.0%	25.9%
Healthcare	31.8%	22.0%
Government/municipal	6.7%	11.0%
Utilities	8.5%	8.8%
Commercial	2.0%	1.8%

Net revenue for the Carpets segment for the nine months ended June 30, 2015 was \$32.4 million, an increase of \$24.1 million, over net revenue of \$8.3 million for the nine months ended June 30, 2014. The increase in net revenue was primarily attributable to an additional 6 months of Carpet's operating results being included in the later period due to the date Carpets was acquired by ALJ.

Net revenue for the periods was generated from three divisions with the following contribution levels:

	Nine months ended June 30, 2015	Nine months ended June 30, 2014
Residential	71.2%	70.8%
Commercial	17.8%	18.0%
Retail	11.0%	11.2%

### Cost of Revenue

Cost of revenue for the Faneuil segment for the nine months ended June 30, 2015 was \$94.3 million, an increase of \$19.4 million, or 25.9%, over cost of revenue of \$74.8 million for the nine months ended June 30, 2014. The increase in cost of revenue was attributable to the operational impact of \$16.6 million in new and expanded customer contracts and \$4.8 million from the additional 18 days of operating results included in the nine months ended June 30, 2015; partially offset by a \$0.1 million decrease in one-time implementation cost of revenue within the healthcare vertical and a reduction in cost of revenue of \$1.9 million from a customer contract that concluded in early 2015.

Cost of revenue for the Carpets segment for the nine months ended June 30, 2015 was \$27.2 million, an increase of \$20.9 million, over cost of revenue of \$6.3 million for the nine months ended June 30, 2014. The increase in cost of revenue was primarily attributable to an additional 6 months of Carpet's operating results being included in the later period due to the date Carpets was acquired by ALJ, \$0.4 million associated with a reserve taken against potential losses on a contract and \$0.3 million in reserves against inventory.

### Gross Profit

Gross profit for the Faneuil segment for the nine months ended June 30, 2015 was \$25.1 million, an increase of \$2.7 million, or 12.0%, over gross profit of \$22.4 million for the nine months ended June 30, 2014. The increase in gross profit was attributable to \$5.5 million in new and expanded customer contracts during the period, partially offset by a \$2.2 million decrease in gross profit from one-time implementation revenue within the healthcare vertical, and a \$0.6 million decrease in gross profit from a customer contract

that concluded in early 2015. Gross profit for the Faneuil segment as a percentage of revenue for the nine months ended June 30, 2015 was 21%, a decrease of 2% compared to gross profit as a percentage of revenue of 23% for the nine months ended June 30, 2014. The decrease was primarily attributable to the gross profit realized on the one-time implementation revenue generated for the nine months ended June 30, 2014.

Gross profit for the Carpets segment for the nine months ended June 30, 2015 was \$5.2 million, an increase of \$3.2 million, over gross profit of \$2.0 million for the nine months ended June 30, 2014. The increase in gross profit was primarily attributable to an additional 6 months of Carpet's operating results being included in the later period due to the date Carpets was acquired by ALJ. Gross profit for the Carpets segment as a percentage of revenue for the nine months ended June 30, 2015 was 16%, a decrease of 8% compared to gross profit as a percentage of revenue of 24% for the nine months ended June 30, 2014. The decrease was primarily attributable to higher overhead expenses including supervision and materials and the reserve against potential losses for a contract and inventory.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses for the Faneuil segment for the nine months ended June 30, 2015 were \$12.5 million, an increase of \$3.6 million, or 41.0% over selling, general and administrative expenses of \$8.9 million for the nine months ended June 30, 2014. The increase was primarily attributable to \$3.6 million in new and expanded customer contracts during the period. The net increases of \$3.6 million were primarily attributable to an increase of \$1.6 million in facility expenses, \$0.7 million in professional/consulting services, \$0.5 million in communications expenses, \$0.5 million in licenses and fees and \$0.2 million in marketing.

Selling, general and administrative expenses for the Carpets segment for the nine months ended June 30, 2015 were \$5.0 million, an increase of \$3.7 million over selling, general and administrative expenses of \$1.4 million for the nine months ended June 30, 2014. The increase in selling, general and administrative was primarily attributable to an additional 6 months of Carpet's operating results being included in the later period due to the date Carpets was acquired by ALJ and increases in headcount.

Selling, general and administrative expenses for ALJ for the nine months ended June 30, 2015 were \$0.8 million, an increase of \$0.2 million, or 23.9%, over selling, general and administrative expenses of \$0.7 million for the nine months ended June 30, 2014. The increase was primarily attributable to higher professional fees.

### **Depreciation and Amortization Expenses**

Depreciation and amortization expenses for the Faneuil segment for the nine months ended June 30, 2015 were \$4.1 million, an increase of \$1.4 million, or 52.6% over depreciation and amortization expenses of \$2.7 million for the nine months ended June 30, 2014. The increase was primarily attributable to \$1.4 million related to new and expanded contracts.

Depreciation and amortization expenses for the Carpet segment for the nine months ended June 30, 2015 were \$0.6 million, an increase of \$0.5 million, over depreciation and amortization expenses of \$0.1 million for the nine months ended June 30, 2014. The increase in depreciation and amortization was primarily attributable to an additional 6 months of Carpet's operating results being included in the later period due to the date Carpets was acquired by ALJ and the build out of two new retail stores.

### **Liquidity and Capital Resources – June 30, 2015**

For the nine months ended June 30, 2015, the Company recognized net income of \$5.5 million, generated positive cash flow from operating activities of \$5.1 million, offset by cash used in investing activities of \$7.5 million and investing activities of \$0.6 million. The Company had an accumulated deficit of \$214.1 million and stockholder's equity of \$53.3 million at June 30, 2015.

On July 11, 2015, ALJ entered into a stock purchase agreement with Visant to acquire 100% of the common stock of Phoenix, effective August 9, 2015. The aggregate consideration for the acquisition, subject to certain closing adjustments, was \$88.6 million.

On August 14, 2015, ALJ entered into a financing agreement with Cerberus Business Finance, LLC (“Cerberus”), to borrow \$105 million in a term loan (“Cerberus Term Loan”) and have available up to \$30 million in a revolver (“Cerberus/PNC Revolver”), of which \$2.2 million was drawn at the close of the stock purchase of Phoenix. The proceeds of these facilities were used together with cash on hand plus the proceeds from the sale of ALJ stock described below to fund the acquisition and refinance the outstanding obligations of ALJ, Faneuil and Carpets and to provide working capital facilities to all three of ALJ’s subsidiaries and ALJ.

On July 10, 2015, Marc Reisch, the Chairman of Phoenix purchased 400,000 shares of common stock of ALJ in a private placement for an aggregate consideration of \$1,520,000.

On August 14, 2015, ALJ refinanced its outstanding borrowings and agreements with M&T Bank, including the Faneuil Term Loan for \$15.9 million, Carpets Revolver for \$2.2 million, ALJ Revolver for \$0.3 million and Faneuil Revolver for \$0, with Cerberus and PNC.

On July 10, 2015, Anna Van Buren, the Chief Executive Officer of Faneuil, and Tarsha Leherr, the Vice President of Operations of Faneuil, exchanged their 32,857 and 3,286 shares of common stock of Faneuil, respectively, for 1,500,000 shares and 150,000 shares of common stock of ALJ, respectively, using an exchange ratio of 45.65 shares of ALJ common stock for each share of Faneuil common stock. In addition, on July 10, 2015, Ms. Van Buren entered into an amended and restated employment agreement with Faneuil and waived her option to purchase 60,000 shares of Faneuil’s common stock.

On July 10, 2015, Steve Chesin, the Chief Executive Officer of Carpets, exchanged his 750,000 Class B Preferred Units with a preference amount equal to \$750,000, 75,000 Common Units and 40,000 Equity Award Units of Carpets for 150,000 shares of common stock of ALJ.

As a result of these three exchanges and the purchase of Phoenix, ALJ now owns 100% of each of its subsidiaries.

Since October 1, 2014, ALJ has used \$954,814 to repurchase 235,383 shares of its common stock under its repurchase program at an average of \$4.04 per share

ALJ believes that its cash resources will be adequate to fund its operations through June 30, 2016. However, to the extent that the Company’s estimates are inaccurate or its assumptions are incorrect, the Company may not have sufficient cash resources to fund its operations. In such event, the Company may have to seek additional financing for the business.

### **Operating Activities**

During the nine months ended June 30, 2015, the Company generated \$5.1 million in operating activities, primarily attributable to \$5.5 million of net income, \$4.7 million of depreciation expense, partially offset by a decrease of \$2.1 million in deferred revenue, \$1.7 million in accounts payable, and \$1.4 million in accrued expenses.

### **Investing Activities**

For the nine months ended June 30, 2015, the Company used cash from investing activities of \$7.5 million related to the purchase of fixed assets, primarily associated with the build-out costs for new facilities to service the Faneuil contracts.

**Financing Activities**

For the nine months ended June 30, 2015, the Company used cash from financing activities of \$0.6 million, primarily related to \$2.9 million in repayments on the M&T Term Loan and \$2.0 million in repayments against the ALJ Line of Credit, partially offset by \$2.3 million in borrowings on the Carpets Line of Credit and \$2.1 million in net borrowings for capital lease obligations.

## Principal Commitments

At June 30, 2015, the Company's principal commitments consisted of the following obligations:

Contractual cash obligations	Payments Due by Twelve Month Periods Ending June 30, (in thousands)					
	Total	2016	2017	2018	2019	Thereafter
Faneuil - Note payable – M&T Bank	16,150	3,800	3,800	3,800	3,800	950
Faneuil – Revolver – M&T Bank	-	-	-	-	-	-
ALJ – Revolver – M&T Bank	-	-	-	-	-	-
Carpets – Revolver – M&T Bank	2,333	-	2,333	-	-	-
Carpets – Note payable – ST	-	-	-	-	-	-
Faneuil – Operating leases	9,590	3,445	2,956	1,917	867	405
Carpets – Operating leases	1,757	557	489	339	350	22
Faneuil – Capital lease obligations	2,142	824	824	494	-	-
Total contractual cash obligations	\$31,972	\$8,626	\$10,402	\$6,550	\$5,017	\$1,377

Faneuil has committed an additional \$1.6 million towards capital expansion projects to that will allow the company to accommodate prospective new customers.

## Off-Balance Sheet Arrangements

Faneuil entered into a \$1.0 million letter of credit with M&T Bank. The letter of credit reduces the total amount Faneuil can borrow against its line of credit with M&T Bank. As of June 30, 2015, Faneuil has an available line of credit balance of \$9.0 million. Additionally, Faneuil is expected to enter into an additional \$4.0 million letter of credit against the Revolver before the end of the year.

## ITEM 5. LEGAL PROCEEDINGS

The Company's subsidiaries are from time to time defendants in actions for matters arising out of normal business operations. The Company concluded as of June 30, 2015 that no legal proceedings then pending or threatened will have a material adverse effect on our business, consolidated financial position, results of operations or cash flows.

## ITEM 6. DEFAULTS UPON SENIOR SECURITIES

None.

## ITEM 7. OTHER INFORMATION

None.

## RISK FACTORS

The following risk factors and other information included in this Report should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks actually occur, our business, financial condition and operating results could be significantly harmed.

## **Risks Related to Faneuil**

### **Economic downturns and reductions in government funding could have a negative effect on Faneuil's business.**

Demand for the services offered by Faneuil has been, and is expected to continue to be, subject to significant fluctuations due to a variety of factors beyond our control, including economic conditions. During economic downturns, the ability of both private and governmental entities to make expenditures may decline significantly. We cannot be certain that economic or political conditions will be generally favorable or that there will not be significant fluctuations adversely affecting Faneuil's industry as a whole, or key industry segments targeted by Faneuil. In addition, Faneuil's operations are, in part, dependent upon state government funding. Significant changes in the level of state government funding could have an unfavorable effect on Faneuil's business, financial position, results of operations and cash flows.

### **Faneuil's business involves many program-related and contract-related risks.**

Faneuil's business is subject to a variety of program-related risks, including changes in political and other circumstances, particularly since contracts for major programs are performed over extended periods of time. These risks include changes in personnel at government authorities, the failure of applicable government authorities to take necessary actions, opposition by third parties to particular programs and the failure by customers to obtain adequate financing for particular programs. Due to these factors, losses on a particular contract or contracts could occur, and Faneuil could experience significant changes in operating results on a quarterly or annual basis.

### **Delays in the government budget process or a government shutdown may adversely affect Faneuil's cash flows and operating results.**

Faneuil derives a significant portion of its revenue from state government contracts and programs. Any delay in the state government budget process or a state government shutdown may result in Faneuil's incurrence of substantial labor or other costs without reimbursement under customer contracts, or the delay or cancellation of key programs in which Faneuil is involved, which could materially adversely affect Faneuil's cash flows and operating results.

### **Faneuil faces intense competition. If Faneuil does not compete effectively, its business may suffer.**

Faneuil faces intense competition from numerous competitors. Faneuil's services as they relate to toll collection, customer contact centers and employee staffing compete primarily on the basis of quality, performance, innovation, technology, price, applications expertise, system and service flexibility and established customer service capabilities. Faneuil may not be able to compete effectively on all of these fronts or with all of its competitors. In addition, new competitors may emerge, and service offerings may be threatened by new technologies or market trends that reduce the value of the services Faneuil provides. To remain competitive, Faneuil must respond to new technologies and enhance its existing services, and we anticipate that it may have to adjust the pricing for its services to stay competitive on future responses to proposals.

### **Faneuil's dependence on one or a few contracts could adversely affect it.**

One or a few contracts have in the past, and may, in the future, contribute a significant portion of Faneuil's consolidated net revenue in one year, or over a period of several consecutive years. For the nine months ended June 30, 2015, the Company's Faneuil segment had eight contracts that each independently accounted for more than 5% of total net revenue. In the aggregate these contracts accounted for \$96.3 million, or 80.7% of total net revenue. Three of these contracts independently accounted for more than 10% of net revenue, at 18.6%, 14.3%, and 13.5%, respectively. Faneuil has long-standing relationships with many of its significant customers. However, because Faneuil's customers generally contract for specific projects or programs with a finite duration, Faneuil may lose these customers if funding for their respective programs are discontinued, or if their projects end and the contracts are not renewed or replaced.

The loss or reduction of, or failure to renew or replace, any significant contracts with any of these customers could materially reduce Faneuil's revenue and cash flows. Additionally, many of Faneuil's customers are government entities. In many situations, government entities can unilaterally terminate or modify Faneuil's existing contracts without cause and without penalty to the government agency. If Faneuil does not replace them with other customers or other programs, the loss of business from any one of such customers could have a material adverse effect on its business or results of operations.

**Faneuil's ability to recover capital investments in connection with its contracts is subject to risk.**

In order to attract and retain large outsourcing contracts, Faneuil sometimes makes significant capital investments to perform its services under the contract, such as purchases of information technology equipment and costs incurred to develop and implement software. The net book value of such assets, including a portion of Faneuil's intangible assets, could be impaired, and Faneuil's earnings and cash flow could be materially adversely affected in the event of the early termination of all or a part of such a contract, reduction in volumes and services thereunder for reasons including, but not limited to, a client's merger or acquisition, divestiture of assets or businesses, business failure or deterioration, or a client's exercise of contract termination rights.

**Faneuil's business could be adversely affected if Faneuil's clients are not satisfied with its services.**

Faneuil's business model depends in large part on its ability to attract new work from Faneuil's base of existing clients. Faneuil's business model also depends on relationships Faneuil develops with its clients with respect to understanding its clients' needs and delivering solutions that are tailored to those needs. If a client is not satisfied with the quality of work performed by Faneuil or a subcontractor or with the type of services or solutions delivered, Faneuil could incur additional costs to address the situation, the profitability of that work might be impaired and the client's dissatisfaction with Faneuil's services could damage its ability to obtain additional work from that client. Dissatisfied clients might seek to terminate existing contracts prior to their scheduled expiration date and could direct future business to Faneuil's competitors. In addition, negative publicity related to Faneuil's client relationships, regardless of its accuracy, may further damage Faneuil's business by affecting its ability to compete for new contracts with current and prospective clients.

**Faneuil's dependence on subcontractors and equipment manufacturers could adversely affect it.**

In some cases, Faneuil relies on and partners with third party subcontractors as well as third party equipment manufacturers to service its contracts. To the extent that Faneuil cannot engage subcontractors or acquire equipment or materials, Faneuil's ability to perform according to the terms of its contracts with its customers may be impaired. If the amount Faneuil is required to pay for subcontracted services or equipment exceeds the amount Faneuil has estimated in bidding for fixed prices or fixed unit price contracts, it could experience reduced profit or losses in the performance of these contracts with its customers. In addition, if a subcontractor or a manufacturer is unable to deliver its services, equipment or materials according to the negotiated terms for any reason, including the deterioration of its financial condition, Faneuil may be required to purchase the services, equipment or materials from another source at a higher price. This may reduce the expected profit or result in a loss on a customer contract for which the services, equipment or materials were needed.

**Faneuil's dependence on primary contractors could adversely affect its ability to secure new projects and derive a profit from its existing projects.**

In some cases, Faneuil partners as a subcontractor with third parties who are the primary contractor. In these cases, Faneuil is largely dependent on the judgments of the primary contractor in bidding for new projects and negotiating the primary contract, including establishing the scope of services and service levels to be provided. Furthermore, even if projects are secured, if the primary contractor is unable to deliver its services according to the negotiated terms of the primary contract for any reason, including the deterioration of its financial condition, the customer may terminate or modify the primary contract, which may reduce Faneuil's profit or cause losses in the performance of the contract.



**If Faneuil or a primary contractor guarantees to a customer the timely implementation or performance standards of a program, Faneuil could incur additional costs to meet its guaranteed obligations or liquidated damages if it fails to perform as agreed.**

In certain instances, Faneuil or its primary contractor guarantees a customer that it will implement a program by a scheduled date. At times, they also provide that the program will achieve or adhere to certain performance standards or key performance indicators. Although Faneuil provides input to primary contractors regarding the scope of services and service levels to be provided, it is possible that a primary contractor may make commitments without Faneuil's input or approval. If Faneuil or the primary contractor subsequently fails to implement the program as scheduled, or if the program subsequently fails to meet the guaranteed performance standards, Faneuil may be held responsible for costs to the client resulting from any delay in implementation, or the costs incurred by the program to achieve the performance standards. In most cases where Faneuil or the primary contractor fails to meet contractually defined performance standards, Faneuil may be subject to agreed-upon liquidated damages. To the extent that these events occur, the total costs for the program would exceed Faneuil's original estimates and it could experience reduced profits or in some cases a loss for that program.

**Adequate bonding is necessary for Faneuil to successfully win new work awards on some types of contracts.**

In line with industry practice, Faneuil is often required, primarily in its toll and transportation programs, to provide performance and surety bonds to customers in conjunction with its contracts. These bonds indemnify the customer should Faneuil fail to perform its obligations under the contract. If a bond is required for a particular program and Faneuil is unable to obtain an appropriate bond, Faneuil cannot pursue that program. The issuance of a bond is at the surety's sole discretion. Moreover, due to events that affect the insurance and bonding markets generally, bonding may be more difficult to obtain in the future or may only be available at significant additional costs. There can be no assurance that bonds will continue to be available on reasonable terms. Any inability to obtain adequate bonding and, as a result, to bid on new work could have a material adverse effect on Faneuil's business, financial condition, results of operations and cash flows.

**Interruption of Faneuil's data centers and customer call centers could have a materially adverse effect on Faneuil's business.**

In the event that Faneuil experiences a temporary or permanent interruption at one or more of Faneuil's data or customer call centers through natural disaster, casualty, operating malfunction, cyber-attack, sabotage or any other causes, Faneuil may be unable to provide the services it is contractually obligated to deliver. This could result in Faneuil being required to pay contractual damages to some clients or to allow some clients to terminate or renegotiate their contracts. Notwithstanding disaster recovery and business continuity plans and precautions instituted to protect Faneuil's clients and Faneuil from events that could interrupt delivery of services, there is no guarantee that such interruptions would not result in a prolonged interruption in Faneuil's ability to provide support services to its clients or that such precautions would adequately compensate Faneuil for any losses it may incur as a result of such interruptions.

**Any business disruptions due to political instability, armed hostilities, incidents of terrorism or natural disasters could adversely affect Faneuil's financial performance.**

If terrorist activity, armed conflict, political instability or natural disasters occur in the United States or other locations, such events may negatively affect Faneuil's operations, cause general economic conditions to deteriorate or cause demand for Faneuil's services, many of which depend on travel, to decline. A prolonged economic slowdown or recession could reduce the demand for Faneuil's services, and consequently, negatively affect Faneuil's future sales and profits. Any of these events could have a significant effect on Faneuil's business, financial condition or results of operations.

**Faneuil is subject to uncertainties regarding healthcare reform that could materially and adversely affect our business.**

On March 23, 2010, President Obama signed the Affordable Care Act (the “Affordable Care Act”) into law, which has effected comprehensive health insurance reform, including the creation of health insurance exchanges, among other reforms. A portion of our healthcare business relates to providing services to health insurance exchanges in various states and we believe that there may be significant opportunities for growth in this area. However, as has been widely publicized, the roll out of the new health insurance exchanges has been fraught with challenges, including, without limitation, problems faced by consumers trying to purchase insurance through the federal government’s health insurance exchange website and various extensions on deadlines for consumers to select and pay premiums for their insurance. Given these challenges, there is uncertainty about continued developments with respect to healthcare reform. Significant changes to, or repeal of, the Affordable Care Act could materially and adversely affect our business.

**Faneuil’s business is subject to many regulatory requirements, and current or future regulation could significantly increase Faneuil’s cost of doing business.**

Faneuil’s business is subject to many laws and regulatory requirements in the United States, covering such matters as data privacy, consumer protection, health care requirements, labor relations, taxation, internal and disclosure control obligations, governmental affairs and immigration. For example, Faneuil is subject to state and federal laws and regulations regarding the protection of consumer information commonly referred to as “non-public personal information.” For instance, the collection of patient data through Faneuil’s call center services and medical device tracking services is subject to the Health Insurance Portability and Accountability Act of 1996, commonly known as HIPAA, which protects the privacy of patient data. These laws, regulations and agreements require Faneuil to develop and implement policies to protect non-public personal information and to disclose these policies to consumers before a customer relationship is established and periodically thereafter. These laws, regulations, and agreements limit Faneuil’s ability to use or disclose non-public personal information for other than the purposes originally intended. Many of these regulations, including those related to data privacy, are frequently changing and sometimes conflicts exist among the various jurisdictions in which Faneuil provides services. Violations of these laws and regulations could result in liability for damages, fines, criminal prosecution, unfavorable publicity and restrictions on Faneuil’s ability to operate. Faneuil’s failure to adhere to or successfully implement processes in response to changing regulatory requirements in this area could result in legal liability or impairment to Faneuil’s reputation in the marketplace, which could have a material adverse effect on Faneuil’s business, results of operations and financial condition. In addition, because a substantial portion of Faneuil’s operating costs consist of labor costs, changes in governmental regulations relating to wages, healthcare and healthcare reform and other benefits or employment taxes could have a material adverse effect on Faneuil’s business, results of operations or financial condition.

**Faneuil may incur material restructuring charges in the future.**

Faneuil continually evaluates ways to reduce Faneuil’s operating expenses through new restructuring opportunities, including more effective utilization of Faneuil’s assets, workforce and operating facilities. In addition, changing industry and market conditions may dictate strategic decisions to restructure some business units and discontinue others. As a result, there is a risk, which is increased during economic downturns, that Faneuil may incur material restructuring charges in the future.

**A failure to attract and retain necessary personnel, skilled management and qualified subcontractors may have an adverse impact on Faneuil’s business.**

Because Faneuil operates in intensely competitive markets, Faneuil’s success depends to a significant extent upon its ability to attract, retain and motivate highly skilled and qualified personnel and to subcontract with qualified, competent subcontractors. If Faneuil fails to attract, develop, motivate, retain and effectively utilize personnel with the desired levels of training or experience, or is unable to contract with qualified, competent subcontractors, Faneuil’s business, financial condition and results of operations

will be materially and adversely affected. Experienced and capable personnel remain in high demand, and there is continual competition for their talents. Additionally, in regard to the labor-intensive business of Faneuil, quality service depends on Faneuil's ability to retain employees and control personnel turnover. Any increase in the employee turnover rate could increase recruiting and training costs and could decrease operating effectiveness and productivity. Faneuil may not be able to continue to hire, train and retain a sufficient number of qualified personnel to adequately staff new client projects. Faneuil's business is driven in part by the personal relationships of Faneuil's senior management team and its success depends on the skills, experience and performance of members of Faneuil's senior management team. Despite executing an employment agreement with Faneuil's CEO, she or other members of the management team may discontinue service with Faneuil and Faneuil may not be able to find individuals to replace them at the same cost, or at all. Faneuil has not obtained "key person" insurance for any member of its senior management team. The loss or interruption of the services of any key employee or the loss of a key subcontractor relationship could have an adverse effect on Faneuil's business, financial condition, cash flow, results of operations and prospects.

### **Risks Related to Carpets**

**The floor covering industry is highly dependent on national and regional economic conditions, such as consumer confidence and income, corporate and individual spending, interest rate levels, availability of credit and demand for housing. A decline in residential or commercial construction activity or remodeling and refurbishment in Las Vegas could have a material adverse effect on our business.**

The floor covering industry is highly dependent on construction activity, including new construction, which is cyclical in nature and recently experienced a downturn. The downturn in the U.S. and global economies, along with the residential and commercial markets in such economies, particularly in Las Vegas, negatively impacted the floor covering industry and Carpets' business. Although the impact of a decline in new construction activity is typically accompanied by an increase in remodeling and replacement activity, these activities lagged during the downturn. Although these difficult economic conditions have improved, there may be additional downturns that could cause the industry to deteriorate in the future. A significant or prolonged decline in residential/commercial remodeling or new construction activity could have a material adverse effect on the Company's business and results of operations.

**Carpets faces intense competition in the floor covering industry that could decrease demand for its products or force it to lower prices, which could have a material adverse effect on our business.**

The floor covering industry is highly competitive. Carpets competes with a number of home improvement stores, building materials supply houses and lumber yards, specialty design stores, showrooms, discount stores, local, regional and national hardware stores, mail order firms, warehouse clubs, independent building supply stores and other retailers, as well as with installers. In addition, it faces growing competition from online and multichannel retailers as its customers increasingly use computers, tablets, smart phones and other mobile devices to shop online and compare prices and products in real time. Intense competitive pressures from one or more of our competitors or our inability to adapt effectively and quickly to a changing competitive landscape could affect its prices, its margins or demand for its products and services. If it is unable to timely and appropriately respond to these competitive pressures, including through maintaining competitive locations of stores, customer service, quality and price of merchandise and services, in-stock levels, and merchandise assortment and presentation, its market share and its financial performance could be adversely affected.

**Carpets may not timely identify or effectively respond to consumer needs, expectations or trends, which could adversely affect its relationship with customers, its reputation, demand for its products and services and its market share.**

Carpets operates in a market sector where demand is strongly influenced by rapidly changing customer preferences as to product design and features. Its success depends on its ability to anticipate and react to changing consumer demands in a timely manner. All of its products are subject to changing consumer

preferences that cannot be predicted with certainty. In addition, long lead times for certain of its products may make it hard for it to quickly respond to changes in consumer demands. Consumer preferences could shift rapidly to different types of products or away from the types of products Carpets carries altogether, and its future success depends, in part, on its ability to anticipate and respond to these changes. Failure to anticipate and respond in a timely manner to changing consumer preferences could lead to, among other things, lower sales and excess inventory levels, which could have a material adverse effect on its financial condition.

**Carpets relies on third-party suppliers for its products. If it fails to identify and develop relationships with a sufficient number of qualified suppliers, or if its suppliers experience financial difficulties, its ability to timely and efficiently access products that meet its standards could be adversely affected.**

Carpets sources, stocks and sells products from vendors, and its ability to reliably and efficiently fulfill their orders is critical to its business success. Its ability to continue to identify and develop relationships with qualified suppliers who can satisfy our standards for quality and the need to access products in a timely, efficient and cost-effective manner is a significant challenge. Carpets' ability to access products can also be adversely affected by political instability, the financial instability of suppliers, suppliers' noncompliance with applicable laws, trade restrictions, tariffs, currency exchange rates, supply disruptions, weather conditions, natural disasters, shipping or logistical interruptions or costs and other factors beyond its control. If these vendors fail or are unable to perform as expected and Carpets is unable to replace them quickly, its business could be adversely affected, at least temporarily, until it is able to do so, and potentially, in some cases, permanently.

**Failure to achieve and maintain a high level of product and service quality could damage Carpets' image with customers and negatively impact its sales, profitability, cash flows and financial condition.**

Product and service quality issues could result in a negative impact on customer confidence in Carpets and the Carpets brand image. As a result, Carpets' reputation as a retailer of high quality products and services could suffer and impact customer loyalty. Additionally, a decline in product and service quality could result in product recalls, product liability and warranty claims.

**If Carpets is unable to effectively manage its installation service business, we could suffer lost sales and be subject to fines, lawsuits and a damaged reputation.**

Carpets acts as a general contractor to provide installation services to its customers. As such, it is subject to regulatory requirements and risks applicable to general contractors, which include management of licensing, permitting and the quality of our installers. If Carpets fails to effectively manage these processes or provide proper oversight of these services, it could suffer lost sales, fines and lawsuits, as well as damage to its reputation, which could adversely affect its business.

**Carpets' business is dependent on estimating fixed price projects correctly and completing the installations within budget. We could suffer losses associated with installations on fixed price projects.**

Most of Carpets' business consists of fixed price projects that are bid for and contracted based on estimated costs. The estimating process includes budgeting for the appropriate amount of materials, labor and overhead. At times, this work can be substantial and as a result our ability to estimate costs correctly and our ability to complete the project within budget or satisfaction without material defect is essential. If Carpets is unable to estimate a project properly or unable to complete the project within budget or without material defect, it may suffer losses, which could adversely affect our reputation, business, and financial condition.

**Carpets' success depends upon its ability to attract, train and retain highly qualified associates while also controlling its labor costs.**

Carpets' customers expect a high level of customer service and product knowledge from its associates. To meet the needs and expectations of its customers, it must attract, train and retain a large number of highly qualified associates while at the same time controlling labor costs. Its ability to control labor costs is subject to numerous external factors, including prevailing wage rates and health and other insurance costs, as well as the impact of legislation or regulations governing labor relations or healthcare benefits. In addition, Carpets competes with other retail businesses for many of its associates in hourly positions, and it invests significant resources in training and motivating them to maintain a high level of job satisfaction. These positions have historically had high turnover rates, which can lead to increased training and retention costs. There is no assurance that it will be able to attract or retain highly qualified associates in the future.

**Risks Related to Phoenix**

As discussed under Item 3. "Interim Financial Statements—Explanatory Note" and Note 5 "Acquisition of Phoenix" and Note 18 "Subsequent Events" to our interim financial statements as of and for the periods ended June 30, 2015, effective August 14, 2015, ALJ acquired Phoenix from Visant. Phoenix is a manufacturer of book components, educational materials and related products.

