

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended July 1, 2017

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File No. 0-19621

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
(Exact name of registrant as specified in its charter)

Minnesota
(State or other jurisdiction of
incorporation or organization)

41-1454591
(I.R.S. Employer
Identification No.)

175 Jackson Avenue North Suite 102, Minneapolis, Minnesota
(Address of principal executive offices)

55343
(Zip Code)

952-930-9000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.
 Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
 Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one)

Large accelerated filer
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of August 21, 2017, there were outstanding 6,655,365 shares of the registrant's Common Stock, without par value.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

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PART I. FINANCIAL INFORMATION
Item 1. Condensed Consolidated Financial Statements

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands)

| | <u>July 1, 2017</u> | <u>December 31, 2016</u> |
|---|-------------------------|------------------------------|
| | (Unaudited) | |
| Assets | | |
| Cash and cash equivalents | \$ 191 | \$ 968 |
| Trade and other receivables, net | 8,789 | 10,509 |
| Inventories, net | 12,574 | 16,291 |
| Income tax receivable | - | 16 |
| Prepaid expenses and other current assets | 2,326 | 761 |
| Total current assets | <u>23,880</u> | <u>28,545</u> |
| Property and equipment, net | 7,989 | 10,116 |
| Restricted cash | 1,298 | 500 |
| Deposits and other assets | 871 | 614 |
| Deferred taxes | 1,487 | 2,081 |
| Total assets | <u>\$ 35,525</u> | <u>\$ 41,856</u> |
| Liabilities and Stockholders' Equity | | |
| Liabilities: | | |
| Accounts payable | \$ 4,836 | \$ 6,143 |
| Accrued liabilities | 8,607 | 8,888 |
| Line of credit - PNC Bank | - | 10,333 |
| Accrued income taxes | 1,200 | - |
| Current portion of long term maturities | 2,054 | 2,093 |
| Total current liabilities | <u>16,697</u> | <u>27,457</u> |
| Long term obligations, less current maturities | 3,365 | 2,826 |
| Other noncurrent liabilities | 328 | 364 |
| Total liabilities | <u>20,390</u> | <u>30,647</u> |
| Stockholders' equity: | | |
| Common stock, no par value, 50,000 shares authorized, 6,655 shares issued and outstanding at July 1, 2017 and December 31, 2016 | 22,437 | 22,405 |
| Accumulated deficit | (6,757) | (11,028) |
| Accumulated other comprehensive loss | (538) | (574) |
| Total stockholders' equity | <u>15,142</u> | <u>10,803</u> |
| Non controlling interest | (7) | 406 |
| Total liabilities and stockholders' equity | <u>\$ 35,525</u> | <u>\$ 41,856</u> |

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)
(in Thousands)