**Phoenix faces intense competition in the publishing industry that could decrease demand for its products or force it to lower prices.**

The publishing industry is highly competitive. Phoenix competes directly or indirectly with a number of established book and book component manufacturers, trade and educational publishers and media, entertainment and internet companies. New distribution channels such as digital formats, the internet and online retailers and growing delivery platforms (*e.g.*, tablets and e-readers), combined with the concentration of retailer power, pose threats and provide opportunities to traditional consumer publishing models, potentially impacting both sales volumes and pricing. In addition, certain of Phoenix's book products are subject to price sensitivity or marketplace competition from other titles that may be more popular with consumers.

Competitive pressures or the inability to adapt effectively and quickly to a changing competitive landscape could affect Phoenix's prices, its margins or demand for its products and services. If Phoenix is unable to timely and appropriately respond to these competitive pressures, from existing or new competitors, its business could be adversely affected.

**Economic weakness and uncertainty, as well as the effects of these conditions on Phoenix's customers and suppliers, could reduce demand for or Phoenix's ability to provide its products and services.**

Economic conditions and, in particular, conditions in Phoenix's customers' and suppliers' businesses, could affect our business and results of operations. Phoenix has experienced and may continue to experience reduced demand for certain of its products and services. As a result of uncertainty about global economic conditions, including factors such as unemployment, bankruptcies, financial market volatility, sovereign debt issues, government budget deficits and other factors which continue to affect the global economy, Phoenix's customers and suppliers may experience further deterioration of their businesses, suffer cash flow shortages or file for bankruptcy. In turn, existing or potential customers may delay or decline to purchase Phoenix's products and related services, and Phoenix's suppliers and customers may not be able to fulfill their obligations to us in a timely fashion.

Phoenix's educational textbook cover and component business depends on continued government funding for educational spending, which impacts demand by our customers, and may be affected by changes in or continued restrictions on local, state and/or federal funding and school budgets. Customers may view the purchase of certain of Phoenix's products as discretionary. As a result, a reduction in consumer discretionary spending or disposable income and/or adverse trends in the general economy (and consumer perceptions of those trends) may affect Phoenix more significantly than other businesses in other industries.

In addition, customer difficulties could result in increases in bad debt write-offs and increases to Phoenix's allowance for doubtful accounts receivable. Further, Phoenix's suppliers may experience similar conditions as our customers, which may impact their viability and their ability to fulfill their obligations to us. Negative changes in these or related economic factors could materially adversely affect our business.

**A substantial decrease or interruption in business from Phoenix's significant customers could adversely affect its business.**

Phoenix has significant customer concentration. Customers in its cover and component business include the three major educational textbook publishers, Pearson, Houghton Mifflin Harcourt and McGraw-Hill. Any significant cancellation, deferral or reduction in the quantity or type of products sold to these principal customers or a significant number of smaller customers, including as a result of our failure to perform, the impact of economic weakness and challenges to their businesses, a change in buying habits, further industry consolidation or the impact of the shift to alternative methods of content delivery to customers, could have a material adverse effect on our business.

Many of Phoenix's customer sales arrangements are conducted by purchase order on an order-by-order basis or are terminable at will at the option of either party. A substantial decrease or interruption in business from Phoenix's significant customers could result in write-offs or in the loss of future business and could have a material adverse effect on our business.

**Fluctuations in the cost and availability of raw materials could increase Phoenix's cost of sales.**

Phoenix is dependent upon the availability of raw materials to produce its products. Phoenix primarily uses paper, ink and adhesives, and the price and availability of these raw materials are affected by numerous factors beyond Phoenix's control. These factors include:

- the level of consumer demand for these materials and downstream products containing or using these materials;
- the supply of these materials and the impact of industry consolidation;
- government regulation and taxes;
- market uncertainty;
- volatility in the capital and credit markets;
- environmental conditions and regulations; and
- political and global economic conditions.

Any material increase in the price of key raw materials could adversely impact our cost of sales or result in the loss of availability of such materials at reasonable prices. When these fluctuations result in significantly higher raw material costs, our operating results are adversely affected to the extent we are unable to pass on these increased costs to our customers or to the extent they materially affect customer buying habits. Significant fluctuations in prices for paper, ink and adhesives could therefore have a material adverse effect on our business.

**Phoenix is subject to seasonality in its business tied to the North American school year and the inherent seasonality of its customers' businesses.**

Phoenix experiences seasonal fluctuations in its net sales and cash flow from operations tied primarily to the North American school year. Net sales of textbook components are impacted seasonally by state and local schoolbook purchasing schedules, which commence in the spring and peak in the summer months preceding the start of the school year. Significant amounts of inventory are acquired by publishers prior to those periods in order to meet customer delivery requirements. Further, we also experience fluctuations in Phoenix's net sales and cash flow from operations due to sales of popular book titles.

This seasonality will require us to manage our working capital carefully over the course of the year. If we fail to manage our working capital effectively in response to seasonal fluctuations, we may be unable to offset the results from any such period with results from other periods, which could impair our ability to service our debt or other obligations. These seasonal fluctuations also require us to allocate our resources to manage Phoenix's manufacturing capacity, which often operates at full or near full capacity during peak seasonal demand periods. If we fail to monitor production and distribution accurately during these peak seasonal periods and are unable to satisfy our customers' delivery requirements, we may seek arrangements with third parties to produce and distribute our products, which would result in an increase in cost of sales. If we are unable to find alternative production arrangements on acceptable terms, or at all, our relationships with our customers may be jeopardized or our business may be otherwise materially and adversely affected.

**Any disruption at Phoenix's principal production facilities could adversely affect its results of operations.**

Phoenix is dependent on certain key production facilities. Any disruption of production capabilities due to unforeseen events, including mechanical failures, labor disturbances, weather or other force majeure events, at any of its principal facilities could adversely affect its business.

**Phoenix is subject to environmental obligations and liabilities that could impose substantial costs upon us.**

Phoenix's operations are subject to a variety of federal, state, local and foreign laws and regulations governing emissions to air, discharge to water, the generation, handling, storage, transportation, treatment and disposal of hazardous substances and other materials, and employee health and safety matters. As an owner and operator of real property and a generator of hazardous substances, Phoenix may be subject to environmental cleanup liability, regardless of fault, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or analogous state laws, as well as to claims for harm to health or property or for natural resource damages arising out of contamination or exposure to hazardous substances. Some of Phoenix's current or past operations have involved metalworking and plating, printing and other activities that have resulted in or could result in environmental conditions giving rise to liabilities.

**Risks Related to our Businesses Generally and our Common Stock**

**Our ability to engage in some business transactions may be limited by the terms of our debt.**

Our financing documents contain affirmative and negative financial covenants restricting ALJ, Faneuil, Carpets and Phoenix. Specifically, our loan facilities include covenants restricting ALJ's, Faneuil's, Carpet's and Phoenix's ability to:

- incur additional debt;
- make certain capital expenditures;
- incur or permit liens to exist;
- enter into transactions with affiliates;
- guarantee the debt of other entities, including joint ventures;
- merge or consolidate or otherwise combine with another company; or
- transfer or sell our assets.

ALJ's, Faneuil's, Carpet's and Phoenix's respective abilities to borrow under our loan arrangements depend upon their respective abilities to comply with certain covenants and borrowing base requirements. Our and our subsidiaries' abilities to meet these covenants and requirements may be affected by events beyond our control and we or they may not meet these obligations. The failure of any of us or our subsidiaries to comply with these covenants and requirements could result in an event of default under our loan arrangements that, if not cured or waived, could terminate such party's ability to borrow further, permit acceleration of the relevant debt (and other indebtedness based on cross-default provisions) and permit foreclosure on any collateral granted as security under the loan arrangements. Further, our obligations to our lenders are secured by liens on our assets. Accordingly, any default under our loan

facilities could also result in a material adverse effect on us that may result in our lenders seeking to recover from us or against our assets. There can also be no assurance that the lenders will grant waivers on covenant violations, if they occur. Any such event of default would have a material adverse effect on us.

**We have substantial indebtedness.**

We currently have, and will likely continue to have, a substantial amount of indebtedness. Our indebtedness could, among other things, make it more difficult for us to satisfy our debt obligations, require us to use a large portion of our cash flow from operations to repay and service our debt or otherwise create liquidity problems, limit our flexibility to adjust to market conditions and place us at a competitive disadvantage. We expect to obtain the money to pay our expenses and pay the principal and interest on our indebtedness from cash flow from our operations and potentially from debt or equity offerings. Accordingly, our ability to meet our obligations depends on our future performance and capital raising activities, which will be affected by financial, business, economic and other factors, many of which are beyond our control. If our cash flow and capital resources prove inadequate to allow us to pay the principal and interest on our debt and meet our other obligations, we could face substantial liquidity problems and might be required to dispose of material assets or operations, restructure or refinance our debt, which we may be unable to do on acceptable terms, and forgo attractive business opportunities.

**Changes in interest rates may increase our interest expense.**

A portion of our current borrowings, namely the Cerberus Term Loan and Cerberus/PNC Revolver (\$105 million and \$2.0 million as of the closing date of the Phoenix acquisition), and potential future borrowings, are and may continue to be at variable rates of interest, thus exposing us to interest rate risk. If interest rates increase, our debt service obligations on our variable rate indebtedness would increase even if the amount borrowed remained the same, resulting in a decrease in our net income. For example, if interest rates increased in the future by 100 basis points, based on our current borrowings as of August 14, 2015, we would incur approximately an additional \$1.1 million per annum in interest expense.

**Account data breaches involving stored data or the misuse of such data could adversely affect our reputation, performance and financial condition.**

We provide services which involve the storage of non-public information. Cyber-attacks designed to gain access to sensitive information are constantly evolving, and high profile electronic security breaches leading to unauthorized releases of sensitive information have occurred recently at a number of major U.S. companies, including several large retailers, despite widespread recognition of the cyber-attack threat and improved data protection methods. Any breach of the systems on which sensitive data and account information are stored or archived and any misuse by our own employees, by employees of data archiving services or by other unauthorized users of such data could lead to damage to our reputation, claims against us and other potential increases in costs. If we are unsuccessful in defending any lawsuit involving such data security breaches or misuse, we may be forced to pay damages, which could materially and adversely affect our profitability and financial condition. In addition, damage to our reputation stemming from such breaches could adversely affect our future prospects. As the regulatory environment relating to companies' obligations to protect such sensitive data becomes stricter, a material failure on our part to comply with applicable regulations could subject us to fines or other regulatory sanctions.

**To service our indebtedness, we will require a significant amount of cash, and our ability to generate cash depends on many factors beyond our control.**

Our ability to make payments on our indebtedness and to fund any future capital expenditures, will depend on our ability to generate cash in the future. To a certain extent, this is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control.

We cannot assure you that we will generate sufficient cash flow from operations, or that future borrowings will be available to us in amounts sufficient to enable us or them to pay any of our respective indebtedness, or to fund our or their other liquidity needs. We cannot assure you that we will be able to refinance any of



our indebtedness on commercially reasonable terms or at all, particularly given the current unstable state of credit markets.

**We may not be able to consummate additional acquisitions and dispositions on acceptable terms or at all. Furthermore, we may not be able to integrate acquisitions successfully and achieve anticipated synergies, or the acquisitions and dispositions we pursue could disrupt our business and harm our financial condition and operating results.**

As part of our business strategy, we may continue to pursue acquisitions and dispositions. Acquisitions and dispositions could involve a number of risks and present financial, managerial and operational challenges, including:

- adverse developments with respect to our results of operations as a result of an acquisition which may require us to incur charges and/or substantial debt or liabilities;
- disruption of our ongoing business and diversion of resources and management attention from existing businesses and strategic matters;
- difficulty with assimilation and integration of operations, technologies, products, personnel or financial or other systems;
- increased expenses, including compensation expenses resulting from newly hired employees and/or workforce integration and restructuring;
- disruption of relationships with current and new personnel, customers and suppliers;
- integration challenges related to implementing or improving internal controls, procedures and/or policies at a business that prior to the acquisition lacked the same level of controls, procedures and/or policies;
- the assumption of certain known and unknown liabilities of the acquired business;
- regulatory challenges or resulting delays; and
- potential disputes (including with respect to indemnification claims) with the buyers of disposed businesses or with the sellers of acquired businesses, technologies, services or products.

We may not be able to consummate acquisitions or dispositions on favorable terms or at all. Our ability to consummate acquisitions will be limited by our ability to identify appropriate acquisition candidates, to negotiate acceptable terms for purchase and our access to financial resources, including available cash and borrowing capacity. In addition, we could experience financial or other setbacks if we are unable to realize, or are delayed in realizing, the anticipated benefits resulting from an acquisition, if we incur greater than expected costs in achieving the anticipated benefits or if any business that we acquire or invest in encounters problems or liabilities which we were not aware of or were more extensive than believed.

**Our net operating loss carry-forwards could be substantially limited if we experience an “ownership change”, as defined in Section 382 of the Internal Revenue Code.**

Our ability to utilize net operating losses (“NOLs”) and built in losses under Section 382 of the Code and tax credit carry-forwards to offset our future taxable income and/or to recover previously paid taxes would be limited if we were to undergo an “ownership change” within the meaning of Section 382 of the Code.

Section 382 of the Code contains rules that limit the ability of a company that undergoes an “ownership change,” which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its NOLs and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes among stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company.

If we undergo an ownership change for purposes of Section 382 as a result of future transactions involving our common stock, including purchases or sales of stock between 5% stockholders, our ability to use our NOLs and to recognize certain built-in losses would be subject to the limitations of Section 382. Depending on the resulting limitation, a significant portion of our NOLs could expire before we would be able to use them. We had approximately \$164 million of (pre-tax) NOLs as of June 30, 2015. The NOLs begin to expire in 2020 and are available to be used at some level through 2025. Our inability to utilize our NOLs would have a negative impact on our financial position and results of operations.

We do not believe we have experienced an “ownership change” as defined by Section 382 in the last three years. However, whether a change in ownership occurs in the future is largely outside of our control, and there can be no assurance that such a change will not occur.

In May 2009, we announced that our Board adopted a shareholder rights plan (the “Rights Plan”) designed to preserve stockholder value and the value of certain tax assets primarily associated with NOLs and built-in losses under Section 382 of the Code. We also amended our certificate of incorporation to add certain restrictions on transfers of our stock that may result in an ownership change under Section 382.

**Our internal controls and procedures may be deficient.**

Our internal controls and procedures, including the internal controls and procedures of our subsidiaries, may be subject to deficiencies or weaknesses. Remedying and monitoring internal controls and procedures distracts our management from its operations, planning, oversight and performance functions, which could harm our operating results. Additionally, any failure of our internal controls or procedures could harm our operating results or cause us to fail to meet our obligation to maintain adequate public information.

**Our common stock is illiquid and stockholders may be unable to sell their shares.**

Our common stock is currently quoted on the “Pink Sheets” under the symbol “ALJJ.PK.” There is currently only a limited market for our common stock and we can provide no assurance to investors that a more robust market will develop. If a broader market for our common stock does not develop, our stockholders may encounter difficulties selling their common stock from time to time.

**We cannot assure you that our common stock will become listed on any securities exchange.**

Although we may apply to list our common stock on NASDAQ, the American Stock Exchange or some other securities exchange in the future, we currently have no plans to do so. Even if we were to determine to pursue a listing, we also cannot assure you that we would be able to meet the initial listing standards, including the minimum per share price and minimum capitalization requirements, or that we would be able to maintain a listing of our common stock on either of those or any other trading venue. Until such time as we determine to list and qualify for listing on NASDAQ, the American Stock Exchange or another trading venue, our common stock will continue to be quoted on the Pink Sheets, which may make it more difficult for an investor to dispose of shares or obtain accurate quotations as to the market value of our common stock.

**Our stock is a penny stock and, as a result, our stockholders are more limited in their ability to sell their stock.**

The SEC has adopted rules that regulate broker-dealer practices in connection with the sale of penny stocks, or low-priced securities other than securities registered on certain exchanges, to persons other than established customers and institutional accredited investors. Because our securities constitute penny stocks within the meaning of the rules, the rules apply to us and our securities. For transactions covered by these rules, prior to effecting a transaction in a penny stock, a broker-dealer must, among other things: (a) make a special suitability determination for the purchaser; (b) deliver a standardized risk disclosure document to the customer; (c) receive written acknowledgement of the receipt of the disclosure statement; (d) provide to customers current bids and offers, including the number of shares to which such bid and offer prices apply;

(e) disclose to customers the broker-dealer and sales representation compensation; and (f) receive the purchaser's written consent to the transaction prior to the sale. These suitability requirements and disclosure requirements may have the effect of reducing the trading activity in the secondary market for our stock.

**The market price of our common stock is volatile.**

The market price of our common stock could fluctuate substantially in the future in response to a number of factors, including the following:

- our quarterly operating results or the operating results of other companies in our industry;
- changes in general conditions in the economy, the financial markets or our industry;
- announcements by our competitors of significant acquisitions; and
- increases in raw materials and other costs.

In addition, the stock market has experienced extreme price and volume fluctuations in recent years. This volatility has had a significant impact on the market prices of securities issued by many companies for reasons unrelated to their operating performance. These broad market fluctuations may materially adversely affect our stock price, regardless of our operating results.

**We do not currently plan to pay dividends to holders of our common stock.**

We do not currently anticipate paying cash dividends to the holders of our common stock. Accordingly, holders of our common stock must rely on price appreciation as the sole method to realize a gain on their investment. There can be no assurances that the price of our common stock will ever appreciate in value.

**The anti-takeover provisions of our stockholders rights plan may have the effect of delaying or preventing beneficial takeover bids by third parties.**

We have a stockholder rights plan designed to preserve the value of certain tax assets primarily associated with our NOLs and built in losses under Section 382. At June 30, 2015, the Company had approximately \$164 million in NOLs and the use of such losses to offset federal income tax would be limited if the Company experiences an "ownership change" under Section 382. This would occur if stockholders owning (or deemed under Section 382 to own) 5% or more of the Company's stock by value increase their collective ownership of the aggregate amount of the Company's stock by more than 50 percentage points over a defined period of time. The Rights Plan was adopted to reduce the likelihood of an "ownership change" occurring as defined by Section 382.

In connection with the Rights Plan, the Company declared a dividend of one preferred share purchase right for each share of its common stock outstanding as of the close of business on May 21, 2009. Pursuant to the Rights Plan, any stockholder or group that acquires beneficial ownership of 4.9 percent or more of the Company's outstanding stock (an "Acquiring Person") without the approval of the Company's Board would be subjected to significant dilution of its holdings. Any existing stockholder holding 4.9% or more of the Company's stock will not be considered an Acquiring Person unless such stockholder acquires additional stock of the Company; provided that existing stockholders actually known to the Company to hold 4.9% or more of its stock as of April 30, 2009 are permitted to purchase up to an additional 5% of the Company's stock without triggering the Rights Plan. In addition, in its discretion, the Board may exempt certain persons whose acquisition of securities is determined by the Board not to jeopardize the Company's deferred tax assets and may also exempt certain transactions. The Rights Plan will continue in effect until May 13, 2019, unless it is terminated or the preferred share purchase rights are redeemed earlier by the Board.

While the Rights Plan is intended to protect our NOLs and built-in losses under Section 382, it may also have the effect of delaying or preventing beneficial takeover bids by third parties.

**ITEM 8. EXHIBITS**

A list of exhibits required to be filed as part of this report is set forth in the Index to Exhibits, which immediately precedes such exhibits, and is incorporated herein by reference.

## EXHIBITS

<b>Exhibit No.</b>	<b>Description</b>
1	First Amendment to Restated Certificate of Incorporation of ALJ Regional Holdings, Inc. as filed with the Secretary of State of the State of Delaware on June 1, 2010 (incorporated by reference to Exhibit 1 to the Company's Quarterly Report for the quarter ended June 30, 2010 available at <a href="http://www.pinksheets.com">www.pinksheets.com</a> ).
2	Restated Certificate of Incorporation of ALJ Regional Holdings, Inc. as filed with the Secretary of State of the State of Delaware on June 16, 2009 (incorporated by reference to Exhibit 1 to the Company's Quarterly Report for the quarter ended June 30, 2009 available at <a href="http://www.pinksheets.com">www.pinksheets.com</a> ).
3	Certificate of Ownership and Merger of YouthStream Media Networks, Inc. as filed with the Secretary of State of the State of Delaware on October 23, 2006 (incorporated by reference to Exhibit 2 to the Company's Annual Report for the year ended September 30, 2006 available at <a href="http://www.pinksheets.com">www.pinksheets.com</a> ).
4	Restated Bylaws of ALJ Regional Holdings, Inc. (incorporated by reference to Exhibit 7 to the Company's Quarterly Report for the quarter ended March 31, 2009 available at <a href="http://www.pinksheets.com">www.pinksheets.com</a> ).
5	Rights Agreement dated May 13, 2009 by and between ALJ Regional Holdings, Inc. and American Stock Transfer and Trust Company, LLC (incorporated by reference to Annex B to the Company's Proxy Statement dated May 15, 2009 available at <a href="http://www.pinksheets.com">www.pinksheets.com</a> ).
6	Financing Agreement, dated as of August 14, 2015, by and among ALJ Regional Holdings, Inc., Faneuil, Inc., Floors-N-More, LLC, Phoenix Color Corp., each subsidiary of ALJ Regional Holdings, Inc. listed as a "Guarantor" on the signature pages thereto, the lenders from time to time party thereto, Cerberus Business Finance, LLC, as collateral agent for the lenders, and PNC Bank, National Association, as administrative agent for the lenders.

**ITEM 9. CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**

**Certification of the Chief Executive Officer**

I, Jess Ravich, hereby certify that:

1. I have reviewed this quarterly disclosure statement of ALJ Regional Holdings, Inc. for the fiscal quarter ended June 30, 2015;
2. Based on my knowledge, this disclosure statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this disclosure statement; and
3. Based on my knowledge, the financial statements and other financial information included or incorporated by reference in this disclosure statement, fairly present, in all material respects, the financial condition, results of operations and cash flows of ALJ Regional Holdings, Inc., as of, and for, the periods presented in this disclosure statement.

Date: August 14, 2015

/S/ Jess Ravich

Jess Ravich,  
Executive Chairman

**Certification of the Chief Financial Officer**

I, T. Robert Christ, hereby certify that:

1. I have reviewed this quarterly disclosure statement of ALJ Regional Holdings, Inc. for the fiscal quarter ended June 30, 2015;
2. Based on my knowledge, this disclosure statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this disclosure statement; and
3. Based on my knowledge, the financial statements and other financial information included or incorporated by reference in this disclosure statement, fairly present, in all material respects, the financial condition, results of operations and cash flows of ALJ Regional Holdings, Inc., as of, and for, the periods presented in this disclosure statement.

Date: August 14, 2015

/S/ T. Robert Christ

T. Robert Christ,  
Chief Financial Officer

**EXHIBIT NO. 6**

**FINANCING AGREEMENT**

**Dated as of August 14, 2015**

**by and among**

**ALJ REGIONAL HOLDINGS, INC.,  
FANEUIL, INC., FLOORS-N-MORE, LLC AND PHOENIX COLOR CORP.,  
as Borrowers,**

**EACH SUBSIDIARY OF ALJ REGIONAL HOLDINGS, INC.  
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,  
as Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,  
as Lenders,**

**CERBERUS BUSINESS FINANCE, LLC,  
as Collateral Agent,**

**and**

**PNC BANK, NATIONAL ASSOCIATION,  
as Administrative Agent**



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Schedule 6.01(v)	Material Contracts
Schedule 7.02(a)	Existing Liens
Schedule 7.02(b)	Existing Indebtedness
Schedule 7.02(e)	Existing Investments
Schedule 7.02(k)	Limitations on Dividends and Other Payment Restrictions
Schedule 8.01	Cash Management Accounts
Exhibit A	Form of Joinder Agreement
Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Notice of Borrowing
Exhibit D	Form of LIBOR Notice
Exhibit E	Form of Borrowing Base Certificate
Exhibit F	Form of Compliance Certificate

## FINANCING AGREEMENT

Financing Agreement, dated as of August 14, 2015, by and among ALJ Regional Holdings, Inc., a Delaware corporation (the "Parent"), Faneuil, Inc., a Delaware corporation ("Faneuil"), Floors-N-More, LLC, a Nevada limited liability company ("FNM"), Phoenix Color Corp., a Delaware corporation ("PCC", and together with the Parent, Faneuil, FNM and each other Person that executes a joinder agreement and becomes a "Borrower" hereunder, each a "Borrower" and collectively, the "Borrowers"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto (together with each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder or otherwise guaranties all or any part of the Obligations (as hereinafter defined), each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("CBF"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and PNC Bank, National Association ("PNC"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

### RECITALS

The Borrowers have asked the Lenders to extend credit to the Borrowers consisting of (a) a term loan in the aggregate principal amount of \$105,000,000 and (b) a revolving credit facility in an aggregate principal amount not to exceed \$30,000,000 at any time outstanding, which will include a subfacility for the issuance of letters of credit in an aggregate amount not to exceed \$15,000,000. The proceeds of the term loan and the loans made under the revolving credit facility shall be used to fund up to \$90,000,000 of the purchase price (as adjusted by working capital adjustments in accordance with the terms of the PCC Acquisition Agreement) for the PCC Acquisition (as defined herein), refinance existing indebtedness of the Borrowers, for general corporate and working capital purposes of the Borrowers and to pay fees and expenses related to this Agreement. The letters of credit will be used for general corporate and working capital purposes. The Lenders are severally, and not jointly, willing to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

"Account Debtor" means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable of such Person.

"Account Receivable" means, with respect to any Person, any and all accounts (as that term is defined in the Uniform Commercial Code), and any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

"Action" has the meaning specified therefor in Section 12.12.

"Additional Amount" has the meaning specified therefor in Section 2.09(a).

"Adjusted Consolidated EBITDA" means, with respect to any period, the Consolidated EBITDA of the Parent and its Subsidiaries, after giving effect to (i) adjustments set forth in a due diligence quality of earnings report prepared by Crowe Horwath received by the Agents prior to the Effective Date and (ii) any other adjustments agreed to by the Parent and the Agents (such acceptance to be evidenced in writing). For purposes of this Agreement, (x) monthly Adjusted Consolidated EBITDA for the first 6 fiscal months of the calendar year ending December 31, 2015 shall be deemed to be as follows: (A) fiscal month ended January 31, 2015, \$2,877,443, (B) fiscal month ended February 28, 2015, \$3,364,971, (C) fiscal month ended March 31, 2015, \$3,824,152, (D) fiscal month ended April 30, 2015, \$3,243,252, (E) fiscal month ended May 30, 2015, \$2,457,635, and (F) fiscal month ended June 30, 2015, \$2,837,231 and (y) monthly Adjusted Consolidated EBITDA for the fiscal months ending July 31, 2015 and August 31, 2015 shall be agreed to by the Parent and the Agents in accordance with the preceding sentence giving full pro forma effect to the PCC Acquisition (as if the PCC Acquisition had occurred prior to such fiscal months).

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders as may be required under the terms of this Agreement and the other Loan Documents.

"Administrative Borrower" has the meaning specified therefor in Section 4.05.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 15% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an "Affiliate" of any Loan Party.

"After Acquired Property" has the meaning specified therefor in Section 6.01(n).

"Agent" has the meaning specified therefor in the preamble hereto.

"Agent Advances" has the meaning specified therefor in Section 10.08(a).

"Agreement" means this Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Anti-Corruption Laws" has the meaning specified therefor in Section 6.01(aa).

"Anti-Terrorism Laws" means any Requirement of Law relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Requirement of Law, as amended, supplemented or replaced from time to time, including without limitation (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (e) any law prohibiting or directed against terrorist activities or the financing or support of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Applicable Margin" means, as of any date of determination, with respect to the interest rate of (a) any Reference Rate Loan or any portion thereof, 5.5% and (b) any LIBOR Rate Loan or any portion thereof, 6.5%.

"Applicable Premium" means

(a) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (c), (d) or (e) of the definition thereof:

(i) during the period of time from and after the Effective Date up to and including the date that is the first anniversary of the Effective Date (the "First Period"), an amount equal to 3.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C) the amount of the undrawn Total Revolving Credit Commitment, in each case, on the date of such Applicable Premium Trigger Event;

(ii) during the period of time after the First Period up to and including the date that is the second anniversary of the Effective Date (the "Second Period"), an amount equal to 2.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C)

the amount of the undrawn Total Revolving Credit Commitment, in each case, on the date of such Applicable Premium Trigger Event;

(iii) during the period of time after the Second Period up to and including the date that is the third anniversary of the Effective Date (the "Third Period"), an amount equal to 1.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C) the amount of the undrawn Total Revolving Credit Commitment, in each case, on the date of such Applicable Premium Trigger Event; and

(iv) thereafter, zero;

(b) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (a) of the definition thereof:

(i) during the First Period, an amount equal to 3.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(ii) during the Second Period, an amount equal to 2.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(iii) during the Third Period, an amount equal to 1.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date; and

(iv) thereafter, zero;

(c) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (b) of the definition thereof:

(i) during the First Period, an amount equal to 3.0% times the principal amount of the Term Loan being paid on such date;

(ii) during the Second Period, an amount equal to 2.0% times the principal amount of the Term Loan being paid on such date;

(iii) during the Third Period, an amount equal to 1.0% times the principal amount of the Term Loan being paid on such date; and

(iv) thereafter, zero.

"Applicable Premium Trigger Event" means

(a) any permanent reduction of the Total Revolving Credit Commitment pursuant to Section 2.05;

(b) any payment by any Loan Party of all, or any part, of the principal balance of any Term Loan for any reason (including, but not limited to, any optional prepayment or mandatory prepayment (other than any mandatory prepayment (x) under Section 2.05(c)(i) or



Section 2.05(c)(iv) or (y) made with the proceeds of the Disposition described in clause (j) of the definition of Permitted Disposition or Extraordinary Receipts constituting any purchase price adjustment received in connection with the PCC Acquisition Agreement) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations; provided, that, notwithstanding the foregoing, Applicable Premium Trigger Event shall not include up to \$10,000,000 in the aggregate of optional prepayments of the Term Loan made under Section 2.05(b)(ii);

(c) the acceleration of the Obligations for any reason, including, but not limited to, acceleration in accordance with Section 9.01, including as a result of the commencement of an Insolvency Proceeding;

(d) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to the Agents, for the account of the Lenders in full or partial satisfaction of the Obligations; or

(e) the termination of this Agreement for any reason.

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form acceptable to the Collateral Agent.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

"Availability" means, as of any date of determination, the result of (a) the lesser of (i) the Consolidated Borrowing Base and (ii) the Total Revolving Credit Commitment, minus (b) the sum of (i) the aggregate outstanding principal amount of all Revolving Loans plus (ii) all Letter of Credit Obligations.

"Bank Product Agreements" means those certain cash management service agreements entered into from time to time between Borrowers, on the one hand, and an Agent or a Lender or its Affiliates, on the other hand, in connection with any of the Bank Products, including, without limitation, any Lender-Provided Hedge Agreement.

"Bank Product Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrowers to any Agent or Lender or its Affiliates pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that Borrowers, as applicable, are obligated to reimburse to Administrative Agent or any Lender as a result of Administrative Agent or such Lender purchasing participations or executing indemnities or

reimbursement obligations with respect to the Bank Products provided to such Person pursuant to the Bank Product Agreements. Notwithstanding any of the foregoing, Bank Product Obligations shall not include any Excluded Hedge Obligations.

"Bank Product Provider" means any Agent or Lender or Affiliate thereof that provides Bank Products to any Loan Party.

"Bank Product Reserve" means, as of any date of determination, the lesser of (a) \$2,500,000 and (b) the amount of reserves that the Administrative Agent has established (based upon the Administrative Agent's reasonable determination of the credit exposure in respect of the then extant Bank Products) in respect of Bank Products then provided or outstanding; provided that, in order to qualify as a Bank Product Reserve, such reserve must be established (i) on or substantially contemporaneous with the date that the applicable Bank Product is provided, or (ii) in response to a change in circumstance, including mark-to-market fluctuations, occurring (or becoming known to the Administrative Agent) after the date that the applicable Bank Product is provided.

"Bank Products" means any service or facility extended to the Borrowers by any Lender or its Affiliates including: (i) credit cards, (ii) credit card processing services, (iii) debit cards and stored value cards, (iv) purchase cards and commercial cards, (v) ACH transactions, (vi) cash management and treasury management services and products, including without limitation controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services, or (vii) Lender-Provided Hedge Agreements and other foreign exchange or "FX" cash management products.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

"Blocked Person" means any Person:

(a) that (i) is identified on the list of "Specially Designated Nationals and Blocked Persons" published by OFAC; (ii) resides, is organized or chartered, or has a place of business in a country or territory that is the subject of an OFAC Sanctions Program; or (iii) a United States Person is prohibited from dealing or engaging in a transaction with under any of the Anti-Terrorism Laws; and

(b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

"Borrower" has the meaning specified therefor in the preamble hereto.

"Borrowing Base" means, with respect to any Person, at any time, (a) up to 85.0% of the Net Amount of Eligible Accounts Receivable of such Person at such time minus (b) the aggregate amount of Reserves established by the Administrative Agent in its Permitted Discretion. The foregoing advance rate may be increased or decreased by Administrative Agent (with the prior written consent of the Collateral Agent and, so long as no Event of Default has occurred and is continuing, in consultation with the Administrative Borrower) at any time and from time to time in the exercise of its Permitted Discretion based on Administrative Agent's review of updated field examinations or other Collateral evaluations (it being understood that the amount of any reduction in the advance rate shall have a reasonable relationship to the event, condition or other matter which is the basis for such reduction, and shall not have been otherwise addressed or compensated for through the imposition of Reserves, all as reasonably determined by Administrative Agent in good faith). The Borrowers consent to any such increases or decreases and acknowledge that decreasing the advance rates or increasing or imposing Reserves may limit or restrict Revolving Loans requested by or on behalf of the Borrowers.

"Borrowing Base Certificate" means a certificate signed by an Authorized Officer of the Administrative Borrower and setting forth the calculation of the Borrowing Base of each Borrower and the Consolidated Borrowing Base in compliance with Section 7.01(a)(vi), substantially in the form of Exhibit E.

"Business Day" means (a) for all purposes other than as described in clause (b) below, any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in East Brunswick, New Jersey, or New York City, (b) with respect to the borrowing, payment or continuation of, or determination of interest rate on, LIBOR Rate Loans, any day that is a Business Day described in clause (a) above and on which dealings in Dollars may be carried on in the interbank eurodollar markets in New York City and London.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed, including all Capitalized Lease Obligations that are paid or due and payable during such period and (b) to the extent not covered by clause (a) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Equity Interests of, any other Person; provided that the term "Capital Expenditures" shall not include Investments in infrastructure (including property, plant and equipment) made by any Loan Party to the extent that such Investments are to be reimbursed to the applicable Loan Party by a client of such Loan Party pursuant to a binding agreement between such Loan Party and its client, so long as the aggregate amount of all unreimbursed amounts shall not exceed \$5,000,000 at any time.

"Capitalized Lease" means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP to be capitalized on the balance sheet of such Person.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateralize" or "Cash Collateralization" means to deliver to the Administrative Agent an amount (whether in cash or in the form of a backstop letter of credit in form and substance reasonably satisfactory to, and issued by a U.S. commercial bank reasonably acceptable to, the Administrative Agent in its reasonable discretion) equal to 103% of the sum of (a) the Maximum Undrawn Amount plus the aggregate amount of all unreimbursed payments and disbursements due and payable under each Letter of Credit which have not been converted to Revolving Loans plus (b) the amount of unpaid Letter of Credit Fees then accrued.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within 360 days from the date of acquisition thereof; (b) commercial paper, maturing not more than 270 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (c) certificates of deposit maturing not more than 360 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; and (f) marketable tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's, in each case, maturing within 270 days from the date of acquisition thereof.

"Cash Management Accounts" means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01 (as such Schedule may be amended in accordance with Section 8.01(d)).

"Cash Management Bank" has the meaning specified therefor in Section 8.01(a).

"CEA" means the CEA (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute.

"CFTC" means the Commodity Futures Trading Commission.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of

law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith (whether or not having the force of law) and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law) shall, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued, promulgated, or implemented.

"Change of Control" means each occurrence of any of the following:

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder of beneficial ownership of more than the aggregate outstanding voting or economic power of the Equity Interests of the Parent owned by the Permitted Holders;

(b) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Parent (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Parent was approved by, or subsequently ratified by, a vote of at least a majority of the directors of the Parent then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Parent;

(c) the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party and each of its Subsidiaries (other than in connection with any transaction permitted pursuant to Section 7.02(c)(i)), free and clear of all Liens (other than Permitted Specified Liens); or

(d) a "Change of Control" (or any comparable term or provision) under or with respect to any of the Equity Interests or Indebtedness of the Parent or any of its Subsidiaries.

"Collateral" means all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collateral Records" means, to the extent relating to Accounts Receivable, the other Revolver Priority Collateral or any Account Debtor or other Person obligated on or in connection with any of the Accounts Receivable, all of the Loan Parties' present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any

rights of the Borrowers and the other Loan Parties with respect to the foregoing maintained with or by any other Person).

"Collection Accounts" means the Cash Management Accounts which are designated as "collection accounts" on Schedule 8.01.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Commitments" means, with respect to each Lender, such Lender's Revolving Credit Commitment and Term Loan Commitment.

"Compliance Certificate" means a certificate of an Authorized Officer of the Parent substantially in the form of Exhibit G.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Borrowing Base" means, at any time, the aggregate of the Borrowing Bases of all Borrowers (as determined pursuant to the most recently delivered Borrowing Base Certificate).

"Consolidated EBITDA" means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,

plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) any provision for United States federal income taxes or other taxes (including state, franchise and other similar taxes and foreign withholding taxes) measured by income, profit or capital,

(ii) Consolidated Net Interest Expense,

(iii) any loss from extraordinary items,

(iv) any depreciation and amortization expense (including amortization of debt discounts, fees and charges incurred in connection with Indebtedness),

(v) any aggregate net loss on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business,

(vi) fees, costs and expenses incurred during such period in connection with the Effective Date Transactions, including expenses relating to the acceleration

of employee compensation in connection therewith, paid within 365 days following the Effective Date in an aggregate amount not to exceed \$2,000,000,

(vii) fees, costs and expenses incurred during such period in connection with (A) any actual issuance of any Indebtedness or Equity Interests or (B) any actual acquisitions, investments, asset sales or divestitures permitted hereunder in an aggregate amount not to exceed \$1,000,000 in any Fiscal Year,

(viii) non-recurring cash charges incurred during such period in respect of restructurings, facilities closings, headcount reductions or other similar actions, including severance charges in respect of employee terminations or relocation costs and business optimization costs, in an aggregate amount not to exceed \$1,500,000 during the term of this Agreement (provided that supporting documentation reasonably satisfactory to the Agents certified by an Authorized Officer of the Parent is delivered to the Agents),

(ix) restructuring, integration or similar charges in connection with any acquisition or disposition permitted hereunder in an aggregate amount not to exceed \$1,000,000 in any four fiscal quarter period (provided that supporting documentation reasonably satisfactory to the Agents certified by an Authorized Officer of the Parent is delivered to the Agents), and

(x) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and Inventory),

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

(i) any credit for United States federal income taxes or any other taxes (including state, franchise and other similar taxes and foreign withholding taxes) measured by income, profit or capital,

(ii) any gain from extraordinary items,

(iii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(iv) any other non-cash gain, including any reversal of a charge referred to in clause (b)(x) above by reason of a decrease in the value of any Equity Interest;

in each case, determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does

not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation, and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, (a) gross interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person), less (b) the sum of (i) interest income for such period and (ii) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross interest expense), plus (c) the sum of (i) losses for such period on Hedging Agreements (to the extent not included in gross interest expense) and (ii) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in gross interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

"Contingent Indemnity Obligations" means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated



liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control Agreement" means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to the Agents, among the Collateral Agent, the financial institution, securities intermediary or other Person at which such account is maintained or with which such entitlement or contract is carried, and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Collateral Agent.

"Covered Entity" means (a) each Borrower, each of Borrower's Subsidiaries, all Guarantors and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 15% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Current Value" has the meaning specified therefor in Section 7.01(m).

"Debtor Relief Law" means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Administrative Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within 2 Business Days of the date when due, (b) has notified the Administrative Borrower, or the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified

in such writing or public statement) cannot be satisfied), (c) has failed, within 3 Business Days after written request by the Administrative Agent or the Administrative Borrower, to confirm in writing to the Administrative Agent and the Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity. Notwithstanding anything to the contrary herein, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Administrative Borrower, each L/C Issuer and each Lender.

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 90 consecutive days, that is the result of dividing the dollar amount of (a) discounts, advertising allowances, credits, or other similar items that are granted in the ordinary course of business with respect to the Borrowers' Accounts Receivable during such period, by (b) the Borrowers' billings with respect to Accounts Receivable during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts Receivable by 1 percentage point for each percentage point by which Dilution is in excess of 5.0%.

"Disbursement Letter" means a disbursement letter, in form and substance satisfactory to the Agents, by and among the Loan Parties, the Agents, the Lenders and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Effective Date.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts, (b) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the

ordinary course for accrued and unpaid amounts due through the date of termination or modification) and (c) any sale of merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Loan Party.

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is 95 days after the Final Maturity Date.

"Dollar," "Dollars" and the symbol "\$" each means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"Drawing Date" has the meaning specified therefor in Section 3.04(b).

"Effective Date" has the meaning specified therefor in Section 5.01.

"Effective Date Transactions" means (a) the execution, delivery and performance of the Loan Documents and the making of the Loans hereunder, (b) the transactions contemplated by the PCC Acquisition Documents (including the PCC Acquisition), and (c) the other transactions contemplated hereby and thereby to occur on the Effective Date.

"Effectiveness Date" means the date indicated in a document or agreement to be the date on which such document or agreement becomes effective, or, if there is no such indication, the date of execution of such document or agreement.

"Effective Yield" means, as to any Loan, the effective yield on such Loan as determined by the Collateral Agent in good faith, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including, without limitation, upfront, underwriting, commitment or similar fees or original issue discount payable generally to all Lenders making such Loan, but excluding any arrangement, structuring or amendment fees or other fees payable in connection therewith that are not generally payable to all Lenders making such Loan.

"Eligible Accounts Receivable" means and include, the Accounts Receivable of a Borrower arising in the ordinary course of business and which meets all of the eligibility criteria set forth below, as determined by the Administrative Agent, in its Permitted Discretion:

(a) delivery of the merchandise or the rendition of the services has been completed with respect to such Account Receivable (except to the extent the merchandise has

been shipped in accordance with instructions from the Account Debtor, and such Account Debtor has agreed that such shipment constitutes delivery);

(b) no return, rejection, repossession or dispute has occurred with respect to such Account Receivable, the Account Debtor is not subject to any setoff, defense or counterclaim with respect to such Account Receivable, and there has not occurred any extension of the time for payment with respect to such Account Receivable without the consent of the Administrative Agent, provided that, in the case of any dispute, setoff, defense or counterclaim with respect to an Account Receivable, the portion of such Account Receivable not subject to such dispute, potential (or actual) setoff, defense or counterclaim will not be ineligible solely by reason of this clause (b);

(c) such Account Receivable is subject to a first priority perfected and enforceable Lien in favor of the Collateral Agent for the benefit of the Agents and the Secured Parties, and is lawfully owned by a Borrower free and clear of any Lien (other than Liens in favor of the Collateral Agent for the benefit of the Agents and the Secured Parties and Liens permitted under clauses (b) and (k) of the definition of "Permitted Liens", so long as the Lien in favor of the Collateral Agent remains a first priority Lien) and otherwise continues to be in conformity in all material respects with all representations and warranties made by Borrowers to the Agents and the Lenders with respect thereto in the Loan Documents, and such Borrower has the right to grant Liens on such Account Receivable;

(d) such Account Receivable (i) is not evidenced by a promissory note, chattel paper, bill of sale or any other instrument or other document in respect of which the perfection or priority of the security interest of the Collateral Agent in such document would be enhanced or ensured by possession under applicable law unless the original of such document is in the possession of the Collateral Agent and contains all necessary endorsements in favor of the Collateral Agent, and (ii) is unconditionally payable by a Borrower in Dollars;

(e) no more than 60 days have elapsed from the invoice due date and no more than 90 days have elapsed from the invoice date with respect to such Account Receivable;

(f) such Account Receivable is not due from an Affiliate of a Borrower;

(g) such Account Receivable does not constitute an obligation of the federal government of the United States (or any other United States federal Governmental Authority) which is either (i) eligible for assignment under the Federal Assignment of Claims Act (unless, if applicable, all steps required by the Administrative Agent in connection therewith, including notice to the United States Government under the Federal Assignment of Claims Act have been duly taken in a manner satisfactory to the Administrative Agent) or (ii) otherwise subject to an enforceable restriction on the assignment thereof under federal law that would pre-empt the provisions of Section 9-406 of the Uniform Commercial Code (unless all necessary steps have been taken to comply with such restrictions on assignment);

(h) the Account Debtor (or the applicable office of the Account Debtor) with respect to such Account is located in the continental United States, unless such Account is (i)

supported by a letter of credit or other similar obligation or (ii) covered by credit insurance, in each case satisfactory to the Administrative Agent;

(i) with respect to the Account Debtor for such Account Receivable, not more than 50% of the aggregate amount of all Accounts Receivable of such Account Debtor are excluded on the basis of the aging requirements set forth in clause (e) above;

(j) with respect to the Account Debtor for such Account Receivable, to the extent that the aggregate amount of outstanding Accounts Receivable of such Account Debtor does not exceed 20% of all Eligible Accounts Receivable;

(k) the sale to the Account Debtor is not on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis;

(l) the Account Debtor with respect to such Account Receivable is not a Blocked Person;

(m) the Account Debtor with respect to such Account Receivable (i) has not filed a petition for bankruptcy or any other relief under any Debtor Relief Law, (ii) has not failed, suspended business operations, become insolvent or called a meeting of its creditors or otherwise commenced action under any assignment for the benefit of creditor statute, (iii) has not had or suffered to be appointed a receiver or a trustee for all or a significant portion of its assets or affairs or (iv) in the case of an Account Debtor who is an individual, is not an employee of a Borrower or any of its Affiliates and has not died or been declared incompetent;

(n) the Administrative Agent is, and continues to be, satisfied in its Permitted Discretion with the credit standing of the Account Debtor with respect to such Account Receivable in relation to the amount of credit extended with respect to such Account Debtor, and the Administrative Agent believes, in its reasonable discretion, that the prospect of collection of such Account Receivable is not impaired for any reason; and

(o) such Account Receivable is and at all times shall continue to be acceptable to the Administrative Agent in its Permitted Discretion.

The Administrative Agent reserves the right, at any time and from time to time after the Effective Date, if any Account Receivable at any time ceases to be an Eligible Account Receivable and the Administrative Agent becomes aware of such fact, to, in its Permitted Discretion, exclude such Account Receivable from the calculation of the Borrowing Base. In the event that (i) any Borrower shall acquire any new assets after the Effective Date or (ii) a new Borrower is joined as a party to this Agreement under any circumstance, no such Accounts Receivable acquired in such acquisition or belonging to such new Borrower shall, unless otherwise approved by the Administrative Agent in the exercise of its Permitted Discretion, constitute an Eligible Account Receivable for any purpose under this Agreement until the Administrative Agent shall have completed a Field Survey and Audit with respect to such after-acquired assets or new Borrower.

"Eligible Contract Participant" means an "eligible contract participant" as defined in the CEA and regulations thereunder.

"Eligibility Date" means, with respect to each Loan Party and each Swap, the date on which this Agreement or any other Loan Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the Effectiveness Date of such Swap if this Agreement or any other Loan Document is then in effect with respect to such Loan Party, and otherwise it shall be the Effectiveness Date of this Agreement or such other Loan Document to which such Loan Party is a party).

"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained (or that was maintained at any time during the 6 calendar years preceding the date of any borrowing hereunder) for employees of any Loan Party or any of its ERISA Affiliates.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (a) from any assets, properties or businesses owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest; (b) from adjoining properties or businesses; or (c) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other Requirement of Law, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment or the Release, deposit or migration of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (a) any property presently or formerly owned by any Loan Party or any of its Subsidiaries or (b) any facility which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equity Interests" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

"Equity Issuance" means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by the Parent of any cash capital contributions.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a "controlled group" within the meaning of Sections 414(b), (c), (m) and (o) of the Internal Revenue Code.

"Event of Default" has the meaning specified therefor in Section 9.01.

"Excess Availability" means, as of any date of determination, the amount equal to the result of (a) Availability minus (b) the aggregate amount, if any, of all trade payables of the Parent and its Subsidiaries aged in excess of historical levels with respect thereto and all book overdrafts of the Parent and its Subsidiaries in excess of historical practices with respect thereto, in each case, as determined by the Agents in their discretion.

"Excess Cash Flow" means, with respect to any Person for any period, (a) Adjusted Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication, (i) all cash principal payments (excluding any principal payments made pursuant to Section 2.05(c)) on the Loans made during such period (but, in the case of the Revolving Loans, only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), and all cash principal payments on Indebtedness (other than Indebtedness incurred under this Agreement) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), (ii) all Consolidated Net Interest Expense to the extent paid or payable in cash during such period, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement (excluding Capital Expenditures to the extent financed through the incurrence of Indebtedness or through an Equity Issuance), (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such

payments are permitted to be made, under this Agreement, (v) income taxes paid in cash by such Person and its Subsidiaries for such period, (vi) one-half of the amount of any taxes that are reduced by the net operating losses of such Person and its Subsidiaries and (vii) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means (a) any deposit account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments (including Roth IRA contributions) to or for the benefit of any Loan Party's employees and (b) any Petty Cash Accounts.

"Excluded Equity Issuance" means (a) in the event that the Parent or any of its Subsidiaries forms any Subsidiary in accordance with this Agreement, the issuance by such Subsidiary of Equity Interests to the Parent or such Subsidiary, as applicable, (b) the issuance of Equity Interests by the Parent to any Person that is an equity holder of the Parent prior to such issuance (an "Equity Holder") so long as such Equity Holder did not acquire any Equity Interests of the Parent so as to become an Equity Holder concurrently with, or in contemplation of, the issuance of such Equity Interests to such Equity Holder, (c) the issuance of Equity Interests of the Parent to directors, officers and employees of the Parent and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors of the Parent and (d) the issuance of Equity Interests by a Subsidiary of the Parent to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (a) – (d) above.

"Excluded Hedge Liability or Liabilities" means, with respect to each Borrower and Guarantor, each of its Swap Obligations if, and only to the extent that, all or any portion of this Agreement or any other Loan Document that relates to such Swap Obligation is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, solely by virtue of such Borrower's and/or Guarantor's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any other Loan Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal under the CEA, or any rule, regulations or order of the CFTC, solely as a result of the failure by such Borrower or Guarantor for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Borrower or Guarantor executing this Agreement or the other Loan Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of



Excluded Hedge Liability or Liabilities with respect to each such Person shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Person, and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

"Excluded Locations" means the locations identified on Schedule 5.03(b).

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.09, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Existing Credit Facilities" means, collectively, (a) the Specified Existing Credit Facilities and (b) the credit facilities evidenced by (i) that certain Loan and Security Agreement (as modified by that certain Modification Agreement, dated as of April 29, 2015), dated as of September 30, 2014, between the Parent and M&T Bank, with respect to a revolving loan and term loan credit facility, (ii) that certain Amended and Restated Loan and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time), dated as of September 30, 2014, between Faneuil and M&T Bank, with respect to a revolving loan and term loan credit facility, (iii) that certain Loan and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time), dated as of September 30, 2014, between FNM and M&T Bank, with respect to a revolving loan credit facility, and (iv) that certain Master Loan and Security Agreement, dated July 15, 2009, between PCC and People's Capital Leasing Corp.

"Existing Lenders" means the lenders party to any Existing Credit Facility.

"Extraordinary Receipts" means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds in an aggregate amount exceeding \$250,000 during the term of this

Agreement, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) immediately payable to a Person that is not the Parent or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments and (g) any purchase price adjustment received in connection with any purchase agreement including, without limitation, the PCC Acquisition Agreement.

"Facility" means the real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Parent or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

"Faneuil" has the meaning specified therefor in the preamble hereto.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"FCPA" has the meaning specified therefor in Section 6.01(aa).

"Federal Funds Effective Rate" means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight Federal funds transactions arranged by Federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided that, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Federal Funds Open Rate" means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) which is the daily federal funds open rate as quoted by ICAP North America, Inc. (or any successor) as set forth on the Bloomberg Screen BTMM for that day opposite the caption "OPEN" (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by Administrative Agent (an "Alternate Source") (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute

screen) or on any Alternate Source, or if there shall at any time, for any reason, no longer exist a Bloomberg Screen BTMM (or any substitute screen) or any Alternate Source, a comparable replacement rate determined by Administrative Agent at such time (which determination shall be conclusive absent manifest error); provided however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the "open" rate on the immediately preceding Business Day. If and when the Federal Funds Open Rate changes, the rate of interest hereunder will change automatically without notice to the Borrowers, effective on the date of any such change.

"Fee Letter" means the fee letter, dated as of the date hereof, among the Borrowers and the Collateral Agent.

"Field Survey and Audit" means a field survey and audit of the Loan Parties and an appraisal of the Collateral performed by auditors, examiners and/or appraisers selected by the Administrative Agent in consultation with the Administrative Borrower, at the sole cost and expense of the Borrowers.

"Final Maturity Date" means August 14, 2020.

"Financial Statements" means (a) the audited consolidated balance sheet of the Faneuil and FNM for the Fiscal Year ended September 30, 2014, and the related consolidated statement of operations, shareholders' equity and cash flows for the Fiscal Year then ended, (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries (other than PCC and its Subsidiaries) for the 6 months ended March 31, 2015, and the related consolidated statement of operations and cash flows for the 6 months then ended, and (c) monthly balance sheet of each of Faneuil, FNM and PCC for each fiscal month ended January 31, 2015, February 28, 2015, March 31, 2015, April 30, 2015 and May 31, 2015, and the related statement of operations and cash flows for the fiscal month then ended.

"Fiscal Year" means the fiscal year of the Parent and its Subsidiaries ending on September 30 of each year.

"Fixed Charge Coverage Ratio" means, with respect to any Person for any period, the ratio of (a) Adjusted Consolidated EBITDA of such Person and its Subsidiaries for such period, to (b) the sum of (i) all principal of Indebtedness of such Person and its Subsidiaries scheduled to be paid or prepaid during such period (excluding for the avoidance of doubt payments under Section 2.05) to the extent there is an equivalent permanent reduction in the commitments thereunder, plus (ii) Consolidated Net Interest Expense of such Person and its Subsidiaries for such period, plus (iii) income taxes paid or payable by such Person and its Subsidiaries during such period, plus (iv) cash dividends or distributions paid, or the purchase, redemption or other acquisition or retirement for value (including in connection with any merger or consolidation), by such Person or any of its Subsidiaries, in respect of the Equity Interests of such Person or any of its Subsidiaries (other than dividends or distributions paid by a Loan Party to any other Loan Party) during such period, plus (v) all management, consulting, monitoring, and advisory fees paid by such Person or any of its Subsidiaries to any of its Affiliates during such period (other than reasonable salaries paid to officers in the ordinary course of business in an aggregate amount not to exceed \$750,000 in any Fiscal Year), plus (vi) unfinanced Capital

Expenditures made by such Person and its Subsidiaries during such period. The amounts described in clause (b) above (other than (b)(iii)) shall be calculated on an Annualized Basis. For purposes of this definition, "Annualized Basis" shall mean with respect to calculating an amount (i) for the fiscal quarter ending December 31, 2015, such amount for the consecutive 3 month period ending December 31, 2015 *times* four (4), (ii) for the fiscal quarter ending March 31, 2016, such amount for the consecutive 6 month period ending March 31, 2016 *times* two (2), (iii) for the fiscal quarter ending June 30, 2016, such amount for the consecutive 9 month period ending June 30, 2016 *times* four-thirds (4/3), and (iv) for the fiscal quarter ending on September 30, 2016 and each period thereafter, such amount for the 12 consecutive fiscal months then ending. The amount described in clause (b)(iii) for the first 6 months of the calendar year ending December 31, 2015 shall be deemed to be as follows: (A) fiscal month ended January 31, 2015, \$0, (B) fiscal month ended February 28, 2015, \$0, (C) fiscal month ended March 31, 2015, \$242,658, (D) fiscal month ended April 30, 2015, \$345,321, (E) fiscal month ended May 30, 2015, \$5,500, and (F) fiscal month ended June 30, 2015, \$208,670.

"FNM" has the meaning specified therefor in the preamble hereto

"Foreign Official" has the meaning specified therefor in Section 6.01(aa).

"Foreign Subsidiary" means any Subsidiary of the Parent that is not a Domestic Subsidiary.

"Funding Losses" has the meaning specified therefor in Section 2.08.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided that for the purpose of Section 7.03 hereof and the definitions used therein, "GAAP" shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided, further, that if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any covenant contained in Section 7.03 hereof, the Collateral Agent and the Administrative Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.03 hereof shall be calculated as if no such change in GAAP has occurred.

"Governing Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

"Governmental Acts" has the meaning specified therefor in Section 3.09.

"Governmental Authority" means any nation or government, any foreign, Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency, authority, division, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guaranteed Obligations" has the meaning specified therefor in Section 11.01.

"Guarantor" means (a) each Subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto, and (b) each other Person which guarantees, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations.

"Guaranty" means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws.

"Hedge Liabilities" means the liabilities of the Borrowers under any Hedging Agreement as calculated on a marked-to-market basis in accordance with GAAP.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity exchange, swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and

any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"Highest Lawful Rate" means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"Holdout Lender" has the meaning specified therefor in Section 12.02(b).

"Incremental Facility Amendment" has the meaning specified therefor in Section 2.13(h).

"Incremental Term Facility" has the meaning specified therefor in Section 2.13(a).

"Incremental Term Loans" has the meaning specified therefor in Section 2.13(a).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for more than 90 days after the date such payable was created and any earn-out, purchase price adjustment or similar obligation until such obligation appears in the liabilities section of the balance sheet of such Person); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) the amount of any net obligations of such Persons under any Hedging Agreement which on any date shall be deemed to be the Swap Termination Value thereof as of such date; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations; (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly non-recourse to such Person.

"Indemnified Matters" has the meaning specified therefor in Section 12.15.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitees" has the meaning specified therefor in Section 12.15.

"Individual Advance Amount" means with respect to (a) Faneuil, \$30,000,000, (b) FNM, \$30,000,000, (c) PCC, \$30,000,000, and (d) the Parent, \$0.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Intellectual Property" has the meaning specified therefor in the Security Agreement.

"Intellectual Property Contracts" means all agreements concerning Intellectual Property, including without limitation license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

"Intercompany Subordination Agreement" means an Intercompany Subordination Agreement made by the Parent and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Reference Rate Loan to a LIBOR Rate Loan) and ending 1, 2 or 3 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (e) the Borrowers may not elect an Interest Period which will end after the Final Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every

nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account Receivable or cash.

"Investment" means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts Receivable arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.

"ISP98 Rules" has the meaning specified therefor in Section 3.02(b).

"Joinder Agreement" means a Joinder Agreement, substantially in the form of Exhibit A, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

"L/C Fee Rate" means the Applicable Margin with respect to LIBOR Rate Loans.

"L/C Issuer" means PNC Bank, National Association, or such other bank as the Administrative Agent may select in its sole and absolute discretion.

"Lease" means any lease of real property to which any Loan Party or any of its Subsidiaries is a party as lessor or lessee.

"Lender" has the meaning specified therefor in the preamble hereto.

"Lender-Provided Hedge Agreement" means a Hedging Agreement which is provided by any Lender, Agent or any affiliate thereof. Except to the extent of any Excluded Hedge Liabilities, the Hedge Liabilities of the Borrowers to the provider of any Lender-Provided Hedge Agreement shall be "Obligations" hereunder, guaranteed obligations under any Guaranty and secured obligations under any Security Agreement and otherwise treated as Obligations for purposes of each of the Loan Documents. The Liens securing the Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Loan Documents, but the Persons to whom such Hedge Liabilities are owed shall not have any right to vote or take any other actions under this Agreement or the other Loan Documents; provided, that, any such Person who is an Agent or Lender shall have the right to vote or take any other actions under this Agreement or the other Loan Documents in its capacity as Agent or Lender, as applicable.

"Letter of Credit Application" has the meaning specified therefor in Section 3.02(a).



"Letter of Credit Borrowing" has the meaning specified therefor in Section 3.04(d).

"Letter of Credit Fees" has the meaning specified therefor in Section 2.06(d).

"Letter of Credit Guaranty" means one or more guaranties by the Administrative Agent in favor of the L/C Issuer guaranteeing or relating to the Borrowers' obligations to the L/C Issuer under a reimbursement agreement, Letter of Credit Application or other like document in respect of any Letter of Credit.

"Letter of Credit Obligations" means, at any time and without duplication, the sum of (a) Reimbursement Obligations with respect to all Letters of Credit at such time plus (b) the Maximum Undrawn Amount with respect to all Letters of Credit at such time, plus (c) all amounts for which the Administrative Agent may be liable to the L/C Issuer pursuant to any Letter of Credit Guaranty with respect to any Letter of Credit.

"Letter of Credit Sublimit" means \$15,000,000.

"Letters of Credit" has the meaning specified therefor in Section 3.01.

"Leverage Ratio" means, with respect to any Person and its Subsidiaries for any period, the ratio of (a) all Indebtedness described in clauses (a), (b), (c), (d), (e) and (f) (only to the extent of drawn and unreimbursed letters of credit) in the definition thereof of such Person and its Subsidiaries as of the end of such period to (b) Adjusted Consolidated EBITDA of such Person and its Subsidiaries for such period.

"LIBOR" means for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by Administrative Agent as the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Administrative Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by Administrative Agent at such time (which determination shall be conclusive absent manifest error)). Administrative Agent shall give reasonably prompt notice to the Administrative Borrower of LIBOR as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

"LIBOR Deadline" has the meaning specified therefor in Section 2.07(a).

"LIBOR Notice" means a written notice substantially in the form of Exhibit D.

"LIBOR Option" has the meaning specified therefor in Section 2.07(a).

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the greater of (a) the rate per annum determined by the Administrative Agent (rounded upwards if necessary, to the next 1/100%) by dividing (i) LIBOR for such Interest Period by (ii) 100% minus the Reserve Percentage and (b) 1.0%. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

"LIBOR Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Loan" means the Term Loan or any Revolving Loan made by an Agent or a Lender to the Borrowers pursuant to Article II hereof.