| | <u>13 Weeks Ended</u> | | <u>26 Weeks Ended</u> | |
|--|-----------------------|---------------------|-----------------------|---------------------|
| | <u>July 1, 2017</u> | <u>July 2, 2016</u> | <u>July 1, 2017</u> | <u>July 2, 2016</u> |
| Revenues | \$ 25,782 | \$ 24,756 | \$ 49,021 | \$ 50,101 |
| Cost of revenues | 17,063 | 18,320 | 34,279 | 37,474 |
| Gross profit | <u>8,719</u> | <u>6,436</u> | <u>14,742</u> | <u>12,627</u> |
| Operating expenses: | | | | |
| Selling, general and administrative expenses | 6,134 | 7,529 | 13,866 | 14,507 |
| Operating income (loss) | 2,585 | (1,093) | 876 | (1,880) |
| Other income (expense): | | | | |
| Gain on the sale of property | – | – | 5,163 | – |
| Interest expense, net | (132) | (304) | (429) | (587) |
| Other income (expense) | 62 | (26) | 67 | 94 |
| Total other income (expense), net | <u>(70)</u> | <u>(330)</u> | <u>4,801</u> | <u>(493)</u> |
| Income (loss) before provision for income taxes | 2,515 | (1,423) | 5,677 | (2,373) |
| Total provision (benefit) for income taxes | 602 | 758 | 1,819 | 438 |
| Net income (loss) | 1,913 | (2,181) | 3,858 | (2,811) |
| Net loss attributed to noncontrolling interest | 150 | 78 | 413 | 257 |
| Net income (loss) attributed to controlling interest | <u>\$ 2,063</u> | <u>\$ (2,103)</u> | <u>\$ 4,271</u> | <u>\$ (2,554)</u> |
| Earnings (loss) per share: | | | | |
| Basic and Diluted | \$ 0.31 | \$ (0.35) | \$ 0.64 | \$ (0.43) |
| Diluted | <u>\$ 0.31</u> | <u>\$ (0.35)</u> | <u>\$ 0.64</u> | <u>\$ (0.43)</u> |
| Weighted average common shares outstanding: | | | | |
| Basic | 6,655 | 5,929 | 6,655 | 5,915 |
| Diluted | <u>6,687</u> | <u>5,929</u> | <u>6,706</u> | <u>5,915</u> |
| Net income (loss) | \$ 1,913 | \$ (2,181) | \$ 3,858 | \$ (2,811) |
| Other comprehensive income (loss), net of tax | | | | |
| Effect of foreign currency translation adjustments | 23 | 24 | 36 | 43 |
| Total other comprehensive income (loss), net of tax | 23 | 24 | 36 | 43 |
| Comprehensive income (loss) | 1,936 | (2,157) | 3,894 | (2,768) |
| Comprehensive loss attributable to noncontrolling interest | 150 | 78 | 413 | 257 |
| Comprehensive income (loss) attributable to controlling interest | <u>\$ 2,086</u> | <u>\$ (2,079)</u> | <u>\$ 4,307</u> | <u>\$ (2,511)</u> |

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

| | 26 Weeks Ended | |
|---|-----------------------|---------------------|
| | July 1, 2017 | July 2, 2016 |
| OPERATING ACTIVITIES: | | |
| Net income | \$ 3,858 | \$ (2,811) |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities: | | |
| Depreciation and amortization | 609 | 634 |
| Amortization of debt issuance costs | 135 | 89 |
| Stock based compensation expense | 32 | 141 |
| Gain on sale of property | (5,163) | - |
| Change in reserve for uncollectible accounts receivable | (27) | - |
| Change in reserve for inventory obsolescence | 32 | - |
| Change in deferred income taxes | 594 | 439 |
| Other | (291) | (37) |
| Changes in assets and liabilities: | | |
| Trade and other receivables | 1,777 | 4,917 |
| Prepaid expenses and other current assets | (1,566) | (145) |
| Inventories | 3,697 | 801 |
| Accounts payable and accrued expenses | (1,605) | 744 |
| Accrued income taxes | 1,216 | 885 |
| Net cash provided by operating activities | <u>3,298</u> | <u>5,657</u> |
| INVESTING ACTIVITIES: | | |
| Purchases of property and equipment | (104) | (193) |
| Proceeds from sale of property, net | 6,785 | - |
| Increase in restricted cash | (798) | - |
| Other | - | (3) |
| Net cash provided by (used) in investing activities | <u>5,883</u> | <u>(196)</u> |
| FINANCING ACTIVITIES: | | |
| Net payments under line of credit - PNC Bank | (10,333) | (4,882) |
| Net borrowing under the line of credit - MidCap Financial Trust | 1,066 | - |
| Proceeds from issuance of long term debt obligations | 1,070 | 100 |
| Payment of debt issuance costs | (344) | (125) |
| Payments on debt obligations | (1,427) | (307) |
| Net cash used in financing activities | <u>(9,968)</u> | <u>(5,214)</u> |
| Effect of changes in exchange rate on cash and cash equivalents | 10 | 33 |
| (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS | (777) | 280 |
| CASH AND CASH EQUIVALENTS, beginning of period | 968 | 1,969 |
| CASH AND CASH EQUIVALENTS, end of period | <u>\$ 191</u> | <u>\$ 2,249</u> |
| Supplemental cash flow disclosures: | | |
| Interest paid | \$ 304 | \$ 213 |
| Income taxes refunded (paid) | \$ (48) | \$ 871 |
| Noncash financing and investing activities: | | |
| Debt issuance costs related to credit agreement renewal | \$ - | \$ 63 |