"Loan Account" means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrowers, in which the Borrowers will be charged with all Loans made to, and all other Obligations incurred by, the Borrowers.

"Loan Document" means this Agreement, the PCC Acquisition Collateral Assignment, any Control Agreement, the Disbursement Letter, the Fee Letter, any Guaranty, the Intercompany Subordination Agreement, any Joinder Agreement, any Letter of Credit Application, any Mortgage, any Security Agreement, any UCC Filing Authorization Letter, any landlord waiver, any collateral access agreement, any Perfection Certificate and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan, any Letter of Credit Obligation or any other Obligation.

"Loan Party" means any Borrower and any Guarantor.

"Material Adverse Effect" means a material adverse effect on any of (a) the condition (financial or otherwise), business, operations, assets or liabilities of the Loan Parties taken as a whole, (b) the ability of the Loan Parties taken as a whole to perform any of their payment or other material obligations under any Loan Document, (c) the legality, validity or enforceability of this Agreement or any other Loan Document, (d) the rights and remedies of any Agent or any Lender under any Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on Collateral having a fair market value in excess of \$1,000,000.

"Material Contract" means, with respect to any Person, (a) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$1,500,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or

Subsidiary in the ordinary course of its business upon less than 60 days' notice without penalty or premium) and (b) all other contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

"Maximum Face Amount" means, with respect to any outstanding Letter of Credit, the face amount of such Letter of Credit including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

"Maximum Undrawn Amount" means, with respect to any outstanding Letter of Credit, the amount of such Letter of Credit that is or may become available to be drawn, including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage (including, without limitation, a leasehold mortgage), deed of trust or deed to secure debt, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding 6 years.

"Net Amount of Eligible Accounts Receivable" means the aggregate unpaid invoice amount of Eligible Accounts Receivable less, without duplication, sales, excise or similar taxes, returns, discounts, chargebacks, claims, advance payments, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed with respect to such Eligible Accounts Receivable.

"Net Cash Proceeds" means, with respect to, any issuance or incurrence of any Indebtedness, any Equity Issuance, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement), (b) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (d) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements), in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case

of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

"New Facility" has the meaning specified therefor in Section 7.01(m).

"New Lending Office" has the meaning specified therefor in Section 2.09(d).

"Non-Qualifying Party" means any Loan Party that on the Eligibility Date fails for any reason to qualify as an Eligible Contract Participant.

"Non-U.S. Lender" has the meaning specified therefor in Section 2.09(d).

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the other Secured Parties arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums including the Applicable Premium, attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person and (c) the Bank Product Obligations. Notwithstanding any of the foregoing, Obligations shall not include any Excluded Hedge Liabilities.

"OFAC Sanctions Programs" means (a) the Requirements of Law and Executive Orders administered by OFAC, including, without limitation, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

"Operating Accounts" means the Cash Management Accounts which are designated as "operating accounts" on Schedule 8.01.

"Order" has the meaning specified therefor in Section 3.10.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Parent" has the meaning specified therefor in the preamble hereto.

"Parent Buybacks" has the meaning specified therefor in the definition of Permitted Restricted Payments.

"Participant Register" has the meaning specified therefor in Section 12.07(i).

"Participation Commitment" means each Revolving Loan Lender's obligation to buy a participation of the Letters of Credit issued hereunder.

"Participation Revolving Loan" has the meaning specified therefor in Section 3.04(c) hereof.

"Payment Office" means the Administrative Agent's office located at Two Tower Center Boulevard, East Brunswick, New Jersey 08816, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Administrative Borrower.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"PCC" has the meaning specified therefor in the preamble hereto.

"PCC Acquisition" means the acquisition of all of the Equity Interests of PCC by the Parent pursuant to the PCC Acquisition Agreement.

"PCC Acquisition Agreement" means the Purchase Agreement, dated July 11, 2015, by and between the Parent, Visant Corporation and Visant Holding Corp., as in effect on the date hereof.

"PCC Acquisition Assets" means all of the Equity Interests, property and assets (tangible and intangible) proposed to be purchased by Parent pursuant to the PCC Acquisition Agreement.

"PCC Acquisition Collateral Assignment" means the Collateral Assignment of Acquisition Documents, dated as of the date hereof, and in form and substance satisfactory to the Collateral Agent, made by Parent in favor of the Collateral Agent.

"PCC Acquisition Documents" means the PCC Acquisition Agreement and all other agreements, instruments and other documents related thereto or executed in connection therewith.

"Perfection Certificate" means a certificate in form and substance satisfactory to the Collateral Agent providing information with respect to the property of each Loan Party.

"Permitted Discretion" means, as applicable, the Collateral Agent's or Administrative Agent's good faith and reasonable (from the perspective of an asset based lender in credit facilities of the type contemplated hereby) business judgment and consistent with the applicable Agent's customary practices in asset based credit facilities of the type contemplated hereby.

"Permitted Disposition" means:

- (a) sale of Inventory in the ordinary course of business;
- (b) licensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;
- (c) leasing or subleasing assets in the ordinary course of business;
- (d) (i) the lapse of Registered Intellectual Property of the Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Secured Parties;
- (e) any involuntary loss, damage or destruction of property;
- (f) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;
- (g) so long as no Event of Default has occurred and is continuing or would result therefrom, transfers of assets (i) from a Loan Party to another Loan Party, and (ii) from any Subsidiary of the Parent that is not a Loan Party to any other Subsidiary of the Parent;
- (h) Disposition of (i) obsolete or worn-out equipment in the ordinary course of business or (ii) property which any Loan Party in good faith determines is no longer used or useful in the conduct of the business of such Loan Party;
- (i) Disposition of property or assets not otherwise permitted in clauses (a) through (h) above for cash in an aggregate amount not less than the fair market value of such property or assets; and
- (j) Disposition of the Facility located in Carmel, New York;

provided that the Net Cash Proceeds of such Dispositions (including the proposed Disposition) (1) in the case of clauses (h) and (i) above, do not exceed \$500,000 in the aggregate in any Fiscal Year and (2) in all cases (except the Disposition within one year of the Effective Date of the Facility located in Carmel, New York) are paid to the Administrative Agent for the benefit of the

Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi).

"Permitted Holder" means Jess M. Ravich or any Specified Party.

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(d) Permitted Intercompany Investments;

(e) Indebtedness incurred in the ordinary course of business under performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations (other than obligations for the payment of borrowed money or other Indebtedness) or in respect of worker's compensation claims, and reimbursement obligations in respect of any of the foregoing;

(f) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(g) the incurrence by any Loan Party of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's operations and not for speculative purposes;

(h) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business;

(i) Subordinated Indebtedness;

(j) contingent liabilities in respect of, or Indebtedness consisting of, any indemnification obligation, adjustment of purchase price, non-compete, earnout, put obligations or similar obligations (i) of any Loan Party incurred in connection with the consummation of one or more acquisitions permitted hereunder or (ii) incurred in connection with transfers, sales or other dispositions permitted hereunder and consummated after the Effective Date, in each case, so long as (A) such obligation is customary for transactions of its

type, (B) the aggregate amount of such Indebtedness does not exceed \$2,000,000 at any time outstanding and (C) any such Indebtedness does not consist of, or is evidenced by, promissory notes or other instruments or agreements evidencing debt for borrowed money;

(k) Indebtedness in respect of the Specified Letter of Credit in the undrawn face amount not to exceed \$1,000,000 at any time outstanding;

(l) unsecured Indebtedness of the Parent owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by the Parent of the common Equity Interests of the Parent that has been issued to such Persons, so long as (i) such repurchase is permitted under Section 7.02(h), (ii) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (iii) the aggregate amount of all such Indebtedness incurred pursuant to this clause (l), together with the aggregate amount of all Restricted Payments made pursuant to clause (b) of the definition of Permitted Restricted Payments, does not exceed \$500,000 at any time outstanding, and (iv) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Collateral Agent;

(m) unsecured guarantees by any Borrower arising with respect to customary agreements entered into by the other Loan Parties in the ordinary course of business and not otherwise prohibited by the terms of this Agreement; and

(n) Indebtedness incurred in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearinghouse transfers of funds, so long as such Indebtedness is repaid in full within 3 Business Days of the incurrence thereof and does not exceed \$1,000,000 at any time outstanding.

"Permitted Intercompany Investments" means Investments made by (a) a Loan Party to or in another Loan Party, (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Subordination Agreement, and (d) a Loan Party to or in a Subsidiary that is not a Loan Party so long as (i) the aggregate amount of all such Investments made by the Loan Parties to or in Subsidiaries that are not Loan Parties does not exceed \$1,000,000 at any time outstanding, (ii) no Default or Event of Default has occurred and is continuing either before or after giving effect to such Investment, and (iii) the Borrowers have Excess Availability plus Qualified Cash of not less than \$10,000,000 after giving effect to such Investment.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of goods or services in the ordinary course of business;



(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(e) Investments existing on the date hereof, and Investments which are committed to be made pursuant to a definitive agreement or binding commitment existing on the Effective Date, in each case as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof (except for any increase in value thereof);

(f) Permitted Intercompany Investments;

(g) Investments constituting loans and advances by any Borrower and its Subsidiaries to their respective employees, officers and directors in the ordinary course of business in an aggregate amount not to exceed \$500,000 at any time outstanding;

(h) payroll, commissions, travel and similar advances made to employees to cover matters that are expected at the time of such advances to be treated as expenses of the Parent and its Subsidiaries for accounting purposes and that are made in the ordinary course of business in an aggregate amount not to exceed \$300,000 at any time outstanding;

(i) Investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with any Borrower or any of its Subsidiaries so long as such Investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger and were in existence on the date of such event;

(j) to the extent constituting Investments, Capital Expenditures permitted pursuant to Section 7.02(g); and

(g) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed \$3,000,000 at any time outstanding.

"Permitted Liens" means:

(a) Liens securing the Obligations;

(b) Liens for taxes, assessments and governmental charges the payment of which is not required under Section 7.01(c)(iii);

(c) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(d) Liens described on Schedule 7.02(a), provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(e) purchase money Liens on equipment and other fixed or capital assets acquired, constructed, improved or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance and other general liability insurance obligations, other social security laws and regulations or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety, appeal bonds, performance bonds and other obligations of similar nature, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;

(g) with respect to any Facility, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that (i) do not (A) secure obligations for the payment of money or (B) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business or (ii) are disclosed in the applicable Title Insurance Policy provided to and accepted by the Collateral Agent;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, or (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capitalized Lease), in each case extending only to such personal property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(l) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens on Faneuil's deposit account maintained at M&T Bank (account number 98597 16558) (the "Pledged M&T Account") securing the Specified Letter of Credit permitted to be incurred pursuant to clause (k) of the definition of Permitted Indebtedness; provided, that the amount on deposit in the Pledged M&T Account does not exceed \$1,200,000 at any time;

(n) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness; and

(o) to the extent constituting Liens, the filing of Uniform Commercial Code financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(p) Liens granted to SureTec Insurance Company, SureTec Indemnity Company, Argonaut Insurance Company and Rockwood Casualty Insurance Company (collectively, the "Specified Insurance Companies") pursuant to the General Agreement of Indemnity, dated as of July 31, 2014, by the Parent and FNM (the "SureTec Indemnity Agreement") to secure the obligations of the Parent and FNM arising under, or in connection, with the bonds issued by the Specified Insurance Companies or otherwise under the SureTec Indemnity Agreement; provided that the aggregate stated or principal amount of obligations secured by such Liens does not exceed \$2,000,000 at any time; and

(q) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$1,000,000.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition of any fixed assets secured by a Lien permitted under clause (e) of the definition of "Permitted Liens"; provided that (a) such Indebtedness is incurred within 60 days after such acquisition, (b) such Indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate principal amount of all such Indebtedness shall not exceed (i) \$15,000,000 at any time outstanding and (ii) \$4,000,000 incurred in any Fiscal Year.

"Permitted Refinancing Indebtedness" means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the principal amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification (other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto);

(b) such extension, refinancing or modification does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) of the Indebtedness so extended, refinanced or modified;

(c) such extension, refinancing or modification is pursuant to terms that are not less favorable, taken as a whole, to the Loan Parties and the Lenders than the terms of the Indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified; and

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Loan Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

"Permitted Restricted Payments" means any of the following Restricted Payments made by:

(a) any Subsidiary of any Borrower to such Borrower,

(b) so long as no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such payment, any Subsidiary to the Parent (and the Parent shall use such Restricted Payments) for the repurchase, retirement or other acquisition or retirement for value of the Parent's common Equity Interests held by any future, present or former employee, director, manager, officer or consultant (or any Affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Parent or any of its Subsidiaries pursuant to any employee, management, director or manager equity plan, employee, management, director or manager stock option plan or any other employee, management, director or manager benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, manager, officer or consultant of the Parent or any Subsidiary; provided that the aggregate amounts of all such payments made pursuant to this clause (b), together with the aggregate amount of all Indebtedness incurred under clause (l) of the definition of Permitted Indebtedness, shall not, in the aggregate, exceed \$500,000 during the term of this Agreement;

(c) any Subsidiary to the Parent (and the Parent shall use such Restricted Payments) for the repurchase, retirement or other acquisition or retirement for value of the Parent's common Equity Interests (other than such repurchase, retirement or other acquisition or retirement for value described in clause (b) above, the "Parent Buybacks") so long as (i) the aggregate amount paid by Parent in connection with all Parent Buybacks shall not exceed \$2,000,000 in any Fiscal Year, (ii) Excess Availability plus Qualified Cash after giving effect to any Parent Buyback shall exceed \$10,000,000 and (iii) no Default or Event of Default shall have occurred and be continuing at the time of any Parent Buyback or would result therefrom; and

(d) the Parent to pay dividends in the form of common Equity Interests.

"Permitted Specified Liens" means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"Petty Cash Accounts" means Cash Management Accounts with deposits at any time in an aggregate amount not in excess of \$50,000 for any one account and \$300,000 in the aggregate for all such accounts.

"Phoenix Office Location" means the Facility owned by Phoenix (Md.) Realty, LLC and located at 18249 Phoenix Drive, Hagerstown, MD.

"Plan" means any Employee Plan or Multiemployer Plan.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.0%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.0%.

"Pro Forma Consolidated EBITDA" means the Consolidated EBITDA of the Parent and its Subsidiaries (after giving effect to the consummation of the PCC Acquisition) for the most recently ended four-quarter period as of the Effective Date, with such adjustments as are reasonably acceptable to the Collateral Agent.

"Pro Forma Leverage Ratio" means (a) all Indebtedness described in clauses (a), (b), (c), (d), (e) and (f) in the definition thereof of the Parent and its Subsidiaries (after giving effect to the consummation of the PCC Acquisition) to (b) Pro Forma Consolidated EBITDA.

"Pro Rata Share" means, with respect to:

(a) (i) a Lender's obligation to make Revolving Loans and the right to receive payments of interest, fees, and principal with respect thereto and (ii) a Lender's obligation to participate in Letters of Credit and Reimbursement Obligations, to reimburse the L/C Issuer, and the right to receive payments of fees with respect thereto, the percentage obtained by dividing (A) such Lender's Revolving Credit Commitment, by (B) the Total Revolving Credit Commitment, provided, that, if the Total Revolving Credit Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's Revolving Loans and its interest in the Letter of Credit Obligations and the denominator shall be the aggregate unpaid principal amount of all Revolving Loans and Letter of Credit Obligations,

(b) a Lender's obligation to make the Term Loan (other than Incremental Term Loans) and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan (other than Incremental Term Loans) and the denominator shall be the aggregate unpaid principal amount of the Term Loan (other than Incremental Term Loans),

(c) with respect to a Lender's right to receive payments of interest, fees, and principal with respect to any Incremental Term Loan, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender's portion of such Incremental Term Loan and (ii) the aggregate unpaid principal amount of such Incremental Term Loan,

(d) with respect to Agent Advances and any Agent's or Lender's right to receive payments of interest, fees and principal with respect thereto, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Agent's or Lender's portion of Agent Advances by (ii) the aggregate unpaid principal amount of Agent Advances; and

(e) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the sum of such Lender's Revolving Credit Commitment and the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the sum of the Total Revolving Credit Commitment and the aggregate unpaid principal amount of the Term Loan, provided, that, if such Lender's Revolving Credit Commitment shall have been reduced to zero, such Lender's Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Agent Advances) and its interest in the Letter of Credit Obligations and if the Total Revolving Credit Commitment shall have been reduced to zero, the Total Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of all Revolving Loans (including Agent Advances) and Letter of Credit Obligations.

"Process Agent" has the meaning specified therefor in Section 12.10(b).

"Projections" means financial projections of the Parent and its Subsidiaries delivered pursuant to Section 6.01(g)(ii), as updated from time to time pursuant to Section 7.01(a)(vii).

"Purchase Price" means, with respect to the PCC Acquisition, an amount equal to the sum of (a) the aggregate consideration, whether cash, property or securities (including, without limitation, the fair market value of any Equity Interests of any Loan Party or any of its Subsidiaries issued in connection with the PCC Acquisition), paid or delivered by a Loan Party or any of its Subsidiaries (whether as initial consideration or through the payment or disposition of deferred consideration, including, without limitation, in the form of seller financing, royalty payments, payments allocated towards non-compete covenants, payments to principals for consulting services or other similar payments) in connection with the PCC Acquisition, plus (b) the aggregate amount of liabilities of the acquired business (net of current assets of the acquired business) that would be reflected on a balance sheet (if such were to be prepared) of the Parent and its Subsidiaries after giving effect to the PCC Acquisition, plus (c) the aggregate amount of all transaction fees, costs and expenses incurred by the Parent or any of its Subsidiaries in connection with the PCC Acquisition.

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of a Loan Party in the United States as of such date, which deposit accounts are subject to Control Agreements.

"Qualified ECP Loan Party" means each Loan Party that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding \$10,000,000 or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the CEA.

"Qualified Equity Interests" means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

"Real Property Deliverables" means each of the following agreements, instruments and other documents in respect of each Facility:

- (a) a Mortgage duly executed by the applicable Loan Party,
- (b) evidence of the recording of each Mortgage in such office or offices as may be reasonably necessary or, in the opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;
- (c) a Title Insurance Policy with respect to each Mortgage;
- (d) (i) a current ALTA survey and a surveyor's certificate, in form and substance reasonably satisfactory to the Collateral Agent, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and satisfactory to the Collateral Agent or (ii) a prior survey, in form and substance reasonably satisfactory to the Collateral Agent, together with an affidavit from the applicable Loan Party certified to the issuer of the Title Insurance Policy with respect thereto that there has been no material change to such Facility since the date of such survey, if applicable, all in form and substance satisfactory to the issuer of the Title Insurance Policy to delete the exception for such matters as a survey would show in the relevant Title Insurance Policy;
- (e) an opinion of counsel, reasonably satisfactory to the Collateral Agent, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Collateral Agent may reasonably request;
- (f) a reasonably satisfactory ASTM 1527-00 Phase I Environmental Site Assessment ("Phase I ESA") provided by the Borrowers to the Collateral Agent (and if recommended in the Phase I ESA and, if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA and after consultation with the Parent, an ASTM 1527-00 Phase II Environmental Site Assessment) of each Facility, in form and substance and by an independent firm satisfactory to the Collateral Agent; and
- (g) such other agreements, instruments and other documents (including opinions of counsel) as the Collateral Agent may reasonably require.

"Recipient" means any Agent, any Lender and any L/C Issuer, as applicable.

"Reference Bank" means PNC, its successors or any other commercial bank designated by the Administrative Agent to the Administrative Borrower from time to time.

"Reference Rate" means, for any period, the greatest of (a) 3.25% per annum, (b) the Federal Funds Open Rate plus 0.50% per annum, (c) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate of interest publicly announced by the Reference Bank in New York, New York from time to time as its reference rate, base rate or prime rate. The reference rate, base rate or prime rate is determined from time to time by the Reference Bank as a means of pricing some loans to its borrowers and neither is tied to any external rate of interest or index nor necessarily reflects the lowest rate of interest actually charged by the Reference Bank to any particular class or category of customers. Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

"Reference Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

"Register" has the meaning specified therefor in Section 12.07(f).

"Registered Intellectual Property" means Intellectual Property that is issued, registered, renewed or the subject of a pending application.

"Registered Loans" has the meaning specified therefor in Section 12.07(f).

"Regulation T", "Regulation U" and "Regulation X" mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

"Reimbursement Obligations" has the meaning specified therefor in Section 3.04(b).

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Related Party Assignment" has the meaning specified therefor in Section 12.07(c)(ii).

"Related Party Register" has the meaning specified therefor in Section 12.07(f).

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.



"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) perform any other actions authorized by 42 U.S.C. § 9601.

"Replacement Lender" has the meaning specified therefor in Section 12.02(b).

"Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

"Reportable Event" means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Required Lenders" means Lenders whose Pro Rata Shares (calculated in accordance with clause (e) of the definition thereof) aggregate at least 50.1%.

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, issued guidance, release, rulings, ordinances, orders, executive orders, opinions, judgments, writs, injunctions, bonds, authorizations or approvals, constitutions, decrees (including administrative or judicial precedents or authorities), award of or any settlement arrangement, by agreement, consent, or otherwise, and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, foreign or domestic, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserve Percentage" means as of any day the maximum effective percentage in effect on such day as prescribed by the Board for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding.

"Reserves" means, as of any date of determination, such amounts (including, without limitation, the amount of any Bank Product Reserve and any Dilution Reserve) as the Administrative Agent may from time to time establish in its Permitted Discretion (a) to reflect events, conditions, contingencies or risks which adversely affect (i) any Collateral in the Borrowing Base or either Agent's access thereto, or (ii) the priority, perfection or enforceability of any of the security interest of the Agents or any Lender in the Collateral in the Borrowing Base, or (b) in respect of any state of facts which the Administrative Agent reasonably

determines to constitute a Default or an Event of Default. The amount of any Reserve established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such Reserve as determined by the Administrative Agent in its Permitted Discretion and shall not be duplicative of the amount of any other Reserve, or any reduction in the advance rate, with respect to the same events, conditions or circumstances. The Administrative Agent shall provide notice to the Administrative Borrower and the Collateral Agent of any new categories of Reserves that may be established after the date hereof and will be available to consult with the Administrative Borrower in connection with the basis for such new categories of Reserves. Notwithstanding any of the foregoing, the Administrative Agent shall not establish any Reserves with respect to core offset liability or core reconciliation variance.

"Restricted Payment" means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party.

"Revolver Priority Collateral" means (a) Accounts Receivable of each Loan Party that arise from the sale, leasing, assignment or other disposition of Inventory or the rendition of services, or from the licensing of, or similar arrangements relating to, patents, trademarks, copyrights and other intellectual property in the ordinary course of business, (b) Collateral Records, (c) deposit accounts (as defined in the Uniform Commercial Code) and all amounts therein (other than amounts therein constituting identifiable Proceeds of Term Priority Collateral) of any Loan Party, (d) Inventory of each Loan Party, (e) to the extent evidencing or relating to any of the foregoing, supporting obligations, letter of credit rights, payment intangibles and documents (as each such term is defined in the Uniform Commercial Code), and (f) all Proceeds and products (whether tangible or intangible) of the foregoing, including Proceeds of insurance covering any or all of the foregoing, in each case to the extent they relate to clauses (a) through (e) above. For the avoidance of doubt, Revolver Priority Collateral shall not include (i) equipment or any other asset acquired with cash proceeds thereof except to the extent such asset acquired is described in clauses (a) through (e) above, (ii) during the continuance of an Event of Default, proceeds of business interruption insurance, if any, and (iii) Proceeds of Revolving Loans (other than such Proceeds constituting Collateral described in clauses (a) through (e) above).

"Revolver Priority Collateral Proceeds" means the Proceeds of Revolver Priority Collateral.

"Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrowers in the amount set forth opposite such Lender's name in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amount may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Revolving Loan" means a loan made by a Lender to the Borrowers pursuant to Section 2.01(a)(i).

"Revolving Loan Lender" means a Lender with a Revolving Credit Commitment or a Revolving Loan.

"Revolving Loan Obligations" means any Obligations with respect to the Revolving Loans (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto).

"Sale and Leaseback Transaction" means, with respect to the Parent or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Parent or any of its Subsidiaries shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanctioned Country" means a country subject to a sanctions program maintained under any Anti-Terrorism Law.

"Sanctioned Person" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

"SEC" means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

"Secured Party" means any Agent, any Lender, the L/C Issuer and any Bank Product Provider.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

"Securitization" has the meaning specified therefor in Section 12.07(l).

"Security Agreement" means a Pledge and Security Agreement, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent, for the benefit of the Secured Parties, securing the Obligations.

"Settlement Period" has the meaning specified therefor in Section 2.02(d)(i) hereof.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is not less than the total amount of the liabilities of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

"Specified Existing Credit Facilities" means, collectively, the credit facilities evidenced by (a) that certain Credit Agreement, dated as of September 23, 2014, among Visant Corporation, Visant Secondary Holdings Corp., the lenders from time to time party thereto and Credit Suisse AG, as administrative agent and collateral agent and (b) that certain Indenture, dated as of September 22, 2010, among Visant Corporation, the guarantors party thereto, and U.S. Bank National Association.

"Specified Insurance Companies" has the meaning specified therefor in clause (p) of the definition of Permitted Liens.

"Specified Letter of Credit" means the letter of credit set forth on Schedule 1.01(C).

"Specified Party" means each of the Persons listed on Schedule 1.01(D) hereto.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Collateral Agent and the Required Lenders and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders, or (b) otherwise on terms and conditions reasonably satisfactory to the Collateral Agent and the Required Lenders.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture

or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Parent unless the context expressly provides otherwise.

"SunTrust Account" means account number 1000050031235 maintained by Faneuil at SunTrust Bank.

"Swap" means any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder other than (a) a swap entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"Swap Obligation" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender-Provided Hedge Agreement.

"Swap Termination Value" means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreement, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Hedging Agreement, as determined by the hedge bank party to such Hedging Agreement (or the Borrowers, if no hedge bank is party to such Hedging Agreement) in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by the hedge bank party to such Hedging Agreement (or the Borrowers, if no hedge bank is party to such Hedging Agreement).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the first date on which all of the Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

"Termination Event" means (a) a Reportable Event with respect to any Employee Plan, (b) any event that causes any Loan Party or any of its ERISA Affiliates to incur liability under Section 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, (c) the filing of a notice of intent to terminate an Employee

Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings by the PBGC to terminate an Employee Plan, or (e) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan.

"Term Loan" means the Term Loans made by the Term Loan Lenders to the Borrowers on the Effective Date pursuant to Section 2.01(a)(ii) and, after the date on which any Incremental Term Loans are made by the applicable Term Loan Lenders to the Borrowers pursuant to Section 2.13, such Incremental Term Loans.

"Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrowers on the Effective Date pursuant to Section 2.01(a)(ii) in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan Lender" means a Lender with a Term Loan Commitment or a Term Loan.

"Term Loan Obligations" means any Obligations with respect to the Term Loan (including, without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto).

"Term Priority Collateral" means all Collateral other than Revolver Priority Collateral.

"Term Priority Collateral Proceeds" means the Proceeds of the Term Priority Collateral.

"Title Insurance Policy" means a mortgagee's loan policy, in form and substance reasonably satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by or otherwise reasonably satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms and with such endorsements reasonably satisfactory to the Collateral Agent, delivered to the Collateral Agent.

"Total Commitment" means the sum of the Total Revolving Credit Commitment and the Total Term Loan Commitment.

"Total Revolving Credit Commitment" means the sum of the amounts of the Lenders' Revolving Credit Commitments, which amount is \$30,000,000 as of the Effective Date.

"Total Term Loan Commitment" means the sum of the amounts of the Lenders' Term Loan Commitments, which amount is \$105,000,000 as of the Effective Date.

"UCC Filing Authorization Letter" means a letter duly executed by each Loan Party authorizing the Collateral Agent to file appropriate financing statements on Form UCC-1

without the signature of such Loan Party in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement and each Mortgage.

"Uniform Commercial Code" or "UCC" has the meaning specified therefor in Section 1.04.

"UCP 600" has the meaning specified therefor in Section 3.02(b).

"Unused Line Fee" has the meaning specified therefor in Section 2.06(a).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001)) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"WARN" has the meaning specified therefor in Section 6.01(p).

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding principal amount of such Indebtedness into (b) the total of the product obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Working Capital" means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) the unpaid face amount of all Accounts Receivable of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of prepaid expenses and other current assets of such Person and its Subsidiaries as at such date of determination (other than cash, Cash Equivalents and any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person), minus (b) the sum, for such Person and its Subsidiaries, of (i) the unpaid amount of all accounts payable of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of all accrued expenses of such Person and its Subsidiaries as at such date of determination (other than the current portion of long-term debt and all accrued interest and taxes).

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any

agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

#### Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance



with any incurrence or expenditure tests set forth in Section 7.01, Section 7.02 and Section 7.03, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 840 on the definitions and covenants herein, GAAP as in effect on the Effective Date shall be applied and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.

Section 1.06 Obligation to Make Payments in Dollars. All payments to be made by any Loan Party of principal, interest, fees and other Obligations under any Loan Document shall be made in Dollars in same day funds, and no obligation of any Loan Party to make any such payment shall be discharged or satisfied by any payment other than payments made in Dollars in same day funds.

## ARTICLE II

### THE LOANS

Section 2.01 Commitments. (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Revolving Loan Lender severally agrees to make Revolving Loans to the Borrowers at any time and from time to time during the term of this Agreement, in an aggregate principal amount of Revolving Loans at any time outstanding not to exceed the amount of such Lender's Revolving Credit Commitment; and

(ii) each Term Loan Lender severally agrees to make the Term Loan to the Borrowers on the Effective Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Revolving Loans outstanding at any time to each Borrower shall not exceed the lower of (A) the difference between (x) the Individual Advance Amount of such Borrower and (y) the aggregate Letter of Credit Obligations of such Borrower and (B) the difference between (x) the then current Borrowing Base of such Borrower and (y) the aggregate Letter of Credit Obligations of such Borrower. Notwithstanding any of the foregoing, the aggregate principal amount of all Revolving Loans outstanding at any time to all Borrowers shall not exceed the Total Revolving Credit Commitment. The Revolving Credit Commitment of each Lender shall automatically and permanently be reduced to zero on the Final Maturity Date. Within the foregoing limits, the Borrowers may borrow, repay and reborrow, the Revolving Loans on or after the Effective Date and prior to the Final Maturity Date, subject to the terms, provisions and limitations set forth herein.

(ii) The aggregate principal amount of the Term Loan made on the Effective Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

Section 2.02 Making the Loans. (a) The Administrative Borrower shall give notice to the Administrative Agent which may be given by (x) telephone or (y) in writing, in substantially the form of Exhibit C hereto (a "Notice of Borrowing") (provided, that, any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Notice of Borrowing), not later than (A) 1:00 p.m. (New York City time) on the date which is 3 Business Days prior to the date of the proposed Loan, if made as a LIBOR Rate Loan (or such shorter period as the Administrative Agent is willing to accommodate from time to time, but in no event later than 1:00 p.m. (New York City time) on the borrowing date of the proposed Loan) or (B) 1:00 p.m. on the date of the proposed Loan, if made as a Reference Rate Loan. Any such Notice of Borrowing shall be irrevocable and shall specify (i) the applicable Borrower and principal amount of the proposed Loan, (ii) in the case of Loans requested on the Effective Date, whether such Loan is requested to be a Revolving Loan or the Term Loan, (iii) whether the Loan is requested to be a Reference Rate Loan or a LIBOR Rate Loan and, in the case of a LIBOR

Rate Loan, the initial Interest Period with respect thereto, and (iv) the proposed borrowing date, which must be a Business Day, and, with respect to the Term Loan (other than any Incremental Term Loan), must be the Effective Date. The Administrative Agent and the Lenders may act without liability upon the basis of written, telecopied or telephonic notice believed by the Administrative Agent in good faith to be from the Administrative Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Administrative Borrower to the Administrative Agent). Each Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of any such telephonic Notice of Borrowing. The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrowers until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrowers shall be bound to make a borrowing in accordance therewith. Each Revolving Loan shall be made in a minimum amount of \$100,000 and shall be in an integral multiple of \$100,000.

(c) (i) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Revolving Credit Commitment or the Total Term Loan Commitment, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

(ii) Notwithstanding any other provision of this Agreement, and in order to reduce the number of fund transfers among the Borrowers, the Agents and the Lenders, the Borrowers, the Agents and the Lenders agree that the Administrative Agent may (but shall not be obligated to), and the Borrowers and the Lenders hereby irrevocably authorize the Administrative Agent to, fund, on behalf of the Revolving Loan Lenders, Revolving Loans pursuant to Section 2.01, subject to the procedures for settlement set forth in Section 2.02(d); provided, however, that (A) the Administrative Agent shall in no event fund any such Revolving Loans if the Administrative Agent shall have received written notice from the Collateral Agent or the Required Lenders on the Business Day prior to the date of the proposed Revolving Loan that one or more of the conditions precedent contained in Section 5.02 will not be satisfied at the time of the proposed Revolving Loan, and (B) the Administrative Agent shall not otherwise be required to determine that, or take notice whether, the conditions precedent in Section 5.02 have been satisfied. If the Administrative Borrower gives a Notice of Borrowing requesting a Revolving Loan and the Administrative Agent elects not to fund such Revolving Loan on behalf of the Revolving Loan Lenders, then promptly after receipt of the Notice of Borrowing requesting such Revolving Loan, the Administrative Agent shall notify each Revolving Loan Lender of the specifics of the requested Revolving Loan and that it will not fund the requested Revolving Loan on behalf of the Revolving Loan Lenders. If the Administrative Agent notifies the Revolving Loan Lenders that it will not fund a requested Revolving Loan on behalf of the

Revolving Loan Lenders, each Revolving Loan Lender shall make its Pro Rata Share of the requested Revolving Loan available to the Administrative Agent, in immediately available funds, in the Administrative Agent's Account no later than 3:00 p.m. (New York City time) (provided that the Administrative Agent requests payment from such Revolving Loan Lender not later than 1:00 p.m. (New York City time)) on the date of the proposed Revolving Loan. The Administrative Agent will make the proceeds of such Revolving Loans available to the Borrowers on the day of the proposed Revolving Loan by causing an amount, in immediately available funds, equal to the proceeds of all such Revolving Loans received by the Administrative Agent in the Administrative Agent's Account or the amount funded by the Administrative Agent on behalf of the Revolving Loan Lenders to be deposited in an account designated by the Administrative Borrower.

(iii) If the Administrative Agent has notified the Revolving Loan Lenders that the Administrative Agent, on behalf of the Revolving Loan Lenders, will not fund a particular Revolving Loan pursuant to Section 2.02(c)(ii), the Administrative Agent may assume that each such Revolving Loan Lender has made such amount available to the Administrative Agent on such day and the Administrative Agent, in its sole discretion, may, but shall not be obligated to, cause a corresponding amount to be made available to the Borrowers on such day. If the Administrative Agent makes such corresponding amount available to the Borrowers and such corresponding amount is not in fact made available to the Administrative Agent by any such Revolving Loan Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Effective Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account.

(iv) Nothing in this Section 2.02(c) shall be deemed to relieve any Revolving Loan Lender from its obligations to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

(d) (i) With respect to all periods for which the Administrative Agent has funded Revolving Loans pursuant to Section 2.02(c), on Friday of each week, or if the applicable Friday is not a Business Day, then on the following Business Day, or such shorter period as the Administrative Agent may from time to time select (any such week or shorter period being herein called a "Settlement Period"), the Administrative Agent shall notify each Revolving Loan Lender of the unpaid principal amount of the Revolving Loans outstanding as of the last day of each such Settlement Period. In the event that such amount is greater than the unpaid principal amount of the Revolving Loans outstanding on the last day of the Settlement Period immediately

preceding such Settlement Period (or, if there has been no preceding Settlement Period, the amount of the Revolving Loans made on the date of such Revolving Loan Lender's initial funding), each Revolving Loan Lender shall promptly (and in any event not later than 2:00 p.m. (New York City time) if the Administrative Agent requests payment from such Lender not later than 1:00 p.m. (New York City time) on such day) make available to the Administrative Agent its Pro Rata Share of the difference in immediately available funds. In the event that such amount is less than such unpaid principal amount, the Administrative Agent shall promptly pay over to each Revolving Loan Lender its Pro Rata Share of the difference in immediately available funds. In addition, if the Administrative Agent shall so request at any time when a Default or an Event of Default shall have occurred and be continuing, or any other event shall have occurred as a result of which the Administrative Agent shall determine that it is desirable to present claims against the Borrowers for repayment, each Revolving Loan Lender shall promptly remit to the Administrative Agent or, as the case may be, the Administrative Agent shall promptly remit to each Revolving Loan Lender, sufficient funds to adjust the interests of the Revolving Loan Lenders in the then outstanding Revolving Loans to such an extent that, after giving effect to such adjustment, each such Revolving Loan Lender's interest in the then outstanding Revolving Loans will be equal to its Pro Rata Share thereof. The obligations of the Administrative Agent and each Revolving Loan Lender under this Section 2.02(d) shall be absolute and unconditional. Each Revolving Loan Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans which have been funded by such Revolving Loan Lender.

(ii) In the event that any Revolving Loan Lender fails to make any payment required to be made by it pursuant to Section 2.02(d)(i), the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Effective Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account. Nothing in this Section 2.02(d)(ii) shall be deemed to relieve any Revolving Loan Lender from its obligation to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

Section 2.03 Repayment of Loans; Evidence of Debt. (a) The outstanding principal of all Revolving Loans shall be due and payable by the Borrowers on the Final Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(b) The outstanding principal amount of the Term Loan made on the Effective Date pursuant to Section 2.01(a)(ii) shall be repaid in consecutive quarterly installments on the last day of each fiscal quarter beginning on September 30, 2015, each in an amount equal to \$1,968,750; provided, however, that the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the Term Loan made on the Effective Date pursuant to Section 2.01(a)(ii). The outstanding principal amount of the any Incremental Term Loan shall be repayable in accordance with the applicable Incremental Facility Amendment. The outstanding unpaid principal amount of the Term Loan (including the Incremental Term Loans, if any), and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (i) the termination of the Total Revolving Credit Commitment, (ii) the Final Maturity Date and (iii) the date on which the Term Loan is declared due and payable pursuant to the terms of this Agreement.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to Section 2.03(c) or Section 2.03(d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(c) and the accounts maintained pursuant to Section 2.03(d), the accounts maintained pursuant to Section 2.03(d) shall govern and control.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Collateral Agent and reasonably acceptable to the Administrative Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### Section 2.04 Interest.

(a) Revolving Loans. Subject to the terms of this Agreement, at the option of the Administrative Borrower, each Revolving Loan shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each Revolving Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin. Each Revolving Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for such Loan plus the Applicable Margin.

(b) Term Loan. Subject to the terms of this Agreement, at the option of the Administrative Borrower, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Term Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Term Loan (or such portion thereof) plus the Applicable Margin. Notwithstanding anything to the contrary in this clause (b), the interest rates for any Incremental Term Loans shall be determined mutually by the Borrowers and the Lenders providing such Incremental Term Loans, as set forth in the applicable Incremental Facility Amendment for such Incremental Term Loans.

(c) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, (i) the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities, outstanding Reimbursement Obligations or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate and (ii) the Letter of Credit Fees shall be increased by 2.0 percentage points above the per annum rate otherwise applicable hereunder.

(d) Interest Payment. Interest on each Loan shall be payable (i) monthly, in arrears, on the first day of each month, commencing on the first day of the month following the month in which such Loan is made and (ii) in the case of each Loan, at maturity (whether upon demand, by acceleration or otherwise). Notwithstanding the foregoing, interest at the Post-Default Rate shall be payable on demand. Each Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 4.01 with the amount of any interest payment due hereunder.

(e) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments.

(i) Revolving Credit Commitments. The Total Revolving Credit Commitment shall terminate on the Final Maturity Date. The Borrowers may reduce the Total Revolving Credit Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Revolving Loans then outstanding, (B) the aggregate principal amount of all Revolving Loans not yet made as to which a Notice of Borrowing has been given by the Administrative Borrower under Section 2.02, (C) the Letter of Credit Obligations at such time and (D) the stated amount of all Letters of Credit not yet issued as to which a request has been made and not withdrawn. Each such reduction shall be (1) in an amount which is an integral multiple of \$250,000 (or by the full amount of the Total Revolving Credit Commitment in effect immediately prior to such reduction if such amount at that time is less than \$250,000), (2) made by providing not less than (x) in the case of a partial reduction, three (3) Business Days' (or such shorter notice as may be agreed by the Administrative Agent) prior written notice to the Administrative Agent and (y) in the case of a reduction to zero, ten (10) Business Days' (or such shorter notice as may be agreed by the Administrative Agent) prior written notice to the Administrative Agent, (3) irrevocable and (4) accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment. Once reduced, the Total Revolving Credit Commitment may not be increased. Each such reduction of the Total Revolving Credit Commitment shall reduce the Revolving Credit Commitment of each Lender proportionately in accordance with its Pro Rata Share thereof.

(ii) Term Loan. The Total Term Loan Commitment shall terminate at 5:00 p.m. (New York City time) on the Effective Date.

(b) Optional Prepayment.

(i) Revolving Loans. The Borrowers may, at any time and from time to time, prepay the principal of any Revolving Loan, in whole or in part; provided, however, that each prepayment made pursuant to this Section 2.05(b)(i) in connection with a reduction of the Total Revolving Credit Commitment pursuant to Section 2.05(a)(i) above shall be accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment.

(ii) Term Loan. The Borrowers may, at any time and from time to time, upon (A) in the case of a Reference Rate Loan, at least 1 Business Day prior written notice to the Agents, or (B) in the case of a LIBOR Rate Loan at least 3 Business Days' prior written notice (or, in each case, such shorter notice as may be agreed by the Agents) to the Agents, prepay the principal of the Term Loan, in whole or in part; provided, that, if such notice states that it is conditioned upon the receipt of the proceeds from the issuance of Indebtedness or Equity Interests, such notice of prepayment may be revoked by the Borrowers if such condition is not satisfied. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Premium, if any, payable in connection with such prepayment of the Term



Loan. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan as directed by the Borrowers.

(iii) Termination of Agreement. The Borrowers may, upon at least 10 Business Days' prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations (including (A) either (1) providing cash collateral to be held by the Administrative Agent in an amount equal to 103% of the aggregate undrawn amount of all outstanding Letters of Credit or (2) causing the original Letters of Credit to be returned to the Administrative Agent and (B) paying in full in cash and/or cash collateralizing the amount of the outstanding Bank Product Obligations, and/or terminating such Bank Product Obligations in a manner satisfactory to the Bank Product Provider providing such Bank Products), in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement. If the Administrative Borrower has sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrowers shall be obligated to repay the Obligations (including (A) either (1) providing cash collateral to be held by the Administrative Agent in an amount equal to 103% of the aggregate undrawn amount of all outstanding Letters of Credit or (2) causing the original Letters of Credit to be returned to the Administrative Agent and (B) paying in full in cash and/or cash collateralizing the amount of the outstanding Bank Product Obligations, and/or terminating such Bank Product Obligations in a manner satisfactory to the Bank Product Provider providing such Bank Products), in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice.

(c) Mandatory Prepayment.

(i) Contemporaneously with the delivery to the Agents and the Lenders of audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the delivery to the Agents and the Lenders of the financial statements for the Fiscal Year ended September 30, 2016 or, if such financial statements are not delivered to the Agents and the Lenders on the date such statements are required to be delivered pursuant to Section 7.01(a)(iii), on the date such statements are required to be delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii), the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 75% of the Excess Cash Flow of the Parent and its Subsidiaries for such Fiscal Year.

(ii) No later than 3 Business Days following any Disposition (excluding (A) Dispositions which qualify as Permitted Dispositions under clauses (a), (a), (c), (d), (e), (f) or (g) of the definition of Permitted Disposition or (B) the Disposition prior to the one year anniversary of the Effective Date of the Facility located in Carmel, New York) by any Loan Party or its Subsidiaries, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions \$250,000 in any Fiscal Year. Nothing contained in this Section 2.05(c)(ii) shall permit any Loan

Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) No later than 3 Business Days following the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or upon an Equity Issuance (other than any Excluded Equity Issuances), the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) No later than 3 Business Days following the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Extraordinary Receipts \$250,000 in any Fiscal Year.

(v) [Reserved.]

(vi) Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with a Disposition or the receipt of Extraordinary Receipts consisting of insurance proceeds or condemnation awards (other than proceeds of Revolver Priority Collateral) that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or Section 2.05(c)(iv), as the case may be, up to \$2,500,000 in the aggregate in any Fiscal Year of the Net Cash Proceeds from all such Dispositions and Extraordinary Receipts shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are reinvested in capital assets used or useful in the business of the Loan Parties which may (but are not required to) be a replacement, restoration or repair of the properties or assets in respect of which such Net Cash Proceeds were received, provided that, (A) no Default or Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Administrative Borrower delivers a certificate to the Administrative Agent within 10 Business Days after such Disposition or loss, destruction or taking, as the case may be, stating that such Net Cash Proceeds shall be used to reinvest in capital assets used or useful in the business of the Loan Parties or to replace, repair or restore properties or assets in respect of which such Net Cash Proceeds were received within a period specified in such certificate not to exceed 180 days after the date of receipt of such Net Cash Proceeds (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds are deposited in an account subject to a Control Agreement, and (D) upon the earlier of (1) the expiration of the period specified in the relevant certificate furnished to the Administrative Agent pursuant to clause (B) above or (2) the occurrence of a Default or an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or Section 2.05(c)(iv) as applicable.

(vii) Each Borrower shall immediately prepay the Revolving Loans of such Borrower at any time when the aggregate principal amount of all Revolving Loans of such Borrower plus the outstanding amount of all Letter of Credit Obligations of such Borrower exceeds the Borrowing Base of such Borrower, to the full extent of any such excess. On each day that any Revolving Loans or Letter of Credit Obligations of a Borrower are outstanding, each such Borrower shall hereby be deemed to represent and warrant to the Agents and the Lenders that the Borrowing Base of such Borrower calculated as of such day equals or exceeds the aggregate principal amount of all Revolving Loans and Letter of Credit Obligations of such Borrower outstanding on such day. If at any time after each applicable Borrower has complied with the first sentence of this Section 2.05(c)(vii), the aggregate Letter of Credit Obligations of such Borrower is greater than the then current Borrowing Base of such Borrower, then such Borrower shall provide cash collateral to the Administrative Agent in an amount equal to 103% of such excess, which cash collateral shall be deposited in the Letter of Credit Collateral Account and, provided that no Event of Default shall have occurred and be continuing, returned to such Borrower, at such time as the aggregate Letter of Credit Obligations of such Borrower plus the aggregate principal amount of all outstanding Revolving Loans of such Borrower no longer exceeds the then current Borrowing Base of such Borrower.

(d) Application of Payments. Each prepayment pursuant to Section 2.05(c) shall be applied as follows:

(i) the proceeds from any prepayment pursuant to any Disposition of any Revolver Priority Collateral or any Extraordinary Receipts consisting of an insurance policy or condemnation award with respect to Revolver Priority Collateral (including, without limitation, proceeds of business interruption insurance, but only to the extent no Event of Default shall have occurred and be continuing) shall be applied (A) first, to the Revolving Loans (with a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full, (B) second, to cash collateralize the Letters of Credit in an amount equal to 103% of the aggregate undrawn amount of all outstanding Letters of Credit (with a corresponding permanent reduction in the Revolving Credit Commitments) and (C) third, to the Term Loan until paid in full;

(ii) the proceeds from any prepayment pursuant to any Disposition of any Term Priority Collateral or any Extraordinary Receipts consisting of insurance policy or condemnation award with respect to Term Priority Collateral (including, without limitation, proceeds of business interruption insurance (but only to the extent of an Event of Default has occurred and is continuing)) shall be applied (A) first, to the Term Loan until paid in full, (B) second, to the Revolving Loans (with a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full, and (C) third, to cash collateralize the Letters of Credit in an amount equal to 103% of the aggregate undrawn amount of all outstanding Letters of Credit (with a corresponding permanent reduction in the Revolving Credit Commitments);

(iii) the proceeds from any prepayment pursuant to a Disposition of all or substantially all of the assets or Equity Interests of any Person or any insurance which Disposition or proceeds of insurance includes both (x) Revolver Priority Collateral and (y) Term Priority Collateral, shall be applied in a manner mutually determined by the Agents acting reasonably and in good faith; and

(iv) the proceeds from any prepayment event set forth in Section 2.05(c)(i), Section 2.05(c)(iii) or Section 2.05(c)(iv) (other than any such proceeds applied pursuant to clauses (d)(i), (d)(ii) or (d)(iii) above) shall be applied, (A) first, to the Term Loan until paid in full, (B) second, to the Revolving Loans (with a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full, and (C) third, to cash collateralize the Letters of Credit in an amount equal to 103% of the aggregate undrawn amount of all outstanding Letters of Credit (with a corresponding permanent reduction in the Revolving Credit Commitments).

Each such prepayment of the Term Loan shall be applied against the remaining installments of principal of the Term Loan in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 (other than prepayments made pursuant to subsection (c)(vii) of this Section 2.05) shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Premium, if any, payable in connection with such prepayment of the Loans to the extent required under Section 2.06(b) and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Revolving Credit Commitment has been terminated, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

#### Section 2.06 Fees.

(a) Unused Line Fee. From and after the Effective Date and until the Termination Date, the Borrowers shall pay to the Administrative Agent for the account of the Revolving Loan Lenders, in accordance with their Pro Rata Shares, monthly in arrears on the first day of each month commencing September 1, 2015, an unused line fee (the "Unused Line Fee"), which shall accrue at the rate per annum of 0.5% on the excess, if any, of the Total Revolving Credit Commitment over the sum of the average principal amount of all Revolving Loans and Letter of Credit Obligations outstanding from time to time during the preceding month.

#### (b) Applicable Premium.

(i) Upon the occurrence of an Applicable Premium Trigger Event, the Borrower shall pay to the Collateral Agent, for the account of the Lenders in accordance with a written agreement among the Agents and the Lenders, the Applicable Premium.

(ii) Any Applicable Premium payable in accordance with this Section 2.06(b) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Premium is a material inducement to Lenders to provide the Commitments and make the Loans, and (F) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(b) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

(c) Audit and Collateral Monitoring Fees. The Borrowers acknowledge that pursuant to Section 7.01(f), representatives of the Agents may visit any or all of the Loan Parties and/or conduct inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations of any or all of the Loan Parties at any time and from time to time and so long as no Event of Default has occurred and is continuing, with reasonable prior notice to the Administrative Borrower and during regular business hours. The Borrowers agree to pay (i) \$1,500 (or such other amount customarily charged by Agents to their customers) per day per examiner plus a per examination manager review fee (whether such examination is performed by an Agent's employees or by a third party retained by an Agent) in the amount of \$1,300 (or such other amount customarily charged by Agents to their customers) plus all costs and disbursements incurred by Agents in the performance of such examination or analysis, and the examiner's out-of-pocket costs and reasonable expenses incurred in connection with all such visits, inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations and (ii) the cost of all visits, inspections, audits, physical counts, valuations, appraisals, environmental site assessments and/or examinations conducted by a third party on behalf of the Agents; provided, that so long as no Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to reimburse the Agents for more than 3 audits during any calendar year.

(d) Letter of Credit Fees. The Borrowers shall pay (A) to the Administrative Agent, for the ratable benefit of the Revolving Loan Lenders, a Letter of Credit fee (in addition

to the charges, commissions, fees, and costs set forth in clause (B) below) which shall accrue at a rate per annum equal to the L/C Fee Rate in effect at such time, times the daily balance of the Maximum Undrawn Amount of all outstanding Letters of Credit, for the period from and excluding the date of issuance of same to and including the date of expiration or termination, such fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each quarter and on the Final Maturity Date, and (B) to the Administrative Agent, for the benefit of the L/C Issuer, a fronting fee of one quarter of one percent (0.25%) per annum times the daily balance of the Maximum Undrawn Amount of all outstanding Letters of Credit, for the period from and excluding the date of issuance of same to and including the date of expiration or termination, such fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each quarter and on the Final Maturity Date, together with any and all customary administrative, issuance, amendment, payment and negotiation charges (as per the L/C Issuer's standard fee schedule) with respect to any Letters of Credit and all fees and expenses as agreed upon by the L/C Issuer and the Borrowers in connection with any Letter of Credit, including in connection with the opening, amendment or renewal of any such Letter of Credit and any acceptances created thereunder and shall reimburse Administrative Agent for any and all fees and expenses, if any, paid by the Administrative Agent to the L/C Issuer, which charges and fees shall be payable on demand or as otherwise mutually agreed upon by the Administrative Agent and the Borrowers. All such charges shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or pro-ration upon the termination of this Agreement for any reason. Any such charge in effect at the time of a particular transaction shall be the charge for that transaction, notwithstanding any subsequent change in the L/C Issuer's prevailing charges for that type of transaction (all of the foregoing fees and charges in this clause (d) collectively, the "Letter of Credit Fees"). All such Letter of Credit Fees shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or pro-ration upon the termination of this Agreement for any reason. Without limiting the generality of the provisions of Section 4.01, the parties hereto agree that, for administrative convenience, Administrative Agent may charge the Loan Account of the Borrowers with the amount of a Revolving Loan made as a Reference Rate Loan on the date any such Letter of Credit Fees with respect to any Letter of Credit are due and payable for the purpose of paying such Letter of Credit Fees; provided that upon any such charge to the Loan Account, Administrative Agent shall give prompt notice to Administrative Borrower of such charge.

(e) Fee Letter. As and when due and payable under the terms of the Fee Letter, the Borrowers shall pay the fees set forth in the Fee Letter.

(f) SyndTrak Fee. The Borrowers shall pay to Administrative Agent, for its own account and not the account of any Lender, an annual SyndTrak fee ("SyndTrak Fee") equal to \$1,500. The SyndTrak Fee will be payable on the Effective Date and on each anniversary thereof until the Final Maturity Date. Such fee shall be deemed earned in full on the date when same is due and payable hereunder and shall not be subject to rebate or proration upon termination of this Agreement for any reason.

## Section 2.07 LIBOR Option.

(a) The Borrowers may, at any time and from time to time, so long as no Default or Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon the LIBOR Rate (the "LIBOR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least 3 Business Days prior to (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a LIBOR Rate Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a LIBOR Rate Loan as a LIBOR Rate Loan, the last day of the then current Interest Period (the "LIBOR Deadline"). Notice of the Borrowers' election of the LIBOR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07(a) shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a LIBOR Notice prior to the LIBOR Deadline (or by telephonic notice received by the Administrative Agent before the LIBOR Deadline (to be confirmed by delivery to the Administrative Agent of a LIBOR Notice received by the Administrative Agent prior to 5:00 p.m. (New York City time) on the same day)). Promptly upon its receipt of each such LIBOR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each LIBOR Notice shall be irrevocable and binding on the Borrowers.

(b) Interest on LIBOR Rate Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Borrowers properly have exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Borrowers no longer shall have the option to request that any portion of the Loans bear interest at the LIBOR Rate and the Administrative Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder prior to the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers (i) shall have not more than 5 LIBOR Rate Loans in effect at any given time, and (ii) only may exercise the LIBOR Option for LIBOR Rate Loans of at least \$500,000 and integral multiples of \$100,000 in excess thereof.

(d) The Borrowers may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of Collateral in accordance with Section 4.03 or Section 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

(e) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Lender, nor any of their participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Article II shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

Section 2.08 Funding Losses. In connection with each LIBOR Rate Loan, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of a Default or an Event of Default), or (c) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any Notice of Borrowing or LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Administrative Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.08 shall be conclusive absent manifest error.

Section 2.09 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all Taxes, except as required by applicable law. If any Loan Party shall be required by any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) to deduct any Taxes from or in respect of any sum payable hereunder to any Recipient, (i) the applicable Withholding Agent shall make such deductions and (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an "Additional Amount") necessary such that after making all required deductions (including deductions applicable to additions sums payable under this Section 2.09) such Recipient receives the amount equal to the sum it would have received had no such deductions been made.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes. Each Loan Party shall deliver to



each Recipient official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Recipient harmless from and against Indemnified Taxes (including Indemnified Taxes imposed on any amounts payable under this Section 2.09) paid by such Person, whether or not such Indemnified Taxes were correctly or legally asserted by the relevant Governmental Authority. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Taxes or Other Taxes.

(d) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document agrees that it shall deliver to the Borrowers or the Administrative Agent (or, in the case of an assignee of a Lender which (x) is an Affiliate of such Lender or a Related Fund of such Lender and (y) does not deliver an Assignment and Acceptance to the Administrative Agent pursuant to the last sentence of Section 12.07(c)(ii) for recordation pursuant to Section 12.07(e), to the assigning Lender only, and in the case of a participant, to the Lender granting the participation only), at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.09(d)(ii) and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), one properly completed and duly executed U.S. Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(iii) Any Lender that is not a U.S. Person (a "Non-U.S. Lender") shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Non U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), one properly completed and duly executed copy of either U.S. Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY or any subsequent versions thereof or successors thereto, in each case claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax on payments of interest hereunder. In addition, in the case of a

Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code, such Non-U.S. Lender hereby represents to the Administrative Agent and the Borrowers that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Internal Revenue Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Borrowers and is not a controlled foreign corporation related to the Borrowers (within the meaning of Section 864(d)(4) of the Internal Revenue Code), and such Non-U.S. Lender agrees that it shall promptly notify the Borrowers and the Administrative Agent in the event any such representation is no longer accurate. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office (a "New Lending Office"). In addition, such Lender or the Administrative Agent shall deliver such forms within 20 days after receipt of a written request therefor from the Administrative Borrower, the assigning Lender or the Lender granting a participation, as applicable. Notwithstanding any other provision of this Section 2.09, a Lender shall not be required to deliver any form pursuant to this Section 2.09(d) that such Lender is not legally able to deliver.

(e) Any Recipient claiming any indemnity payment or additional payment amounts payable pursuant to this Section 2.09 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Administrative Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount that may thereafter accrue, would not require such Recipient to disclose any information such Recipient deems confidential and would not, in the sole determination of such Recipient, be otherwise disadvantageous to such Recipient.

(f) If any Recipient shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Indemnified Taxes with respect to which any Loan Party has made an indemnity payment or paid additional amounts, pursuant to this Section 2.09, it shall promptly notify the Administrative Borrower of the availability of such refund claim and shall, within 30 days after receipt of a request by the Administrative Borrower, make a claim to such Governmental Authority for such refund at the Loan Parties' expense. If any Recipient receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Indemnified Taxes with respect to which any Loan Party has made an Indemnity payment or paid additional amounts pursuant to this Section 2.09, it shall within 30 days from the date of such receipt pay over such refund to the Administrative Borrower, net of all out-of-pocket expenses of such Recipient.

(g) If a payment made to a Lender or the Administrative Agent under any Loan Document would be subject to U.S. Federal withholding tax imposed by FATCA if such Lender or the Administrative Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender or the Administrative Agent shall deliver to the Administrative Borrower and the Agents at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation

reasonably requested by the Administrative Borrower or the Administrative Agent as may be necessary for the Administrative Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender or the Administrative Agent has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Any forms, certifications or other documentation under this clause (g) shall be delivered by each Lender and each Agent.

(h) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(i) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.10 Increased Costs and Reduced Return. (a) If any Change in Law shall (i) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any Loan made by such Lender or any Letter of Credit issued by the L/C Issuer, (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan, any Letter of Credit or against assets of or held by, or deposits with or for the account of, or credit extended by, such Recipient or (iii) impose on such Recipient any other condition, cost or expense (other than Taxes) regarding this Agreement or any Loan or Letter of Credit, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Recipient of making any Loan, issuing, guaranteeing or participating in any Letter of Credit, or agreeing to make any Loan or issue, guaranty or participate in any Letter of Credit, or to reduce any amount received or receivable by such Recipient hereunder, then, upon demand by such Recipient, the Borrowers shall pay to such Recipient such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, Letters of Credit issued or any guaranty or participation with respect thereto, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, Letters of Credit issued, or any guaranty or participation with respect thereto or any agreement to make Loans, to issue Letters of Credit or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrowers shall pay to such

Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 15 days after the date of demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Administrative Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Administrative Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

#### Section 2.11 Changes in Law; Impracticability or Illegality.

(a) The LIBOR Rate may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give the Administrative Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Administrative Borrower may, by notice to such affected Lender (i) require such Lender to furnish to the Administrative Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (ii) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.09).

(b) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Administrative Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder, and (ii) the Borrowers shall not be entitled to elect the LIBOR Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) The obligations of the Loan Parties under this Section 2.11 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

#### Section 2.12 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requires the Borrowers to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10, then such Lender shall (at the request of the Administrative Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Section in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requires the Borrowers to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, or if any Lender is a Defaulting Lender, then the Administrative Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrowers shall have paid to the Agents any assignment fees specified in Section 12.07;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.08 and Section 2.09) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(iii) in the case of any such assignment resulting from payments required to be made pursuant to Section 2.09 or a claim for compensation under Section 2.10, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law.

Prior to the effective date of such assignment, the assigning Lender shall execute and deliver an Assignment and Acceptance, subject only to the conditions set forth above. If the assigning Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such assignment, the assigning Lender shall be deemed to have executed and delivered such Assignment and Acceptance. Any such assignment shall be made in accordance with the terms of Section 12.07.

(c) A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Administrative Borrower to require such assignment and delegation cease to apply.

### Section 2.13 Incremental Term Facility.

(a) Subject to the terms and conditions hereof, the Lenders agree that the Borrowers may, on any Business Day from time to time, deliver a written notice to the Agents requesting to add additional term loans (the "Incremental Term Loans"; and the credit facility for making any Incremental Term Loans is hereinafter referred to as the "Incremental Term Facility") on not more than 3 occasions and in minimum principal amounts of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof (or such other lower amount as may be agreed by the Agents); provided, that (i) the Administrative Agent shall have received a written request for such Incremental Term Loan not later than 1:00 p.m. (New York City time) on the date which is 10 Business Days prior to the date of the proposed Incremental Term Loan, (ii) all conditions set forth in Section 5.02 shall have been satisfied and the Administrative Borrower shall have delivered to the Collateral Agent a certificate from an Authorized Officer certifying as to matters set forth in Section 5.02(a), (iii) the Administrative Borrower shall have delivered a certificate of the chief financial officer of the Administrative Borrower, demonstrating on a pro forma basis, as of the end of the most recently ended fiscal quarter for which internally prepared financial statements are available and for the 12 calendar months (on a quarter-by-quarter basis) following the proposed date of making the Incremental Term Loans (A) that the Leverage Ratio of the Parent and its Subsidiaries is equal to or less than 0.25 below the then applicable Leverage Ratio level set forth in Section 7.03(a) and (B) compliance with all then applicable covenants set forth in Section 7.03, (iv) the Borrowers shall have delivered or cause to be delivered any legal opinions, resolutions and other customary closing documents and certificates reasonably requested by any Agent in connection with such transaction and (v) any closing fee or other

amounts payable to the Agents and the Lenders pursuant to the applicable Incremental Facility Amendment shall have been paid.