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
NOTES TO CONDENSED UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands)

1. Nature of Business and Basis of Presentation

Appliance Recycling Centers of America, Inc. and subsidiaries (“we,” the “Company” or “ARCA”) are in the business of providing turnkey appliance recycling and replacement services for electric utilities and other sponsors of energy efficiency programs. We also sell new major household appliances through a chain of Company-owned stores under the name ApplianceSmart[®]. In addition, we have a 50% interest in a joint venture operating under the name ARCA Advanced Processing, LLC (“AAP”), which recycles appliances from twelve states in the Northeast and Mid-Atlantic regions of the United States.

The accompanying balance sheet as of December 31, 2016 which has been derived from the audited consolidated financial statements and the unaudited consolidated financial statements have been prepared by the Company in accordance with generally accepted accounting principles (“GAAP”) in the United States of America for interim financial information and Article 8 of Regulation S-X promulgated by the United States Securities and Exchange Commission (the “SEC”). Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, normal and recurring adjustments and accruals considered necessary for a fair presentation for the periods indicated have been included. Operating results for the three-month and six-month periods ended July 1, 2017 and July 2, 2016, are presented using 13-week and 26-week periods, respectively. The results of operations for any interim period are not necessarily indicative of the results for the year.

In preparation of the Company’s condensed consolidated financial statements, management is required to make estimates and assumptions that affect reported amounts of assets and liabilities and related revenues and expenses during the reporting periods. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates.

These condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and related notes thereto for the year ended December 31, 2016, included in the Company’s Annual Report on Form 10-K filed with the SEC on March 31, 2017.

Principles of consolidation: The consolidated financial statements include the accounts of Appliance Recycling Centers of America, Inc. and our subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

ApplianceSmart, Inc., a Minnesota corporation, is a wholly owned subsidiary that was formed through a corporate reorganization in July 2011 to hold our business of selling new major household appliances through a chain of Company-owned retail stores. ARCA Canada Inc., a Canadian corporation, is a wholly owned subsidiary that was formed in September 2006 to provide turnkey recycling services for electric utility energy efficiency programs. ARCA Recycling, Inc., a California corporation, is a wholly owned subsidiary that was formed in November 1991 to provide turnkey recycling services for electric utility energy efficiency programs. The operating results of our wholly owned subsidiaries are consolidated in our financial statements.

AAP is a joint venture that was formed in October 2009 between ARCA and 4301 Operations, LLC (“4301”). ARCA and 4301 owned a 50% interest in AAP through August 15, 2017. AAP established a regional processing center in Philadelphia, Pennsylvania at which recyclable appliances are processed. The financial position and results of operations of AAP are consolidated in our financial statements based on our conclusion that AAP is a variable interest entity due to our contribution in excess of 50% of the total equity, subordinated debt and other forms of financial support. We had a controlling financial interest in AAP and we have provided substantial financial support to fund the operations of AAP since its inception. On August 15, 2017, subsequent to these condensed consolidated financial statements, ARCA sold its 50% interest in AAP. See Note 14 to these condensed consolidated financial statements.

On August 18, 2017, subsequent to these condensed consolidated financial statements, we acquired GeoTraq, Inc. (“GeoTraq”). GeoTraq is a development stage company that is engaged in the development, manufacture, and, ultimately, sale of cellular transceiver modules, also known as Cell-ID modules. GeoTraq has created the world’s first, and only, dedicated Cell-ID transceiver module that can enable the design of extremely small, inexpensive products that can operate for years on a single charge, powered by standardly available batteries of diminutive size without the need of recharge. Accordingly, and utilizing Cell-ID technology exclusively, we believe that GeoTraq will provide an exclusive, low-cost solution and service life that will enable new global markets for location-based services (LBS) that could utilize technology similar to the technology that emergency 911 location systems currently utilize.