(b) The aggregate original principal amount of all Incremental Term Loans shall not exceed \$25,000,000.

(c) Any existing Lender may, but shall not be obligated to, participate in any Incremental Term Facility on a pro rata basis. If the existing Lenders do not agree to make the amount of the Incremental Term Loan requested by the Borrowers, the Borrowers may seek one or more Persons acceptable to the Collateral Agent in its sole discretion to be added as Lenders for purposes of participating in such remaining portion.

(d) The pricing for any Incremental Term Loans shall be determined by the applicable Lenders and the Borrowers and set forth in the Incremental Facility Amendment; provided, that, the Effective Yield with respect to any Incremental Term Loan may be different than the Effective Yield of the Term Loan then outstanding to the extent provided in the applicable Incremental Facility Amendment; provided, further, that if at the time of the effectiveness of any Incremental Facility Amendment, the Effective Yield in respect of such Incremental Term Loan exceeds the Effective Yield on the then outstanding Loans, the Applicable Margin with respect to the then outstanding Loans shall be increased by the amount of such excess.

(e) No Incremental Term Loan shall mature earlier, or require earlier scheduled amortization, than the then outstanding Term Loan. The outstanding principal amount of the any Incremental Term Loan shall be repayable in accordance with the applicable Incremental Facility Amendment.

(f) Incremental Term Facilities shall rank pari passu in right of payment and pari passu with respect to security with the other Loans. Incremental Term Loans shall share ratably in any prepayments of the other outstanding Term Loans.

(g) The Weighted Average Life to Maturity of any Incremental Term Loan shall be no shorter than the remaining Weighted Average Life to Maturity of the then outstanding Term Loan.

(h) Each Incremental Term Facility shall be evidenced by an amendment (an "Incremental Facility Amendment") to this Agreement, executed by the Borrowers, the Agents and each Lender (including any new Lender, if any) providing a portion of the Incremental Term Facility. Each Incremental Term Facility shall also require such amendments to the other Loan Documents, and such other new Loan Documents, as the Collateral Agent deems necessary to effect the modifications permitted by this Section 2.13. The Borrowers agree to pay the reasonable expenses of the Agents relating to any Incremental Facility Amendment and the transactions contemplated thereby in accordance with Section 12.04. Notwithstanding anything to the contrary in Section 12.02, neither the Incremental Facility Amendment, nor any such amendments to the other Loan Documents or such other new Loan Documents, shall be required to be executed or approved by any Person, other than the Loan Parties, the Lenders providing a portion of the Incremental Term Facility and the Agents, in order to be effective; provided that

the execution and approval of the Administrative Agent in respect of any such Incremental Facility Amendment, any such amendment to the other Loan Documents or any such other new Loan Document shall not be unreasonably withheld or delayed.

(i) Except to the extent otherwise permitted above, all Incremental Term Loans shall be on substantially the same terms and conditions applicable to the other outstanding Term Loan or as otherwise reasonably acceptable to the Collateral Agent.

### **ARTICLE III**

#### **LETTERS OF CREDIT**

Section 3.01 Letters of Credit. Subject to the terms and conditions hereof (including Section 2.01(b) hereof), the L/C Issuer shall issue or cause the issuance of standby and/or trade letters of credit (collectively, "Letters of Credit") for the account of any Borrower, and which may be for the benefit of any Loan Party (each such Letter of Credit, a "Letter of Credit"), which Letters of Credit shall be denominated in Dollars. The Maximum Undrawn Amount of all outstanding Letters of Credit of any Borrower shall not exceed in the aggregate at any time the (i) the Borrowing Base of such Borrower minus (ii) the aggregate principal amount of all Revolving Loans of such Borrower then outstanding. Notwithstanding anything to the contrary contained in the foregoing or in any other provision hereof, no Letter of Credit shall be issued if after giving effect thereto, (x) the Maximum Undrawn Amount of all outstanding Letters of Credit would exceed the Letter of Credit Sublimit or (y) any of the credit limits set forth in Section 2.01(b) would be violated. All disbursements or payments related to Letters of Credit shall be deemed to be Revolving Loans and shall bear interest at the rate applicable to Revolving Loans that are Reference Rate Loans in accordance with Section 2.04. Letters of Credit that have not been drawn upon shall not bear interest. To the extent that a Letter of Credit is requested to be issued for the benefit of multiple Loan Parties, so long as no Event of Default has occurred and is continuing, the Administrative Agent shall consult with the Borrowers regarding the allocation of such Letter of Credit to each respective Borrowers' availability to borrow Revolving Loans under Section 2.01(b)(i) and/or incur Letter of Credit Obligations under this Section 3.01.

#### Section 3.02 Issuance of Letters of Credit.

(a) Subject to the terms hereof, any Borrower (or the Administrative Borrower on behalf of any other Borrower) may request the L/C Issuer to issue or cause the issuance of a Letter of Credit by delivering to the L/C Issuer, at the Payment Office, prior to 10:00 a.m. (New York time), at least five (5) Business Days' prior to the proposed date of issuance (or such shorter period as may be agreed by the L/C Issuer in its sole discretion), the L/C Issuer's form of letter of credit application (the "Letter of Credit Application") completed to the reasonable satisfaction of the L/C Issuer; and, such other certificates, documents and other papers and information as the L/C Issuer may reasonably request. Each Borrower (or the Administrative Borrower on behalf of another Borrower) also has the right to give instructions and make agreements with respect to any application, any applicable letter of credit and security agreement, any applicable letter of credit reimbursement agreement and/or any other applicable agreement, any letter of credit and the disposition of documents, disposition of any unutilized



funds, and to agree with the L/C Issuer upon any amendment, extension or renewal of any Letter of Credit.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts, other written demands for payment, or acceptances of drafts when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance (subject to automatic renewals) and in no event later than the date that is 15 days prior to the Final Maturity Date. Each standby Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 600, and any amendments or revision thereof adhered to by the Issuer ("UCP 600") or the International Standby Practices (ISP98-International Chamber of Commerce Publication Number 590) ("ISP98 Rules"), as determined by the L/C Issuer, and each trade Letter of Credit shall be subject to UCP 600.

(c) The Administrative Agent shall use its reasonable efforts to notify the Lenders of the request by the Administrative Borrower for a Letter of Credit hereunder.

Section 3.03 Requirements for the Issuance of Letters of Credit. The Administrative Borrower shall authorize and direct the L/C Issuer to name one Borrower as the "Applicant" or "Account Party" of each Letter of Credit. If the Administrative Agent is not the L/C Issuer of any Letter of Credit, the Administrative Borrower shall authorize and direct the L/C Issuer to deliver to the Administrative Agent all instruments, documents, and other writings and property received by the L/C Issuer pursuant to the Letter of Credit and to accept and rely upon the Administrative Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit or the application therefor.

#### Section 3.04 Disbursements Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit, each Revolving Loan Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a participation in such Letter of Credit and each drawing thereunder in an amount equal to such Lender's Pro Rata Share (determined in accordance with clause (a) of the definition of Pro Rata Share) of the Maximum Face Amount of such Letter of Credit and the amount of such drawing, respectively.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the L/C Issuer will promptly notify the Administrative Borrower. Provided that the Administrative Borrower shall have received such notice by 1:00 p.m. (New York time), the Borrowers shall reimburse (such obligation to reimburse the L/C Issuer or any Lender together with any interest thereon pursuant to Section 2.04 shall sometimes be referred to as a "Reimbursement Obligation") the L/C Issuer and the Revolving Loan Lenders prior to 1:00 p.m. (New York time) on such date that an amount is paid by the L/C Issuer and the Revolving Loan Lenders under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the amount so paid by the L/C Issuer. In the event the Borrowers do not reimburse the L/C Issuer within the time period set forth in the immediately preceding sentence, the L/C Issuer will promptly notify each Revolving Loan Lender thereof, and the Administrative

Borrower shall be deemed to have requested that a Revolving Loan that is a Reference Rate Loan be made by the Revolving Loan Lenders to be disbursed on the Drawing Date under such Letter of Credit, pursuant to Section 2.01(a)(i) (whether or not the conditions in Sections 5.01 and 5.02 have been satisfied). Any notice given by the L/C Issuer pursuant to this Section 3.04(b) may be oral if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(c) Each Revolving Loan Lender shall upon any notice pursuant to Section 3.04(b) make available to the Administrative Agent an amount in immediately available funds equal to its applicable Pro Rata Share (determined in accordance with clause (a) of the definition of Pro Rata Share) of the amount of the drawing, whereupon the participating Lenders shall (subject to Section 3.04(d)) each be deemed to have made a Revolving Loan that is a Reference Rate Loan to the Borrowers in that amount. If any Revolving Loan Lender so notified fails to make available to the Administrative Agent the amount of such Lender's Pro Rata Share of such amount by no later than 2:00 p.m. (New York time) on the Drawing Date, then interest shall accrue on such Lender's obligation to make such payment, from the Drawing Date to the date on which such Lender makes such payment (i) at a rate per annum equal to the Federal Funds Effective Rate during the first three days following the Drawing Date and (ii) at a rate per annum equal to the interest rate on Revolving Loans that are Reference Rate Loans on and after the fourth day following the Drawing Date. The Administrative Agent will promptly give notice of the occurrence of the Drawing Date, but failure of the Administrative Agent to give any such notice on the Drawing Date or in sufficient time to enable any Revolving Loan Lender to effect such payment on such date shall not relieve such Lender from its obligation under this Section 3.04(c), provided that such Lender shall not be obligated to pay interest as provided in Section 3.04(d) (i) and (ii) until and commencing from the date of receipt of notice from the Administrative Agent of a drawing. Each Revolving Loan Lender's payment to the L/C Issuer pursuant to this Section 3.04(c) shall be deemed to be a payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a "Participation Revolving Loan" from such Lender in satisfaction of its Participation Commitment under this Section 3.04.

(d) With respect to any unreimbursed drawing that is not converted into a Revolving Loan to the Borrowers in whole or in part as contemplated by Section 3.04(b), because of the Borrowers' failure to satisfy the conditions set forth in Section 5.02 (other than any notice requirements) or for any other reason, the Borrowers shall be deemed to have incurred from the Administrative Agent a borrowing (each, a "Letter of Credit Borrowing") in the amount of such drawing. Such Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate per annum equal to the interest rate on Revolving Loans that are Reference Rate Loans.

(e) Each Lender's Participation Commitment shall continue until the last to occur of any of the following events: (i) the L/C Issuer ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (ii) no Letter of Credit issued or created hereunder remains outstanding and uncanceled and (iii) all Persons (other than the Borrowers) have been fully reimbursed for all payments made under or relating to Letters of Credit.

### Section 3.05 Repayment of Participation Revolving Loans.

(a) Upon (and only upon) receipt by the Administrative Agent for the account of the L/C Issuer immediately available funds from the Borrowers (i) in reimbursement of any payment made by the L/C Issuer under the Letter of Credit with respect to which any Lender has made a Participation Revolving Loan to the L/C Issuer or (ii) in payment of interest on such a payment made by the Administrative Agent under such a Letter of Credit, the L/C Issuer will pay to each Revolving Loan Lender, in the same funds as those received by the L/C Issuer, the amount of such Lender's Pro Rata Share of such funds, except the L/C Issuer shall retain the amount of the Pro Rata Share of such funds of any Revolving Loan Lender that did not make a Participation Revolving Loan in respect of such payment by the Administrative Agent.

(b) If the L/C Issuer is required at any time to return to the Borrowers, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the payments made by the Borrowers to the L/C Issuer pursuant to Section 3.05(a) in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each Revolving Loan Lender shall, on demand of the L/C Issuer, forthwith return to the L/C Issuer the amount of its Pro Rata Share of any amounts so returned by the L/C Issuer plus interest at the Federal Funds Effective Rate.

Section 3.06 Documentation. The Borrowers agree to be bound by the terms of the Letter of Credit Application and by the L/C Issuer's interpretations of any Letter of Credit issued for the Borrowers' Loan Account and by the L/C Issuer's written regulations and customary practices relating to letters of credit, though the L/C Issuer's interpretations may be different from the Borrowers' interpretations. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), the L/C Issuer shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following the Borrowers' instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

Section 3.07 Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the Administrative Agent shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

Section 3.08 Nature of Participation and Reimbursement Obligations. Each Revolving Loan Lender's obligation in accordance with this Agreement to make the Revolving Loans or Participation Revolving Loans as a result of a drawing under a Letter of Credit, and the obligations of the Borrowers to reimburse the L/C Issuer upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Article III under all circumstances, including the following circumstances:

(a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrowers or any other Person for any reason whatsoever;

(b) the failure of the Borrowers or any other Person to comply, in connection with a Letter of Credit Borrowing, with the conditions set forth in this Agreement for the making of a Revolving Loan, it being acknowledged that such conditions are not required for the making of a Letter of Credit Borrowing and the obligation of the Lenders to make Participation Revolving Loans under Section 3.04;

(c) any lack of validity or enforceability of any Letter of Credit, this Agreement or any other Loan Documents;

(d) any claim of breach of warranty that might be made by any Borrower or any Lender against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, crossclaim, defense or other right which any Borrower or any Lender may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the Administrative Agent or any Lender or any other Person, whether in connection with this Agreement, such Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the Borrowers or any of their Subsidiaries and the beneficiary for which any Letter of Credit was procured);

(e) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provisions of services relating to a Letter of Credit, in each case even if the Administrative Agent or any of the Administrative Agent's Affiliates has been notified thereof;

(f) except as provided in Section 3.07, any payment by the Administrative Agent under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit;

(g) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(h) any failure by the Administrative Agent or the applicable L/C Issuer to issue any Letter of Credit in the form requested by the Administrative Borrower, unless the Administrative Agent has received written notice from the Administrative Borrower of such failure within three (3) Business Days after the Administrative Agent shall have furnished the Administrative Borrower a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(i) any Material Adverse Effect on any Borrower or any Guarantor;

(j) any breach of this Agreement or any Loan Document by any party thereto;

(k) the occurrence or continuance of an insolvency proceeding with respect to the Borrowers or any Guarantor;

(l) the fact that a Default or Event of Default shall have occurred and be continuing;

(m) the fact that the Final Maturity Date shall have expired or this Agreement or the Obligations hereunder shall have been terminated;

(n) any amendment or waiver of or any consent to departure from any Letter of Credit or any document relating thereto; and

(o) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Nothing contained in this Section 3.08 shall be deemed to relieve the L/C Issuer or the Administrative Agent from any claim by any Borrower for the gross negligence or willful misconduct of the L/C Issuer in respect of honoring or failing to honor any drawing under any Letter of Credit or otherwise in respect of any Letter of Credit, but any such claim may not be used as a defense to the Borrowers' obligation to reimburse the L/C Issuer for any such drawing.

Section 3.09 Indemnity. In addition to amounts payable as provided in Section 12.15, the Borrowers hereby agree to protect, indemnify, pay and save harmless the Administrative Agent and the L/C Issuer from and against any and all claims, demands, liabilities, damages, penalties, interest, judgments, losses, costs, charges and expenses (including reasonable and documented out-of-pocket fees, expenses and disbursements of outside counsel (provided, that, such obligation shall be limited to one primary outside counsel for the Administrative Agent and the L/C Issuer taken as a whole, absent a conflict of interest with respect to the Administrative Agent or the L/C Issuer (in which case, such affected Person may engage and be reimbursed for its own additional counsel)) which the Administrative Agent or any of the Administrative Agent's Affiliates may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit, other than as a result of (a) the gross negligence, willful misconduct or bad faith of the Administrative Agent or the L/C Issuer (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (b) the wrongful dishonor by the Administrative Agent, the L/C Issuer, or any of the Administrative Agent's Affiliates of a proper demand for payment made under any Letter of Credit, except if such dishonor resulted from any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority (all such acts or omissions herein called "Governmental Acts"). Notwithstanding anything to the contrary in this Section 3.09 or elsewhere in this Agreement, this Section 3.09 shall not apply to Taxes, which shall be governed exclusively by Sections 2.09 and 2.10.

Section 3.10 Liability for Acts and Omissions. As between the Borrowers and the Administrative Agent and Lenders, the Borrowers assume all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Administrative Agent shall not be responsible for: (a) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such

Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if the Administrative Agent shall have been notified thereof); (b) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (c) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of the Borrowers against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among Borrowers and any beneficiary of any Letter of Credit or any such transferee; (d) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (e) errors in interpretation of technical terms; (f) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (g) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (h) any consequences arising from causes beyond the control of the Administrative Agent, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of the Administrative Agent's rights or powers hereunder. Nothing in the preceding sentence shall relieve the Administrative Agent from liability for the Administrative Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment) in connection with actions or omissions described in such clauses (a) through (h) of such sentence. In no event shall the Administrative Agent or the Administrative Agent's Affiliates be liable to the Borrowers for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

Without limiting the generality of the foregoing, the Administrative Agent and each of its Affiliates (i) may rely on any oral or other communication believed in good faith by the Administrative Agent or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit, (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by the Administrative Agent or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on the Administrative Agent or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each, an "Order") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by the Administrative Agent under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall not put the Administrative Agent under any resulting liability to the Borrowers or any Lender.

#### **ARTICLE IV**

##### **APPLICATION OF PAYMENTS; DEFAULTING LENDERS; JOINT AND SEVERAL LIABILITY OF BORROWERS**

Section 4.01 Payments; Computations and Statements. (a) The Borrowers will make each payment under this Agreement not later than 1:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 1:00 p.m. (New York City time) on any Business Day will be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrowers without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders, except as otherwise provided in Section 2.09 with respect to Taxes. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. The Lenders and the Borrowers hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrowers with any amount due and payable by the Borrowers under any Loan Document. Each of the Lenders and the Borrowers agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrowers shall be deemed a Revolving Loan hereunder made by the Revolving Loan Lenders to the Borrowers, funded by the Administrative Agent on behalf of the Revolving Loan Lenders and subject to Section 2.02 of this Agreement. The Lenders and the Borrowers confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrowers as herein provided will be made as an accommodation to the Borrowers and solely at the Administrative Agent's discretion, provided that the Administrative Agent shall from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrowers with any amount due and payable under any Loan Document. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Administrative Borrower, promptly after the end of each calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrowers during such month, the amounts and dates of all Loans made to the Borrowers during such month, the amounts and dates of all payments on account of the Loans to the Borrowers during such month and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrowers during such month, any Letters of Credit issued by the L/C Issuer for the account of the Borrowers during such month, specifying the face amount thereof, the amount of charges to the Loan Account and/or Loans made to the Borrowers during such month to reimburse the Revolving Loan Lenders for drawings made under Letters of Credit, and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, 30 days after the same is sent, shall be final and conclusive absent manifest error.

Section 4.02 Sharing of Payments. Except as provided in Section 2.02 hereof, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letters of Credit to any assignee or participant, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

Section 4.03 Apportionment of Payments. Subject to Section 2.02 hereof and to any written agreement among the Agents and/or the Lenders:

(a) All payments of principal and interest in respect of outstanding Loans, all payments in respect of the Reimbursement Obligations, all payments of fees (other than the fees set forth in Section 2.06 hereof to the extent set forth in any written agreement among the Agents and the Lenders, and fees with respect to Letters of Credit provided for in Section 2.06) and all other payments in respect of any other Obligations, shall be allocated by the Administrative



Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans or Letter of Credit Obligations, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the Collateral, subject to the provisions of this Agreement, as follows:

(i) except to the extent provided in clause (iii) below, with respect to Revolver Priority Collateral Proceeds and payments made using Revolver Priority Collateral Proceeds, (A) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (B) second, ratably to pay the Revolving Loan Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Revolving Loan Lenders or the L/C Issuer until paid in full; (C) third, to pay interest then due and payable in respect of the Agent Advances until paid in full; (D) fourth, to pay principal of the Agent Advances until paid in full; (E) fifth, ratably to pay interest then due and payable in respect of the Revolving Loans and Reimbursement Obligations until paid in full; (F) sixth, ratably to pay principal of the Revolving Loans and Letter of Credit Obligations (or, to the extent such Obligations are contingent, to provide cash collateral in respect of such Obligations), until paid in full; (G) seventh, ratably to pay the Bank Product Obligations in an amount not to exceed the amount of the Bank Product Reserve; (H) eighth, ratably to pay the Term Loan Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Term Loan Lenders until paid in full; (I) ninth, ratably to pay interest then due and payable in respect of the Term Loan until paid in full; (J) tenth, ratably to pay principal of the Term Loan until paid in full; (K) eleventh, ratably to pay any Applicable Premium then due and payable in respect of the Revolving Credit Commitment until paid in full, (L) twelfth, ratably to pay any Applicable Premium then due and payable in respect of the Term Loan until paid in full; (M) thirteenth, ratably to pay the Bank Product Obligations to the extent not paid under clause (G) above until paid in full; and (N) fourteenth, to the ratable payment of all other Obligations then due and payable until paid in full.

(ii) except to the extent provided in clause (iii) below, with respect to Term Priority Collateral Proceeds and payments made using Term Priority Collateral Proceeds, (A) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (B) second, ratably to pay the Term Loan Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Term Loan Lenders until paid in full; (C) third, ratably to pay interest then due and payable in respect of the Agent Advances until paid in full; (D) fourth, ratably to pay principal of the Agent Advances until paid in full; (E) fifth, ratably to pay interest then due and payable in respect of the Term Loan until paid in full; (F) sixth, ratably to pay principal of the Term Loan until paid in full; (G) seventh, ratably to pay the Revolving Loan Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then

due and payable to the Revolving Loan Lenders or the L/C Issuer until paid in full; (H) eighth, ratably to pay interest then due and payable in respect of the Revolving Loans and Reimbursement Obligations until paid in full; (I) ninth, ratably to pay principal of the Revolving Loans and Letter of Credit Obligations (or, to the extent such Obligations are contingent, to provide cash collateral in respect of such Obligations), until paid in full; (J) tenth, ratably to pay the Bank Product Obligations in an amount not to exceed the amount of the Bank Product Reserve; (K) eleventh, ratably to pay any Applicable Premium then due and payable in respect of the Term Loan until paid in full, (L) twelfth, ratably to pay any Applicable Premium then due and payable in respect of the Revolving Credit Commitment until paid in full; (M) thirteenth, ratably to pay the Bank Product Obligations to the extent not paid under clause (J) above until paid in full, and (N) fourteenth, to the ratable payment of all other Obligations then due and payable until paid in full; and

(iii) with respect to the Proceeds of any Disposition of all or substantially all of the assets or Equity Interests of any Person or any insurance which Disposition or proceeds of insurance includes both (x) Revolver Priority Collateral and (y) Term Priority Collateral, such Proceeds and payments using such Proceeds shall be applied in a manner mutually determined by the Agents acting reasonably and in good faith.

(c) For purposes of Section 4.03(b) (other than clause (N) of Section 4.03(b)(i) and clause (N) of Section 4.03(b)(ii)), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, except to the extent that default or overdue interest (but not any other interest) and loan fees, each arising from or related to a default, are disallowed in any Insolvency Proceeding; provided, however, that for the purposes of clause (N) of Section 4.03(b)(i) and clause (N) of Section 4.03(b)(ii), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 4.03 shall control and govern.

Section 4.04 Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 12.02.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by any Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Administrative Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrowers as if such Defaulting Lender had made such Loans to the Borrowers. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers to replace the Defaulting Lender with one or more substitute Lenders, and the Defaulting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Defaulting Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Defaulting Lender shall execute and deliver an Assignment and Acceptance, subject only to the Defaulting Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Defaulting Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Defaulting Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Defaulting Lender shall be made in accordance with the terms of Section 12.07.

(d) The operation of this Section 4.04 shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section 4.04 shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the non-Defaulting Lenders, the Agents, and the Borrowers shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made

retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

Section 4.05 Administrative Borrower; Joint and Several Liability of the Borrowers.

(a) Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for the Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed to be the Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral of the Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents nor the Lenders shall incur liability to the Borrowers as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

(b) Each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 4.05), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 4.05 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(c) The provisions of this Section 4.05 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 4.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

(d) Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

## ARTICLE V

### CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Effective Date all fees, costs, expenses and taxes then payable pursuant to Section 2.06 and Section 12.04 to the extent such fees and expenses are invoiced at least one day prior to the Effective Date.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the initial Loans or the issuance of any Letters of Credit shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Collateral Agent shall have received on or before the Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) a Security Agreement, together with the original stock certificates representing all of the Equity Interests and all promissory notes required to be pledged thereunder (if any), accompanied by undated stock powers executed in blank and other proper instruments of transfer;

(ii) a UCC Filing Authorization Letter, together with evidence satisfactory to the Collateral Agent of the filing of appropriate financing statements on Form UCC-1 in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement and each Mortgage (to the extent that a security interest may be perfected by such filing in the property purported to be covered by such Security Agreement or Mortgage);

(iii) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens acceptable to the Collateral Agent);

(iv) a Perfection Certificate;

(v) the PCC Acquisition Collateral Assignment;

(vi) the Disbursement Letter;

(vii) the Fee Letter;

(viii) the Intercompany Subordination Agreement;

(ix) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, (C) the names and true signatures of the representatives of

such Loan Party authorized to sign each Loan Document (in the case of a Borrower, including, without limitation, Notices of Borrowing, LIBOR Notices, Letter of Credit Applications and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers and (D) as to the matters set forth in Section 5.01(b);

(x) a certificate of the chief financial officer of the Parent (A) setting forth in reasonable detail the calculations required to establish that the Pro Forma Leverage Ratio does not exceed 3.90:1.00, (B) attaching a copy of the Financial Statements and the Projections described in Section 6.01(g)(ii) hereof and certifying as to the compliance with the representations and warranties set forth in Section 6.01(g)(i) and Section 6.01(cc)(ii) and (C) certifying that after giving effect to all Loans to be made on the Effective Date and the Letters of Credit to be issued on the Effective Date, (1) the Availability is not less than \$15,000,000 and (2) all liabilities of the Loan Parties are current;

(xi) a certificate of the chief financial officer of the Parent, certifying as to the matters set forth in Section 6.01(t)(i);

(xii) a certificate of an Authorized Officer of the Administrative Borrower certifying that (A) the attached copies of the PCC Acquisition Documents as in effect on the Effective Date are true, complete and correct copies thereof and (B) such agreements remain in full force and effect and that none of the Loan Parties has breached or defaulted in any of its obligations under such agreements;

(xiii) a certificate of the appropriate official(s) of the jurisdiction of organization and, except to the extent such failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, each jurisdiction of foreign qualification of each Loan Party certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions;

(xiv) an opinion of Shearman & Sterling LLP, counsel to the Loan Parties, as to such matters as the Agents may reasonably request;

(xv) opinions of McDonald Carano Wilson LLP and Gordon Feinblatt LLC, each acting as local counsel to the Loan Parties, which opinions shall be in form and substance satisfactory to the Agents, as to such matters as the Agents may reasonably request;

(xvi) insurance certificates evidencing the insurance coverage of the Loan Parties required by Section 7.01;

(xvii) (A) evidence of the payment in full of all Indebtedness under the Existing Credit Facilities (other than the Specified Existing Credit Facilities), (B) a termination and release agreement with respect to the Existing Credit Facilities (other than the Specified Existing Credit Facilities) and all related documents, duly executed by the applicable Loan Parties and the Existing Lenders, (C) a release agreement with respect to the Specified Existing Credit Facilities and all related documents, duly executed by the applicable Loan Parties and the

Existing Lenders, (D) a satisfaction of mortgage for each mortgage filed by the Existing Lender on each Facility, (E) a termination of security interest in Intellectual Property for each assignment for security recorded by the Existing Lenders at the United States Patent and Trademark Office or the United States Copyright Office and covering any intellectual property of the Loan Parties, and (F) UCC-3 termination statements for all UCC-1 financing statements filed by the Existing Lenders and covering any portion of the Collateral.

(e) Material Adverse Effect. No event or development shall have occurred since September 30, 2014 which could reasonably be expected to have a Material Adverse Effect.

(f) Consummation of PCC Acquisition. Concurrently with the making of the initial Loans, (i) the Parent shall have purchased pursuant to the PCC Acquisition Documents (no provision of which shall have been amended or otherwise modified or waived in a manner adverse to the interests of the Agents and the Lenders without the prior written consent of the Agents), and shall have become the owner, free and clear of all Liens other than Permitted Liens, of all of the PCC Acquisition Assets and (ii) the proceeds of the initial Loans shall have been applied to pay the Purchase Price payable pursuant to the PCC Acquisition Documents for the PCC Acquisition Assets and the closing and other costs relating thereto.

(g) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans or the conduct of the Loan Parties' business shall have been obtained and shall be in full force and effect.

(h) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Loans or the issuance of the initial Letters of Credit and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Collateral Agent and its counsel, and the Collateral Agent and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Collateral Agent or such counsel may reasonably request.

Section 5.02 Conditions Precedent to All Loans and Letters of Credit. The obligation of any Agent or any Lender to make any Loan or of the Administrative Agent to assist the Borrowers in establishing or opening any Letter of Credit after the Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrowers shall have paid all fees, costs, expenses and taxes then payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including, without limitation, Section 2.06 and Section 12.04 hereof.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, or the submission by the Borrowers of a



Letter of Credit Application with respect to a Letter of Credit, and the issuance of such Letter of Credit, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan or the date of issuance of such Letter of Credit that: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date of such Loan or such Letter of Credit are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof or at the time of issuance of such Letter of Credit, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made, or the issuance of such Letter of Credit to be issued, on such date and (iii) the conditions set forth in this Section 5.02 have been satisfied as of the date of such request.

(c) Legality. The making of such Loan or the issuance of such Letter of Credit shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Notices. The Administrative Agent shall have received (i) a Notice of Borrowing pursuant to Section 2.02 hereof and (ii) a Letter of Credit Application pursuant to Section 3.03 hereof, if applicable.

Section 5.03 Conditions Subsequent to Effectiveness. As an accommodation to the Loan Parties, the Agents and the Lenders have agreed to execute this Agreement and to make the Loans on the Effective Date notwithstanding the failure by the Loan Parties to satisfy the conditions set forth below on or before the Effective Date. In consideration of such accommodation, the Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including, without limitation, those conditions set forth in Section 5.01, the Loan Parties shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (it being understood that (i) the failure by the Loan Parties to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an Event of Default and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Required Lenders hereby waive such breach for the period from the Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 5.03):

(a) not later than the date that is 15 Business Days after the Effective Date (or such later date as agreed to in writing by the Collateral Agent in its sole discretion), the Collateral Agent shall have received (i) an amendment to the SureTec Indemnity Agreement, in form an substance reasonably satisfactory to the Collateral Agent, or (ii) evidence reasonably satisfactory to it that the SureTec Indemnity Agreement has been terminated;

(b) not later than the date that is 10 Business Days after the Effective Date (or such later date as agreed to in writing by the Collateral Agent in its sole discretion), the Collateral Agent shall have received evidence of the insurance coverage required by Section 7.01 (other than the insurance certificates delivered pursuant to Section 5.01(d)), with such endorsements as to the additional insureds or lender loss payees thereunder as the Collateral Agent may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' prior written notice to the Collateral Agent and each such additional insured or lender loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request;

(c) use commercially reasonable efforts until the date that is 45 days after the Effective Date to execute and deliver to the Collateral Agent a landlord waiver, in form and substance satisfactory to the Collateral Agent and which may be included as a provision contained in the relevant Lease, executed by each landlord with respect to (i) each of the following locations (the "Specified Locations"): (A) 2 Eaton Street, Suite 1002, Hampton, Virginia 23669 and (B) 4580 W Teco Avenue, Las Vegas, NV 89118 and (ii) each of the Leases set forth on Schedule III to the Security Agreement to the extent the book value of Collateral maintained at such location exceeds \$1,000,000 (when aggregated with all other Collateral at the same location); provided, that, notwithstanding this clause (c)(ii), the Loan Parties shall not be required to execute and deliver landlord waivers with respect to the Excluded Locations;

(d) use commercially reasonable efforts until the date that is 45 days after the Effective Date to execute and deliver to the Collateral Agent a collateral access agreement, in form and substance satisfactory to the Collateral Agent, executed by each Person who possesses Inventory of any Loan Party to the extent the book value of Collateral maintained at such location exceeds \$1,000,000 (when aggregated with all other Collateral at the same location); provided, that, notwithstanding this clause (c), the Loan Parties shall not be required to execute and deliver collateral access agreements with respect to the Excluded Locations;

(e) not later than the date that is 45 days after the Effective Date (or such later date as agreed to in writing by the Agents in their sole discretion), the Collateral Agent shall have received all Control Agreements required under Section 8.01(b); and

(f) subject to Section 7.01(p), not later than the date that is 60 days after the Effective Date (or such later date as agreed to in writing by the Collateral Agent in its sole discretion), the Collateral Agent shall have received the Real Property Deliverables with respect to each Facility.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good

standing under the laws of the state or jurisdiction of its organization, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable Requirement of Law or (C) any Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clauses (ii)(B), (ii)(C) and (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, the authorized Equity Interests of each of the Subsidiaries of the Parent and the issued and outstanding Equity Interests of each of the Subsidiaries of the Parent are as set forth on Schedule 6.01(e). All of the issued and outstanding shares of Equity Interests of each of the Subsidiaries of the Parent have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the Parent are owned directly or indirectly by the Parent free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e), there are no outstanding debt or equity securities of the Parent or any of its Subsidiaries and no outstanding obligations of the Parent or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or

other rights for the purchase or acquisition from the Parent or any of its Subsidiaries, or other obligations of the Parent or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of the Parent or any of its Subsidiaries.

(f) Litigation. Except as set forth in Schedule 6.01(f), there is no pending or, to the best knowledge of any Loan Party, threatened action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other material liabilities (including, without limitation, Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Parent and its Subsidiaries are set forth in the Financial Statements. Since September 30, 2014, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Parent has heretofore furnished to each Agent and each Lender (A) projected balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries on a consolidated basis for the period from August 30, 2015 through December 31, 2015, and (B) projected annual balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries on a consolidated and consolidating basis for each calendar year ending in 2016 through 2019, which projected financial statements shall be updated solely as to each succeeding calendar year pursuant to Section 7.01(a)(vii).

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) any term of any Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, and no default or event of default has occurred and is continuing thereunder.

(i) ERISA. Except as set forth on Schedule 6.01(i), (i) each Employee Plan is in compliance with ERISA and the Internal Revenue Code other than as could reasonably be expected to result in a Material Adverse Effect, (ii) no Termination Event has occurred nor is reasonably expected to occur with respect to any Employee Plan, (iii) no Employee Plan had an accumulated or waived funding deficiency or permitted decrease which would create a deficiency in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code at any time during the

previous 60 months, and (iv) no Lien imposed under the Internal Revenue Code or ERISA exists or is likely to arise on account of any Employee Plan within the meaning of Section 412 of the Internal Revenue Code. Except as set forth on Schedule 6.01(i), no Loan Party or any of its ERISA Affiliates has incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability. No Loan Party or any of its ERISA Affiliates nor any fiduciary of any Employee Plan has, except as would not reasonably be expected to have a Material Adverse Effect, (i) engaged in a nonexempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code, (ii) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (iii) engaged in a transaction within the meaning of Section 4069 of ERISA or (iv) incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. There are no pending or, to the best knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (i) any Employee Plan or its assets, (ii) any fiduciary with respect to any Employee Plan, or (iii) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) which provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or coverage after a participant's termination of employment.

(j) Taxes, Etc. (i) All foreign, Federal and material provincial, state and local tax returns and other reports required by applicable Requirements of Law to be filed by any Loan Party have been filed, or extensions have been obtained, and (ii) all taxes, assessments and other governmental charges imposed upon any Loan Party or any property of any Loan Party in an aggregate amount for all such taxes, assessments and other governmental charges exceeding \$350,000 and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U and X.

(l) Nature of Business.

(i) No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l).

(ii) The Parent does not have any material liabilities (other than liabilities arising under the Loan Documents), own any material assets (other than the Equity Interests of its Subsidiaries) or engage in any operations or business (other than the ownership of its Subsidiaries).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect.

(o) Properties. Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes. All such properties and assets are in good working order and condition, ordinary wear and tear excepted.

(p) Employee and Labor Matters. There is (i) no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party which arises out of or under any collective bargaining agreement, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened against any Loan Party or (iii) to the best knowledge of each Loan Party, no union representation question existing with respect to the employees of any Loan Party and no union organizing activity taking place with respect to any of the employees of any Loan Party. No Loan Party or any of its ERISA Affiliates has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of any Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements. All payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q), (i) the operations of each Loan Party are in compliance with all Environmental Laws in all material

respects; (ii) there has been no Release at any of the properties owned or operated by any Loan Party or a predecessor in interest, or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iii) no Environmental Action has been asserted against any Loan Party or any predecessor in interest nor does any Loan Party have knowledge or notice of any threatened or pending Environmental Action against any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iv) no Environmental Actions have been asserted against any facilities that may have received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (v) no property now or, to the knowledge any Loan Party, formerly owned or operated by a Loan Party has been used as a treatment or disposal site for any Hazardous Material; (vi) no Loan Party has failed to report to the proper Governmental Authority any Release which is required to be so reported by any Environmental Laws which could reasonably be expected to have a Material Adverse Effect; (vii) each Loan Party holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of the business carried on by it, except for such licenses, permits and approvals as to which a Loan Party's failure to maintain or comply with could not reasonably be expected to have a Material Adverse Effect; and (viii) no Loan Party has received any notification pursuant to any Environmental Laws that (A) any work, repairs, construction or Capital Expenditures are required to be made as a condition of continued compliance with any Environmental Laws, or any license, permit or approval issued pursuant thereto or (B) any license, permit or approval referred to above is about to be reviewed, made, subject to limitations or conditions, revoked, withdrawn or terminated, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

(r) Insurance. Each Loan Party maintains the insurance and required services and financial assurance as required by law and as required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all insurance maintained by each Loan Party on the Effective Date.

(s) Use of Proceeds. The proceeds of the Loans shall be used on the Effective Date to (i) refinance the Existing Credit Facilities (other than the Specified Existing Credit Facilities), (ii) pay up to \$90,000,000 of the Purchase Price (as adjusted by working capital adjustments in accordance with the terms of the PCC Acquisition Agreement) payable pursuant to the PCC Acquisition Documents, (iii) pay fees and expenses in connection with the transactions contemplated hereby and (iv) fund working capital of the Borrowers. After the Effective Date, the proceeds of the Revolving Loans, the Incremental Term Loans (if any) and the Letters of Credit will be used for general corporate and working capital purposes of the Borrowers.

(t) Solvency. (i) After giving effect to the transactions contemplated by this Agreement and before and after giving effect to each Loan and Letter of Credit, each Loan Party is, and the Loan Parties on a consolidated basis are, Solvent. (ii) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property rights that are

necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) is a complete and accurate list as of the Effective Date of (i) each item of Registered Intellectual Property owned by each Loan Party; and (ii) each material Intellectual Property Contract to which each Loan Party is bound. To the knowledge of each Loan Party, no trademark or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by such Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contracts. Set forth on Schedule 6.01(v) is a complete and accurate list as of the Effective Date of all Material Contracts of each Loan Party, showing the parties and subject matter thereof and amendments and modifications thereto. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the best knowledge of such Loan Party, all other parties thereto in accordance with its terms, (ii) has not been otherwise amended or modified, and (iii) is not in default due to the action of any Loan Party or, to the best knowledge of any Loan Party, any other party thereto.

(w) Investment Company Act. None of the Loan Parties is (i) an "investment company" or an "affiliated person" or "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Customers and Suppliers. There exists no actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship that could reasonably be expected to have a Material Adverse Effect between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (ii) any Loan Party, on the one hand, and any supplier or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party; and there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change.

(y) Consummation of PCC Acquisition. The Parent has delivered to the Agents complete and correct copies of the PCC Acquisition Documents, including all schedules and exhibits thereto. The PCC Acquisition Documents, taken as a whole, set forth the entire agreement and understanding of the parties thereto relating to the subject matter thereof, and



there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby. The execution, delivery and performance of the PCC Acquisition Documents has been duly authorized by all necessary action (including, without limitation, the obtaining of any consent of stockholders or other holders of Equity Interests required by law or by any applicable corporate or other organizational documents) on the part of each such Person. No authorization or approval or other action by, and no notice to filing with or license from, any Governmental Authority is required for such sale other than such as have been obtained on or prior to the Effective Date. Each PCC Acquisition Document is the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms. All conditions precedent to the PCC Acquisition Agreement have been fulfilled or waived (with the prior written consent of the Agents to the extent such waiver is adverse to the interests of the Agents and the Lenders), no PCC Acquisition Document has been amended or otherwise modified in a manner adverse to the interests of the Agents and the Lenders without the prior written consent of the Agents, and there has been no breach of any material term or condition of any PCC Acquisition Document.

(z) Anti-Terrorism Laws.

(i) None of the Loan Parties, nor any Affiliate of any of the Loan Parties, has violated or is in violation of any of the Anti-Terrorism Laws or has engaged in or conspired to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(ii) None of the Loan Parties, nor any Affiliate of any of the Loan Parties, nor, to the knowledge of the Loan Parties, any officer, director or principal shareholder or owner of any of the Loan Parties, nor any of the Loan Parties' respective agents acting or benefiting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder, is a Blocked Person.

(iii) None of the Loan Parties, nor to the knowledge of the Loan Parties, any of their agents acting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder, (A) conducts any business with or for the benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any OFAC Sanctions Programs.

(iv) (A) No Covered Entity is a Sanctioned Person and (B) no Covered Entity, either in its own right or through any third party, (1) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (2) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, or (3) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(aa) Anti-Bribery and Anti-Corruption Laws.

(i) The Loan Parties are in compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA") and the applicable anti-bribery and anti-corruption laws of those jurisdictions in which they do business (collectively, the "Anti-Corruption Laws").

(ii) None of the Loan Parties has at any time:

(A) offered, promised, paid, given, or authorized the payment or giving of any money, gift or other thing of value, directly or indirectly, to or for the benefit of any employee, official, representative, or other person acting on behalf of any foreign (i.e., non-U.S.) Governmental Authority thereof, or of any public international organization, or any foreign political party or official thereof, or candidate for foreign political office (collectively, "Foreign Official"), for the purpose of: (1) influencing any act or decision of such Foreign Official in his, her, or its official capacity; or (2) inducing such Foreign Official to do, or omit to do, an act in violation of the lawful duty of such Foreign Official, or (3) securing any improper advantage, in order to obtain or retain business for, or with, or to direct business to, any Person; or

(B) acted or attempted to act in any manner which would subject any of the Loan Parties to liability under any Anti-Corruption Law.

(iii) There are, and have been, no allegations, investigations or inquiries with regard to a potential violation of any Anti-Corruption Law by any of the Loan Parties or to the knowledge of the Loan Parties, any of their respective current or former directors, officers, employees, stockholders or agents, or other persons acting or purporting to act on their behalf.

(iv) The Loan Parties have adopted, implemented and maintain anti-bribery and anti-corruption policies and procedures that are reasonably designed to ensure compliance with the Anti-Corruption Laws.

(bb) As of the Effective Date, the Phoenix Office Location and the Specified Locations are the only locations of the Loan Parties in which the Loan Parties maintain Account Receivable and account payable registers (other than any duplicates or copies of Account Receivable and/or account payable registers maintained at the Phoenix Office Location or one of the Specified Locations).

(cc) Full Disclosure.

(i) Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading.

(ii) Projections, have been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Loan Parties to be reasonable at the time such Projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties at the time such Projections were furnished to the Lenders, and Parent is not be aware of any facts or information that would lead it to believe that such Projections are incorrect or misleading in any material respect; it being understood that (A) Projections are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (B) actual results may differ materially from the Projections and such variations may be material and (C) the Projections are not a guarantee of performance.

## ARTICLE VII

### COVENANTS OF THE LOAN PARTIES

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan, Reimbursement Obligation, Letter of Credit Obligation or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent:

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Effective Date, internally prepared consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form (presented solely in "tabular" or "columnar" form) the figures for the corresponding date or period set forth in the Projections, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Parent and its Subsidiaries commencing with the first fiscal quarter of the Parent and its Subsidiaries ending after the Effective Date, consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form (presented solely in "tabular" or "columnar" form) the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the Projections, all in reasonable detail and certified

by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as of the end of such quarter and the results of operations and cash flows of the Parent and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within:

(A) 90 days after the end of the Fiscal Year of the Parent and its Subsidiaries ended September 30, 2015, (1) unaudited consolidated balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries and (2) separate consolidated balance sheets, statements of operations and retained earnings and statements of cash flows of each of (I) FNM and its Subsidiaries, (II) Faneuil and its Subsidiaries and (III) PCC and its Subsidiaries, in each case, as at the end of such Fiscal Year, setting forth in each case in comparative form (presented solely in "tabular" or "columnar" form) the figures for the corresponding date or period set forth in (x) the financial statements for the immediately preceding Fiscal Year, and (y) the Projections, all in reasonable detail and prepared in accordance with GAAP; and

(B) 120 days after the end of the Fiscal Year of the Parent and its Subsidiaries ended September 30, 2016 and 90 days each Fiscal Year of the Parent and its Subsidiaries ended on and after September 30, 2017, consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries, setting forth in each case in comparative form (presented solely in "tabular" or "columnar" form) the figures for the corresponding date or period set forth in (x) the financial statements for the immediately preceding Fiscal Year, and (y) the Projections, all in reasonable detail and prepared in accordance with GAAP;

in each case of clause (iii)(A)(2) and (iii)(B), accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Parent and satisfactory to the Agents (which opinion shall be without (1) a "going concern" or like qualification or exception, (2) any qualification or exception as to the scope of such audit, or (3) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.03 (but that may contain a "going concern" or like qualification or exception solely as a result of the stated final maturity date of any Indebtedness within 12 months from the date of such opinion), together with a written statement of such accountants (x) to the effect that, in making the examination necessary for their certification of such financial statements, they have not obtained any knowledge of the existence of an Event of Default or a Default under Section 7.03 and (y) if such accountants shall have obtained any knowledge of the existence of an Event of Default or such Default, describing the nature thereof. It is acknowledged and agreed by all parties hereto that the delivery of financial statements pursuant to Section 7.01(a)(i), (ii) or (iii) above setting forth in comparative form the figures for the corresponding date or period set forth in the Projections previously delivered to the Agents pursuant to Section 5.01(d)(x) or Section 7.01(a)(vii), as applicable, does not

constitute a representation or warranty by any Loan Party that such Projections included in such financial statements are true, accurate or complete in any respect, and all such Projections provided pursuant to such Sections speak only as of the date such Projections were delivered pursuant to Section 5.01(d)(x) or Section 7.01(a)(vii), as applicable. For the avoidance of doubt, the foregoing does not affect the Loan Parties' obligations to deliver Projections with respect to each calendar year pursuant to Section 7.01(a)(vii).

(iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), a Compliance Certificate executed by an Authorized Officer of the Parent:

(A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto,

(B) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), (1) attaching a schedule showing the calculation of the financial covenants specified in Section 7.03 and (2) including a discussion and analysis of the financial condition and results of operations of the Parent and its Subsidiaries for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year, and

(C) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clause (iii) of this Section 7.01(a), attaching (1) a summary of all material insurance coverage maintained as of the date thereof by any Loan Party and all material insurance coverage planned to be maintained by any Loan Party, together with such other insurance-related documents and information as the Administrative Agent may reasonably require, (2) the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) confirmation that there have been no changes to the information contained in each of the Perfection Certificates delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv) and/or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) as soon as available and in any event within 16 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Effective Date, reports in form and detail satisfactory to the Agents and certified by an Authorized Officer of the Administrative Borrower

as being accurate and complete (A) listing all Accounts Receivable of the Loan Parties as of such day, which shall include the amount and age of each such Account Receivable, showing separately those which are more than 30, 60, 90 and 120 days old and a description of all Liens, set-offs, defenses and counterclaims with respect thereto, together with a reconciliation of such schedule with the schedule delivered to the Agents pursuant to this clause (v)(A) for the immediately preceding fiscal month, and such other information as any Agent may request, (B) listing all accounts payable of the Loan Parties as of each such day which shall include the amount and age of each such account payable and such other information as any Agent may request, and (C) listing all Inventory of the Loan Parties as of each such day, and containing a breakdown of such Inventory by type and amount, and such other information as any Agent may request, all in detail and in form satisfactory to the Agents;

(vi) as soon as available and in any event within 16 days after the end of each month commencing with the first month ending after the Effective Date, a Borrowing Base Certificate, current as of the close of business on the last calendar day of the immediately preceding calendar month, supported by schedules showing the derivation thereof and containing such detail and other information as any Agent may request from time to time, provided that (A) the Borrowing Base set forth in the Borrowing Base Certificate shall be effective from and including the date such Borrowing Base Certificate is duly received by the Agents but not including the date on which a subsequent Borrowing Base Certificate is received by the Agents, unless any Agent disputes the eligibility of any property included in the calculation of the Borrowing Base or the valuation thereof by notice of such dispute to the Administrative Borrower and (B) in the event of any dispute about the eligibility of any property included in the calculation of the Borrowing Base or the valuation thereof, such Agent's good faith judgment shall control;

(vii) as soon as available and in any event not later than the end of each calendar year, a certificate of an Authorized Officer of the Parent (A) attaching Projections for the Parent and its Subsidiaries, prepared on a monthly basis for the immediately succeeding calendar year for the Parent and its Subsidiaries and otherwise in form and substance reasonably satisfactory to the Agents, and (B) certifying that the representations and warranties set forth in Section 6.01(cc)(ii) are true and correct with respect to such Projections;

(viii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(ix) as soon as possible, and in any event within 3 days after the occurrence of an Event of Default or Default or the occurrence of any event or development that would reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Administrative Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(x) (A) as soon as possible and in any event within 10 days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that (1) any Reportable Event with respect to any Employee Plan has occurred, (2) any other Termination Event with

respect to any Employee Plan has occurred, or (3) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to an Employee Plan, a statement of an Authorized Officer of the Administrative Borrower setting forth the details of such occurrence and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto, (B) promptly and in any event within 3 days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from the PBGC, copies of each notice received by any Loan Party or any ERISA Affiliate thereof of the PBGC's intention to terminate any Plan or to have a trustee appointed to administer any Plan, (C) promptly and in any event within 10 days after the filing thereof with the Internal Revenue Service if requested by any Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Employee Plan and Multiemployer Plan, (D) promptly and in any event within 10 days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that a required installment within the meaning of Section 412 of the Internal Revenue Code has not been made when due with respect to an Employee Plan, (E) promptly and in any event within 3 days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any ERISA Affiliate thereof concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA or indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (F) promptly and in any event within 10 days after any Loan Party or any ERISA Affiliate thereof sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party or such ERISA Affiliate thereof;

(xi) promptly after the commencement thereof but in any event not later than 5 days after service of process with respect thereto on any Loan Party, or the obtaining of knowledge thereof by an Authorized Officer of any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(xii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Contract or any PCC Acquisition Document;

(xiii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

(xiv) as soon as possible and in any event within 10 Business Days after receipt, filing or delivery thereof, after (A) the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness or its securities or files with the SEC or any national (domestic or foreign) securities exchange and (B) the receipt thereof, a copy of any material notice received from any holder of its Indebtedness;

(xv) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(xvi) promptly upon request, any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Borrowers' compliance with Section 7.02(r);

(xvii) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements that is permitted by Section 7.02(q), the consolidated financial statements of the Parent and its Subsidiaries delivered pursuant to clauses (i), (ii) and (iii) of this Section 7.01(a) will differ from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to the Agents; and

(xviii) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party as any Agent may from time to time may reasonably request.

(b) Additional Borrowers, Guarantors and Collateral Security. Cause:

(i) each Subsidiary of any Loan Party not in existence on the Effective Date, and each Subsidiary of any Loan Party which is a non-borrowing Subsidiary on the Effective Date or upon formation or acquisition but later ceases to be a non-borrowing Subsidiary, to execute and deliver to the Collateral Agent promptly and in any event within 10 Business Days (45 Business Days in the case of the matters set forth in clause (C) below) (or, in each case, such later date as agreed to in writing by the Collateral Agent in its sole discretion) after the formation, acquisition or change in status thereof, (A) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Borrower or a Guarantor, (B) a supplement to the Security Agreement, together with (1) certificates evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged under the terms of the Security Agreement, (2) undated stock powers for such Equity Interests executed in blank with signature guaranteed, and (3) such opinions of counsel as the Collateral Agent may reasonably request, (C) to the extent required under the terms of this Agreement, one or more Mortgages creating on the real property of such Subsidiary a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such real property and such other Real Property Deliverables as may be reasonably required by the Collateral Agent with respect to each such real property, and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiary shall become Collateral for the Obligations; and



(ii) each owner of the Equity Interests of any such Subsidiary to execute and deliver promptly and in any event within 10 Business Days (or such later date as agreed to in writing by the Collateral Agent in its sole discretion) after the formation or acquisition of such Subsidiary a Pledge Amendment (as defined in the Security Agreement), together with (A) certificates evidencing all of the Equity Interests of such Subsidiary required to be pledged under the terms of the Security Agreement, (B) undated stock powers or other appropriate instruments of assignment for such Equity Interests executed in blank with signature guaranteed, (C) such opinions of counsel as the Collateral Agent may reasonably request and (D) such other agreements, instruments, approvals or other documents requested by the Collateral Agent.

Notwithstanding the foregoing, no Subsidiary of a Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Internal Revenue Code shall be required to become a Guarantor hereunder (and, as such, shall not be required to deliver the documents required by clause (i) above); provided, however, that if the Equity Interests of a Foreign Subsidiary are owned by a Loan Party, such Loan Party shall deliver all such documents, instruments, agreements (including, without limitation, at the reasonable request of the Collateral Agent, a pledge agreement governed by the laws of the jurisdiction of the organization of such Foreign Subsidiary) and certificates described in clause (ii) above to the Collateral Agent, and take all commercially reasonable actions reasonably requested by the Collateral Agent or otherwise necessary to grant and to perfect a first-priority Lien (subject to Permitted Specified Liens) in favor of the Collateral Agent, for the benefit of the Agents and the Lenders, in 65% of the voting Equity Interests of such Foreign Subsidiary and 100% of all other Equity Interests of such Foreign Subsidiary owned by such Loan Party. For the avoidance of doubt, the Loan Parties shall not be required to take any action in any foreign jurisdiction to create any security interest in any Collateral located or titled outside of the United States or to perfect any security interests in such Collateral to the extent the fair market value of any such Collateral (when aggregated with all Collateral located or titled outside of the United States) does not exceed \$2,000,000 in the aggregate, including, without limitation, delivery of any security agreements or pledge agreements with respect to such Collateral governed by the laws of any jurisdiction other than the United States.

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply, in all material respects, with all Requirements of Law (including, without limitation, all Environmental Laws), judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Each Covered Entity shall comply with all Anti-Terrorism Laws, and the Borrowers shall promptly notify the Agents in writing upon the occurrence of a Reportable Compliance Event.

(iii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all taxes, assessments and other governmental charges imposed upon any Loan Party or any of its Subsidiaries or any property of

any Loan Party or any of its Subsidiaries in an aggregate amount for all such taxes, assessments and other governmental charges exceeding \$350,000, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent at any time and from time to time during normal business hours, at the expense of the Borrowers, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, Phase I Environmental Site Assessments (and if recommended in the Phase I ESA and, if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA and after consultation with the Parent, an ASTM 1527-00 Phase II Environmental Site Assessment) or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent, worker's compensation and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is

required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event in amount, adequacy and scope reasonably satisfactory to the Collateral Agent. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as its interests may appear, in case of loss, under a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Notwithstanding the foregoing, the Loan Parties may self-insure with respect to certain risks related to workers' compensation and health benefit plans and (i) generally in accordance with sound business practice of companies in similar businesses similarly situated and (ii) in amount and scope as in effect on the Effective Date.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental. (i) Keep any property either owned or operated by it or any of its Subsidiaries free of any Environmental Liens; (ii) comply, and cause each of its Subsidiaries to comply, with all Environmental Laws in all material respects and provide to the Collateral Agent any non-privileged documentation of such compliance which the Collateral Agent may reasonably request; (iii) provide the Agents written notice within 5 Business Days of any Release of a Hazardous Material in excess of any reportable quantity from or onto property at any time owned or operated by it or any of its Subsidiaries and take any Remedial Actions required to abate said Release; and (iv) provide the Agents with written notice within 10 days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of any Loan Party or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries; and (C) notice of a violation, citation or other administrative order which could reasonably be expected to have a Material Adverse Effect.

(k) Fiscal Year. Cause the Fiscal Year of the Parent and its Subsidiaries to end on September 30 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. Use commercially reasonable efforts to obtain written subordinations or waivers or collateral access agreements, as the case may be, in form and substance satisfactory to the Collateral Agent, (i) at any time any Collateral with a book value in excess of \$1,000,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Loan Party, or is stored on the premises of a bailee, warehouseman, or similar party and (ii) with respect to any location of the Loan Parties in which the Loan Parties maintain Account Receivable and account payable registers.

(m) After Acquired Real Property. Upon the acquisition by it or any of its Subsidiaries after the date hereof of any fee interest in any real property (wherever located) (each such interest being a "New Facility") with a Current Value (as defined below) in excess of \$1,000,000, promptly, but in any event within 5 Business Days, so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property (for purposes of this Section, the "Current Value"). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Person that has acquired such New Facility shall furnish the same to the Collateral Agent within 45 days of such request (or such later date as agreed to in writing by the Collateral Agent in its sole discretion). The Borrowers shall pay all fees and expenses, including, without limitation, reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 7.01(m).

(n) Anti-Bribery and Anti-Corruption Laws. Maintain, and cause each of its Subsidiaries to maintain, anti-bribery and anti-corruption policies and procedures that are reasonably designed to ensure compliance with the Anti-Corruption Laws.

(o) Lender Meetings. Upon the request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than once during each Fiscal Year), participate in a meeting with the Agents and the Lenders at the Borrowers' corporate offices (or at such other location as may be agreed to by the Administrative Borrower and such Agent or the Required Lenders) at such time as may be agreed to by the Administrative Borrower and such Agent or the Required Lenders.

(p) Carmel, New York Facility. In the event there has not been a Disposition of the Facility located in Carmel, New York prior to the one year anniversary of the Effective Date, deliver to the Collateral Agent the Real Property Deliverables with respect to such Facility within 45 days of the one year anniversary of the Effective Date (or such later date as agreed to in writing by the Collateral Agent in its sole discretion).

(q) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral or any other property of any Loan Party and its Subsidiaries (to the extent required by this Agreement and the other Loan Documents), (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent, at any time during the continuance of an Event of Default, to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

Section 7.02 Negative Covenants. So long as any principal of or interest on any Loan, Reimbursement Obligation, Letter of Credit Obligation or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens; provided, that, no Liens shall be permitted on any assets included in the Borrowing Base other than the Liens of the Collateral Agent for the benefit of the Agents and the Lenders.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing; provided, however, that any wholly-owned Subsidiary of any Loan Party (other than a

Borrower) may be merged into such Loan Party or another wholly-owned Subsidiary of such Loan Party, or may consolidate or amalgamate with another wholly-owned Subsidiary of such Loan Party, so long as (A) no other provision of this Agreement would be violated thereby, (B) such Loan Party gives the Agents at least 15 days' prior written notice of such merger, consolidation or amalgamation accompanied by true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including, but not limited to, the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (C) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (D) the Lenders' rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or amalgamation and (E) the surviving Subsidiary, if any, if not already a Loan Party, is joined as a Loan Party hereunder pursuant to a Joinder Agreement and is a party to a Security Agreement and the Equity Interests of such Subsidiary is the subject of a Security Agreement, in each case, which is in full force and effect on the date of and immediately after giving effect to such merger, consolidation or amalgamation; and

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that any Loan Party and its Subsidiaries may make Permitted Dispositions.

(d) Change in Nature of Business.

(i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l); provided, that this Section 7.02(d) shall not prohibit Parent or any of its Subsidiaries from engaging in any business activities reasonably related or incidental to the business described in Section 6.01(l).

(ii) Permit the Parent to have any material liabilities (other than liabilities arising under the Loan Documents), own any material assets (other than the Equity Interests of its Subsidiaries) or engage in any operations or business (other than the ownership of its Subsidiaries).

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) Capital Expenditures. Make or commit or agree to make, or permit any of its Subsidiaries to make or commit or agree to make, any Capital Expenditure (by purchase or Capitalized Lease) that would cause the aggregate amount of all Capital Expenditures made by the Loan Parties and their Subsidiaries in any Fiscal Year to exceed \$4,500,000; provided, however, that if the amount of the Capital Expenditures permitted to be made in any Fiscal Year

is greater than the actual amount of the Capital Expenditures actually made in such Fiscal Year (the amount by which such permitted Capital Expenditures for such Fiscal Year exceeds the actual amount of Capital Expenditures for such Fiscal Year, the "Excess Amount"), then up to 100% of such Excess Amount (such amount, the "Carry-Over Amount") may be carried forward to the next succeeding Fiscal Year (the "Succeeding Fiscal Period"); provided that the Carry-Over Amount applicable to a particular Succeeding Fiscal Period may not be carried forward to another Fiscal Year. Capital Expenditures made by the Loan Parties and their Subsidiaries in any Fiscal Year shall be deemed to reduce first, the amount set forth above for such Fiscal Year, and then, the Carry-Over Amount.

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, and that are fully disclosed to the Agents prior to the consummation thereof, if they involve one or more payments by the Parent or any of its Subsidiaries in excess of \$2,000,000 for any single transaction or series of related transactions, (ii) transactions with another Loan Party, (iii) transactions permitted by Section 7.02(e) and Section 7.02(h), (iv) sales of Qualified Equity Interests of the Parent to Affiliates of the Parent not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith, (v) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of such Loan Party or such Subsidiary and (vi) transactions between or among non-Loan Party Subsidiaries not involving any Loan Party or any other Affiliate thereof.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends or distributions in certain circumstances);

(D) in the case of clause (iv), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(G) customary restrictions in contracts that prohibit the assignment of such contract.

(I) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 7.02(b) of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, (iv) customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto and (v) customary provisions restricting assignment of any agreement entered into in the ordinary course of business.



(m) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc.

(i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness (other than Indebtedness constituting Permitted Intercompany Indebtedness) or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would add any covenant or event of default, would change the subordination provision, if any, of such Indebtedness, or would otherwise be adverse to the Lenders or the issuer of such Indebtedness in any respect;

(ii) except for (1) the Obligations and (2) subject to the terms of the Intercompany Subordination Agreement, any Indebtedness constituting Permitted Intercompany Investments, (A) make any voluntary or optional payment (including, without limitation, any payment of interest in cash that, at the option of the issuer, may be paid in cash or in kind), prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness (including, without limitation, by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Indebtedness when due), (B) refund, refinance, replace or exchange any other Indebtedness for any such Indebtedness (other than with respect to Permitted Refinancing Indebtedness), (C) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Subordinated Indebtedness in violation of the subordination provisions thereof or any subordination agreement with respect thereto, or (D) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing;

(iii) amend, modify or otherwise change any of its Governing Documents (including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (iii) that either individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect; or

(iv) agree to any amendment, modification or other change to or waiver of any of its rights under any Material Contract or any PCC Acquisition Document if such amendment, modification, change or waiver would be adverse in any material respect to any Loan Party or any of its Subsidiaries or the Agents and the Lenders.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the

registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA. (i) Engage, or permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA; (ii) engage, or permit any ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor; (iii) adopt or permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law; (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it or any of its Subsidiaries, except in compliance with Environmental Laws (other than any noncompliance that could not reasonably be expected to have a Material Adverse Effect).

(q) Accounting Methods. Modify or change, or permit any of its Subsidiaries to modify or change, its method of accounting or accounting principles from those utilized in the preparation of the Financial Statements (other than as may be required to conform to GAAP).

(r) Anti-Terrorism Laws.

(i) None of the Loan Parties, nor any of their Affiliates or agents, shall:

(A) conduct any business or engage in any transaction or dealing with or for the benefit of any Blocked Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Blocked Person;

(B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to the OFAC Sanctions Programs;

(C) use any of the proceeds of the transactions contemplated by this Agreement to finance, promote or otherwise support in any manner any illegal activity, including, without limitation, any violation of the Anti-Terrorism Laws or any specified unlawful activity as that term is defined in the Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956 and 1957; or

(D) violate, attempt to violate, or engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, any of the Anti-Terrorism Laws.

(ii) None of the Loan Parties, nor any Affiliate of any of the Loan Parties, nor any officer, director or principal shareholder or owner of any of the Loan Parties, nor any of the Loan Parties' respective agents acting or benefiting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder, shall be or shall become a Blocked Person.

(iii) (A) no Covered Entity will become a Sanctioned Person, (B) no Covered Entity, either in its own right or through any third party, will (i) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (ii) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (iii) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (iv) use the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (v) the funds used to repay the Obligations will not be derived from any unlawful activity, (vi) each Covered Entity shall comply with all Anti-Terrorism Laws and (vii) the Borrowers shall promptly notify the Agents in writing upon the occurrence of a Reportable Compliance Event.

(s) Anti-Bribery and Anti-Corruption Laws. None of the Loan Parties shall:

(i) offer, promise, pay, give, or authorize the payment or giving of any money, gift or other thing of value, directly or indirectly, to or for the benefit of any Foreign Official for the purpose of: (1) influencing any act or decision of such Foreign Official in his, her, or its official capacity; or (2) inducing such Foreign Official to do, or omit to do, an act in violation of the lawful duty of such Foreign Official, or (3) securing any improper advantage, in order to obtain or retain business for, or with, or to direct business to, any Person; or

(ii) act or attempt to act in any manner which would subject any of the Loan Parties to liability under any Anti-Corruption Law.

(t) SunTrust Account. Maintain more than \$1,050,000 in the aggregate at any time in the SunTrust Account.

Section 7.03 Financial Covenants. So long as any principal of or interest on any Loan, Reimbursement Obligation, Letter of Credit Obligation or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Leverage Ratio. Beginning with the fiscal quarter ending on December 31, 2015, permit the Leverage Ratio of the Parent and its Subsidiaries for any period of 12 consecutive fiscal months of the Parent and its Subsidiaries for which the last month ends on the last day of each fiscal quarter to be greater than 3.50:1.00.

(b) Fixed Charge Coverage Ratio. Beginning with the fiscal quarter ending on December 31, 2015, permit the Fixed Charge Coverage Ratio of the Parent and its Subsidiaries for any period of 12 consecutive fiscal months of the Parent and its Subsidiaries for which the last month ends on the last day of each fiscal quarter to be less than 1.25:1.00.

## ARTICLE VIII

### CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

Section 8.01 Cash Management Arrangements; Collection of Accounts Receivable. (a) The Loan Parties shall (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Agents at one or more of the banks set forth on Schedule 8.01 (each a "Cash Management Bank") and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party) into a Cash Management Account.

(b) Within 45 days after the Effective Date (or such later date as agreed to in writing by the Agents in their sole discretion), the Loan Parties shall enter into a Control Agreement relating to each Cash Management Account (other than Excluded Accounts). Each Control Agreement shall direct the applicable Cash Management Bank to transfer any funds deposited in such accounts (other than Excluded Accounts and Operating Accounts) on a daily basis to the Administrative Agent's Account to be further credited to the respective Borrower's Loan Account (or in the case of Cash Management Accounts of any Guarantor, the Loan Account of the Borrower that is the direct parent of such Guarantor). Notwithstanding the foregoing, the applicable Control Agreement with respect to each Operating Account (including, without limitation, the SunTrust Account) shall provide that no such daily transfers shall occur until the occurrence of an Event of Default and upon notice to the applicable Cash Management Bank from the Collateral Agent. Within 45 days of the Effective Date (or such later date as agreed to in writing by the Agents in their sole discretion), each of the Loan Parties shall irrevocably instruct its respective Account Debtors, with respect to its Accounts Receivable, to remit all payments to be made by them, whether by means of checks or other drafts or by wire transfer, to a Collection Account. From and after the date that is 45 days following the Effective Date (or such later date as agreed to in writing by the Agents in their sole discretion), the Loan Parties shall not maintain, and shall not permit any of their Subsidiaries to maintain, cash, Cash Equivalents or other amounts in any deposit account or securities account, unless the Collateral Agent shall have received a Control Agreement in respect of each such Cash Management Account (other than Excluded Accounts).

(c) All funds deposited in such Cash Management Accounts (other than Excluded Accounts) shall immediately become subject to the security interest of Collateral Agent, for its own benefit and the benefit of the other Secured Parties. Neither Agents nor any Lender assumes any responsibility for such cash management arrangements, including any claim of accord and satisfaction or release with respect to deposits accepted by any Cash Management

Bank thereunder. Administrative Agent shall apply all funds received by it from the Cash Management Accounts (other than Excluded Accounts) to the satisfaction of the Obligations (including the cash collateralization of the Letters of Credit) as provided in this Agreement; provided that, in the absence of any Event of Default, the Administrative Agent shall apply all such funds only to the prepayment of the principal amount of the Revolving Loans and to such other Obligations as may then be due and payable (for the avoidance of doubt, funds on deposit in any Operating Account shall not be "swept" or otherwise transferred or applied by the Administrative Agent unless an Event of Default has occurred and is continuing).

(d) So long as no Default or Event of Default has occurred and is continuing, the Borrowers may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided, however, that (i) such prospective Cash Management Bank shall be reasonably satisfactory to the Agents and the Collateral Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective Cash Management Bank, and (ii) prior to the time of the opening of such Cash Management Account, each Loan Party and such prospective Cash Management Bank shall have executed and delivered to the Collateral Agent a Control Agreement. Each Loan Party shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 45 days of notice from the Collateral Agent that the creditworthiness of any Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment, or that the operating performance, funds transfer, or availability procedures or performance of such Cash Management Bank with respect to Cash Management Accounts or the Collateral Agent's liability under any Control Agreement with such Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment.

(e) Each Borrower recognizes that the amounts evidenced by checks, notes, drafts or any other items of payment relating to and/or proceeds of Collateral may not be collectible by Administrative Agent on the date received by Administrative Agent. Administrative Agent shall conditionally credit the Loan Account for each item of payment on the next Business Day after the Business Day on which such item of payment is received by Administrative Agent (and the Business Day on which each such item of payment is so credited shall be referred to, with respect to such item, as the "Application Date"). Administrative Agent is not, however, required to credit the Loan Account for the amount of any item of payment which is unsatisfactory to Administrative Agent and Administrative Agent may charge the Loan Account for the amount of any item of payment which is returned, for any reason whatsoever, to Administrative Agent unpaid. Subject to the foregoing, Borrowers agree that for purposes of computing the interest charges under this Agreement, each item of payment received by Administrative Agent shall be deemed applied by Administrative Agent on account of the Obligations on its respective Application Date. Borrowers further agree that there is a monthly float charge payable to Administrative Agent for Administrative Agent's sole benefit, in an amount equal to (i) the face amount of all items of payment received during the prior month (including items of payment received by Administrative Agent as a wire transfer or electronic depository check) multiplied by (ii) the interest rate applicable to Revolving Loans that are Reference Rate Loans for one (1) Business Day.

(f) Nothing herein contained shall be construed to constitute any Agent as agent of any Loan Party for any purpose whatsoever, and the Agents shall not be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof (other than from acts of omission or commission constituting gross negligence, bad faith, or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents shall not, under any circumstance or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Accounts Receivable of any Loan Party or any instrument received in payment thereof or for any damage resulting therefrom (other than acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents, by anything herein or in any assignment or otherwise, do not assume any of the obligations under any contract or agreement assigned to any Agent and shall not be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

(g) If any Account Receivable of any Loan Party includes a charge for any tax payable to any Governmental Authority, each Agent is hereby authorized (but in no event obligated) in its discretion to pay the amount thereof to the proper taxing authority for such Loan Party's account and to charge the Borrowers therefor. The Borrowers shall notify the Agents if any Account Receivable of any Loan Party includes any taxes due to any such Governmental Authority and, in the absence of such notice, the Agents shall have the right to retain the full proceeds of such Account Receivable and shall not be liable for any taxes that may be due by reason of the sale and delivery creating such Account Receivable.

Section 8.02 Accounts Receivable Documentation. The Loan Parties will at such intervals as the Agents may require, execute and deliver confirmatory written assignments of the Accounts Receivable to the Agents and furnish such further schedules or information as any such Agent may require relating to the Accounts Receivable, including sales invoices or the equivalent, credit memos issued, remittance advices, reports and copies of deposit slips and copies of original shipping or delivery receipts for all merchandise sold. The items to be provided under this Section 8.02 are to be in form reasonably satisfactory to the Agents and are to be executed and delivered to the Agents from time to time solely for their convenience in maintaining records of the Collateral. The Loan Parties' failure to give any of such items to the Agents shall not affect, terminate, modify or otherwise limit the Collateral Agent's Lien on the Collateral. The Borrowers shall not re-date any invoice or sale or make sales on extended dating beyond that customary in the Borrowers' industry, and shall not re-bill any Accounts Receivable without promptly disclosing the same to the Agents and providing the Agents with a copy of such re-billing, identifying the same as such. If any Borrower becomes aware of anything materially detrimental to any of the Borrowers' customers' credit, the Borrowers will promptly advise the Agents thereof.

## ARTICLE IX

### EVENTS OF DEFAULT

Section 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Collateral Agent Advance or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans or any Reimbursement Obligation) or any other Loan Document, and such failure continues for a period of 3 Business Days or (ii) all or any portion of the principal of the Loans or any Reimbursement Obligation;

(b) (i) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made, or (ii) any representation or warranty contained in Section 6.01(z) is or becomes false or misleading at any time;

(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in Section 7.01(a), Section 7.01(c), Section 7.01(d), Section 7.01(f), Section 7.01(h), Section 7.01(k), Section 7.01(m), Section 7.01(o), Section 7.02 or Section 7.03 or Article VIII, or any Loan Party shall fail to perform or comply with any covenant or agreement contained in any Security Agreement to which it is a party or any Mortgage to which it is a party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 30 days after the earlier of the date any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) any Loan Party shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate amount outstanding in excess of \$1,000,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to

prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) any Loan Party (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against any Loan Party seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 45 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) any Security Agreement, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any Collateral with a fair market value of \$1,000,000 or more purported to be covered thereby;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$1,000,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against any Loan Party and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 10 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not be in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;



(k) any Loan Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its business for more than 20 days;

(l) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 20 consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance would reasonably be expected to have a Material Adverse Effect;

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party, if such loss, suspension, revocation or failure to renew would reasonably be expected to have a Material Adverse Effect;

(n) the indictment of any Loan Party or any senior officer thereof in connection with the performance of the duties of such senior officer for the Parent and its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any senior officer thereof in connection with the performance of the duties of such senior officer for the Parent and its Subsidiaries, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of the Parent or its Subsidiaries;

(o) any Loan Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, any Loan Party or any of its ERISA Affiliates incurs a withdrawal liability in an annual amount exceeding \$1,000,000; or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof any Loan Party's or any of its ERISA Affiliates' annual contribution requirements with respect to such Multiemployer Plan increases in an annual amount exceeding \$500,000;

(p) any Termination Event with respect to any Employee Plan shall have occurred, and, 30 days after notice thereof shall have been given to any Loan Party by any Agent, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan by more than \$500,000 (or, in the case of a Termination Event involving liability under Section 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, the liability is in excess of such amount);

(q) any event that causes liability under Section 409, 502(i) or 502(l) of ERISA in an amount exceeding \$500,000; or

(r) a Change of Control shall have occurred;

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Administrative Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or

any portion of the Loans and Reimbursement Obligations then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans and Reimbursement Obligations, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Premium with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans and Reimbursement Obligations then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, without limitation, the Applicable Premium, shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party. Subject to Section 4.03(b), the Administrative Agent may, after the occurrence and during the continuation of any Event of Default, require the Borrowers to Cash Collateralize each Letter of Credit then outstanding. Such deposits shall be held by the Administrative Agent in the Letter of Credit Collateral Account as security for, and to provide for the payment of, the Letter of Credit Obligations and, upon the payment in full of all Letter of Credit Obligations, the payment of any other Obligations.

## ARTICLE X

### AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other

rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, that the L/C Issuer shall not be required to refuse to honor a drawing under any Letter of Credit and the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation. (a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent (and, with respect to Revolving Loans, Administrative Agent) receive written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent (and, with respect to Revolving Loans, Administrative Agent); (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan

Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any Agent or the L/C Issuer is not reimbursed and indemnified by any Loan Party, and whether or not such Agent or the L/C Issuer has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent or the L/C Issuer, reimburse such Agent and the L/C Issuer for and indemnify such Agent and the L/C Issuer from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent or the L/C Issuer (provided, that in the case of legal expenses, the Borrowers' obligations shall be limited to one counsel to the Collateral Agent, one counsel to the Administrative Agent, one counsel to the other Lenders, and one local counsel in each relevant jurisdiction (unless a conflict arises, in which case the reasonable and documented fees and expenses of each conflicts counsel shall also be reimbursed by the Borrowers)), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent or the L/C Issuer in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent or the L/C Issuer under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation,

advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or the L/C Issuer's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06 Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent. (a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders, the L/C Issuer and the Administrative Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Administrative Borrower, to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders and the L/C Issuer, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by such Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender and L/C Issuer directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) Any Agent may from time to time make such disbursements and advances ("Agent Advances") which such Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrowers of the Loans, Reimbursement Obligations, Letter of Credit Obligations and other Obligations or to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 12.04. The Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Loans that are Reference Rate Loans. The Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Agent making the Agent Advance shall notify the other Agent and each Lender and the Administrative Borrower in writing of each such Agent Advance, which notice shall include a description of the purpose of such Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Agent making the Agent Advance, upon such Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Agent Advance. If such funds are not made available to the Agent making such Agent Advance by such Lender, such Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to such Agent, at the Federal Funds Effective Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans, Reimbursement Obligations, Letter of Credit Obligations, and all other Obligations (other than Contingent Indemnification Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which,

in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents



and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be reasonably necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program.

(a) Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Terrorism Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

(b) Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to each Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(c) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, any Agent or Lender may from time to time request, and each Loan Party shall provide to such Agent or Lender, such Borrower's name, address, tax identification number and/or such other identifying information as shall be necessary for Lender to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

Section 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Parent or any of its Subsidiaries (each, a "Report") prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will rely significantly upon the Parent's and its Subsidiaries' books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrowers, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any

time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and charged to the Loan Account.

Section 10.15 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan or Reimbursement Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Reimbursement Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents (provided, that in the case of legal expenses, the Borrowers' obligations shall be limited to one counsel to the Collateral Agent, one counsel to the Administrative Agent, one counsel to the other Lenders, and one local counsel in each relevant jurisdiction (unless a conflict arises, in which case the reasonable and documented fees and expenses of each conflicts counsel shall also be reimbursed by the Borrowers)) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

## **ARTICLE XI**

### **GUARANTY**

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation,

all interest that accrues after the commencement of any Insolvency Proceeding of any Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding), Letter of Credit Obligations, fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrowers, being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Borrower. Notwithstanding any of the foregoing, Guaranteed Obligations shall not include any Excluded Hedge Liabilities. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, its Loans, the Reimbursement Obligations and the Letter of Credit Obligations owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not

such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related

payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

Section 11.07 Keepwell. Each Loan Party, if it is a Qualified ECP Loan Party, then jointly and severally, together with each other Qualified ECP Loan Party, hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any other Loan Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 11.07 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.07, or otherwise under this Agreement or any other Loan Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 11.07 shall remain in full force and effect until payment in full (or written release and discharge) of the Obligations and termination of this Agreement and the other Loan Documents. Each Qualified ECP Loan Party intends that this Section 11.07 constitute, and this Section 11.07 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Borrower and Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the CEA.

## ARTICLE XII

### MISCELLANEOUS

#### Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telecopier. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

ALJ Regional Holdings, Inc.  
244 Madison Avenue, PMB 358  
New York, New York 10016  
Attention: Jess M. Ravich  
Telephone: 213-244-0045  
Email: jessravich@gmail.com

with a copy to (which shall not constitute notice):

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022

Attention: Christopher M. Forrester  
Telephone: (650) 838-3772  
Telecopier: (650) 838-3699  
Email: Chris.Forrester@Shearman.com

and

Attention: Michael J. Steinberg  
Telephone: (212) 848-8213  
Telecopier: (646) 848-8213  
Email: Michael.Steinberg@Shearman.com

if to the Administrative Agent, to it at the following address:

PNC Bank, National Association  
1600 Market Street  
Philadelphia, PA 19103  
Attention: Jacqueline MacKenzie  
Telephone: 215-585-2056  
Telecopier: 215-585-4771  
Email: [jacqueline.mackenzie@pnc.com](mailto:jacqueline.mackenzie@pnc.com)

in each case, with a copy to (which shall not constitute notice):

Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103  
Attention: Michael C. Graziano  
Telephone: 215-569-5387  
Facsimile: 215-832-5387  
Email: graziano@blankrome.com

if to the Collateral Agent, to it at the following address:

Cerberus Business Finance, LLC  
875 Third Avenue  
New York, New York 10022  
Attention: Kevin Genda  
Telephone: 212-891-1550  
Telecopier: 212-891-1541  
Email: kgenda@cerberuscapital.com



in each case, with a copy to (which shall not constitute notice):

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Frederic L. Ragucci  
Telephone: 212-756-2000  
Telecopier: 212-593-5955  
Email: Frederic.Ragucci@srz.com

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further that notices to any Agent or the L/C Issuer pursuant to Articles II and III shall not be effective until received by such Agent or the L/C Issuer, as the case may be.

(b) Electronic Communications.

(i) Each Agent and the Administrative Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Articles II and III if such Lender or the L/C Issuer, as applicable, has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 12.02 Amendments, Etc. (a) No amendment or waiver of any provision of this Agreement or any other Loan Document (excluding the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the

same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrowers (or by the Administrative Borrower on behalf of the Borrowers), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans or the Reimbursement Obligations payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans or Letter of Credit Obligations payable to any Lender, in each case, without the written consent of such Lender;

(ii) increase the Total Commitment without the written consent of each Lender;

(iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iv) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(v) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, or release any Borrower or any Guarantor (except in connection with a Disposition of the Equity Interests thereof permitted by Section 7.02(c)(ii)), in each case, without the written consent of each Lender;

(vi) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 of this Agreement without the written consent of each Lender; or

(vii) amend the definition of "Availability", "Bank Product Provider", "Bank Product Obligations" (or any provision expressly relating to Bank Product Obligations), "Bank Product Reserve," "Borrowing Base", "Eligible Accounts Receivable", "Excess Availability", "Excluded Hedge Liability" (or any provision expressly relating to Excluded Hedge Liabilities), "Individual Advance Amount", "Lender-Provided Hedge Agreement", "Letter of Credit Sublimit", or "Net Amount of Eligible Accounts Receivable", in each case, without the written consent of each Lender.

Notwithstanding the foregoing, (A) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents, (B) any amendment,

waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party, any Permitted Holder (or other equity holder of the Parent) or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 and/or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby and (C) the consent of the Borrowers shall not be required to change any order of priority set forth in Section 2.05(d) and Section 4.03 Notwithstanding anything to the contrary herein, no Defaulting Lender, Loan Party, Permitted Holder (or other equity holder of the Parent) or any of their respective Affiliates that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party, Permitted Holder (or other equity holder of the Parent) or Affiliate).

(b) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender other than the Collateral Agent and the Administrative Agent and their respective Affiliates and Related Funds (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Taxes; Attorneys' Fees. Subject to limitations set forth in Section 2.06(c) with respect to the Borrowers' reimbursement obligations of certain fees and expenses, the Borrowers will pay on demand, all costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (b) through (n) below, each Lender), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable and documented fees, costs, client charges and expenses of counsel (provided, that in the case of legal expenses, the Borrowers' obligations shall be limited to one counsel to the Collateral Agent, one counsel to the Administrative Agent, one counsel to the other Lenders, and one local counsel in each relevant jurisdiction (unless a conflict arises, in which case the reasonable and documented fees and expenses of each conflicts counsel shall also be reimbursed by the Borrowers), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) all liabilities and costs arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property, (k) any Environmental Liabilities and Costs incurred in connection with the investigation, removal, cleanup and/or remediation of any Hazardous Materials present or arising out of the operations of any Facility of any Loan Party, (l) any Environmental Liabilities and Costs incurred in connection with any Environmental Lien, (m) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (n) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrowers agree to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter determined by any Agent or any Lender to be payable in connection with this Agreement or any other Loan Document, and the Borrowers agree to save each Agent and each Lender harmless from and against any and all present or future claims, liabilities or losses with

respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions, (y) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents, and (z) if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers. The obligations of the Borrowers under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of 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 portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may (after consultation with the Parent) assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to:

(i) all or a portion of its Term Loan Commitment and any Term Loan made by it with the written consent of the Collateral Agent, and

(ii) all or a portion of its Revolving Credit Commitment and the Revolving Loans made by it with the written consent of each Agent;

provided, however, that no written consent of the Collateral Agent or the Administrative Agent shall be required (A) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof); and

(ii) Except as provided in the last sentence of this Section 12.07(c)(ii), the parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender). Notwithstanding anything to the contrary contained in this Section 12.07(c)(ii), a Lender may assign any or all of its rights under the Loan Documents to an Affiliate of such Lender or a Related Fund of such Lender without delivering an Assignment and Acceptance to the Agents or to any other Person (a "Related Party Assignment"); provided, however, that (A) the Borrowers and the Administrative Agent may continue to deal solely and directly with such assigning Lender until an Assignment and Acceptance has been delivered to the Administrative Agent for recordation on the Register, (B) the Collateral Agent may continue to deal solely and directly with such assigning Lender until receipt by the Collateral Agent of a copy of the fully executed Assignment and Acceptance pursuant to Section 12.07(g), (C) the failure of such assigning Lender to deliver an Assignment and Acceptance to the Agents shall not affect the legality, validity, or binding effect of such assignment, and (D) an Assignment and Acceptance between the assigning Lender and an Affiliate of such Lender or a Related Fund of such Lender shall be effective as of the date specified in such Assignment and Acceptance and recordation on the Related Party Register referred to in the last sentence of Section 12.07(f) below; and

(iii) No such assignment shall be made to (A) any Loan Party, any Permitted Holder (or other equity holder of the Parent) or any of their respective Affiliates or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least 3 Business Days after the delivery thereof to the Collateral Agent (or such shorter period as shall be agreed to by the Collateral Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans")

and Letter of Credit Obligations owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Agents and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. In the case of an assignment pursuant to the last sentence of Section 12.07(c)(ii) as to which an Assignment and Acceptance is not delivered to the Administrative Agent, the assigning Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained, a register (the "Related Party Register") comparable to the Register on behalf of the Borrowers. The Related Party Register shall be available for inspection by the Borrowers and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register or the Related Party Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register or the Related Party Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the Agents shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered on the Register as the owner thereof for the purpose of receiving all payments thereon, notwithstanding notice to the contrary.

(i) In the event that any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrowers, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each



registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Administrative Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(j) Any Person who purchases or is assigned or participates in any portion of such Registered Loan shall be entitled to the benefits of Section 2.09 and Section 2.10 of this Agreement with respect to its portion in any such Registered Loan (subject to the requirements and limitations therein, including the requirements under Section 2.09(d)).

(k) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments, the Loans made by it and its Pro Rata Share of the Letter of Credit Obligations); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans or Letter of Credit Obligations, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.09 and Section 2.10 of this Agreement with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender.

(l) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to such Lender pursuant to securitization or similar credit facility (a "Securitization"); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect the Securitization including, without limitation, by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or the Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or

electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH

IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each Loan Party hereby irrevocably appoints National Corporate Research, Ltd. (the "Process Agent"), with an office on the date hereof at 10 E. 40<sup>th</sup> Street, 10<sup>th</sup> Floor, New York, NY 10016 as its agent to receive on behalf of each Loan Party service of the summons and complaint and any other process which may be served in any action or proceeding described above. Such service may be made by mailing or delivering a copy of such process to each Loan Party, in care of the Process Agent at the address specified above for such Process Agent, and such Loan Party hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Administrative Borrower,

and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Affiliates, officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses; provided, that, in the case of legal expenses, the Loan Parties' obligations shall be limited to one counsel to the Collateral Agent, one counsel to the Administrative Agent and the Lenders and one local counsel in each relevant jurisdiction (unless a conflict arises, in which case the reasonable, documented fees and expenses of each conflicts counsel shall also be reimbursed by the Loan Parties)) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers or the L/C Issuer's issuing of Letters of Credit for the account of the Borrowers under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans, the Reimbursement Obligations or the Letter of Credit Obligations or the Borrowers' use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Administrative Borrower or the handling of the Loan Account and Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to

pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the

Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrowers); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrowers). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term "applicable law" shall mean that law in effect from time to time and applicable to the loan transaction between the Borrowers, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such

Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates and to its and its Affiliates' respective equityholders (including, without limitation, partners), directors, officers, employees, agents, trustees, counsel, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 12.19; (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency or otherwise to the extent consisting of general portfolio information that does not identify Loan Parties; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; or (viii) with the consent of the Administrative Borrower.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrowers, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrowers, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrowers in accordance with the USA PATRIOT Act. Each Loan Party

agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act

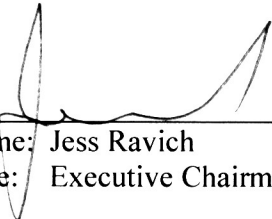
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWERS:**

**ALJ REGIONAL HOLDINGS, INC.**

By:   
Name: Jess Ravich  
Title: Executive Chairman

**FANEUIL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FLOORS-N-MORE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**PHOENIX COLOR CORP.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWERS:

**ALJ REGIONAL HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FANEUIL, INC.**

By: Anna Van Buren  
Name: Anna Van Buren  
Title: Chief Executive Officer

**FLOORS-N-MORE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**PHOENIX COLOR CORP.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWERS:**

**ALJ REGIONAL HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FANEUIL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FLOORS-N-MORE, LLC**

By:  \_\_\_\_\_  
Name: Steve Chesin  
Title: Chief Executive Officer

**PHOENIX COLOR CORP.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWERS:

**ALJ REGIONAL HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:


**FANEUIL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FLOORS-N-MORE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

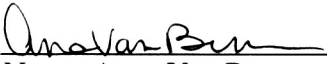
**PHOENIX COLOR CORP.**

By:  \_\_\_\_\_  
Name: John Carbone  
Title: President

GUARANTORS:

**FANEUIL TOLL OPERATIONS LLC**

By: Fanueil, Inc., its sole member

By:   
Name: Anna Van Buren  
Title: Chief Executive Officer

**PCC EXPRESS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PHOENIX (MD) REALTY, LLC**


By: \_\_\_\_\_  
Name:  
Title:

GUARANTORS:

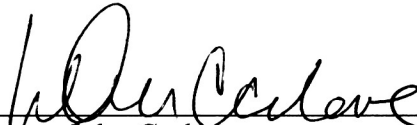
**FANEUIL TOLL OPERATIONS LLC**

By: \_\_\_\_\_  
Name:  
Title:

**PCC EXPRESS, INC.**

By:  \_\_\_\_\_  
Name: John Carbone  
Title: President

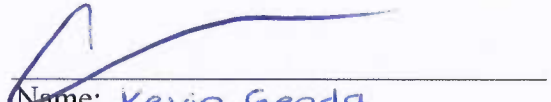
**PHOENIX (MD.) REALTY, LLC**

By:  \_\_\_\_\_  
Name: John Carbone  
Title: President

COLLATERAL AGENT:

**CERBERUS BUSINESS FINANCE, LLC**

By:

  
Name: Kevin Genda  
Title: Vice Chairman

ADMINISTRATIVE AGENT AND  
LENDER:

**PNC BANK, NATIONAL ASSOCIATION**

By: *Keith Moellering*  
Name: Keith Moellering  
Title: Senior Vice President

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LENDERS:

**CERBERUS NJ CREDIT  
OPPORTUNITIES FUND, L.P.**

By: Cerberus NJ Credit Opportunities GP,  
LLC

Its: General Partner

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

Name: Kevin Genda

Title: Senior Managing Director

**CERBERUS ASRS HOLDINGS LLC**

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

Name: Kevin Genda

Title: Vice President

**CERBERUS ICQ LEVERED LOAN  
OPPORTUNITIES FUND, L.P.**

By: Cerberus ICQ Levered Opportunities GP,  
LLC

Its: General Partner

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

Name: Kevin Genda

Title: Senior Managing Director

**CERBERUS KRS LEVERED LOAN  
OPPORTUNITIES FUND, L.P.**

By: Cerberus KRS Levered Opportunities GP,  
LLC

Its: General Partner

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

Name: Kevin Genda

Title: Senior Managing Director