The GeoTraq platform is a Java-based, scalable, multi-tenant software, designed to manage an unlimited number of Cell-ID devices. Cell-ID transceivers work indoors, unlike GPS, which are only accurate outdoors. Cell-ID transceivers do not require close proximity for asset tracking, unlike both RFID and Wi-Fi. GPS devices are more expensive and utilize significantly more energy than the GeoTraq device. RFID technology will operate indoors, but only over short distances and requires installation of additional hardware.

As a result of this transaction, GeoTraq became a wholly-owned subsidiary of ours. In connection with this transaction, we tendered to the owners of GeoTraq \$200,000, issued to them an aggregate of 288,588 shares of our Series A Convertible Preferred Stock, and entered into one-year unsecured promissory notes for an aggregate of \$800,000. We are in discussions with our bank in respect of harmonizing this transaction with our rights and obligations under our banking agreement. As the information set forth herein is merely a descriptive summary of the transaction, it cannot contain every detail of the transaction. The agreement between GeoTraq and us is filed with this Report as Exhibit 10.9. See Note 14 to these condensed consolidated financial statements.

2. Inventories

Inventories, consisting principally of appliances, are stated at the lower of cost, determined on a specific identification basis, or net realizable value and consist of:

| | July 1, 2017 | December 31, 2016 |
|---|------------------|----------------------|
| Appliances held for resale | \$ 12,456 | \$ 16,146 |
| Processed metals from recycled appliances held for resale | 118 | 139 |
| Other | – | 6 |
| | <u>\$ 12,574</u> | <u>\$ 16,291</u> |

We provide estimated provisions for the obsolescence of our appliance inventories, including adjustments to market, based on various factors, including the age of such inventory and our management's assessment of the need for such provisions. We look at historical inventory aging's and margin analysis in determining our provision estimate. A revised cost basis is used once a provision for obsolescence is recorded.

3. Earnings per share

Basic income per common share is computed based on the weighted average number of common shares outstanding. Diluted income per common share is computed based on the weighted average number of shares of common stock outstanding adjusted by the number of additional shares that would have been outstanding had the potentially dilutive shares of common stock been issued. Potentially dilutive shares of common stock include unexercised stock options and warrants. Basic per share amounts are computed, generally, by dividing net income attributable to controlling interest by the weighted average number of shares of common stock outstanding. Diluted per share amounts assume the conversion, exercise or issuance of all potential common stock instruments unless their effect is anti-dilutive, thereby reducing the loss or increasing the income per common share. In calculating diluted weighted average shares and per share amounts, we included stock options and warrants with exercise prices below average market prices, for the respective reporting periods in which they were dilutive, using the treasury stock method. We calculated the number of additional shares by assuming the outstanding stock options were exercised and that the proceeds from such exercises were used to acquire shares of common stock at the average market price during the quarter. For the 13 weeks and 26 weeks ended July 1, 2017 and July 2, 2016, we excluded options and warrants to purchase 734 and 734 shares of common stock from the diluted weighted average shares outstanding calculation as the effect of these options were anti-dilutive.

| | 13 Weeks Ended | | 26 Weeks Ended | |
|---|----------------|--------------|----------------|--------------|
| | July 1, 2017 | July 2, 2016 | July 1, 2017 | July 2, 2016 |
| <i>Basic</i> | | | | |
| Net income (loss) attributed to controlling interest | \$ 2,063 | \$ (2,103) | \$ 4,271 | \$ (2,554) |
| Weighted average common shares outstanding | 6,655 | 5,929 | 6,655 | 5,915 |
| Basic earnings (loss) per share | \$ 0.31 | \$ (0.35) | \$ 0.64 | \$ (0.43) |
| <i>Diluted</i> | | | | |
| Net income (loss) applicable to diluted earnings (loss) per share | \$ 2,063 | \$ (2,103) | \$ 4,271 | \$ (2,554) |
| Weighted average common shares outstanding | 6,655 | 5,929 | 6,655 | 5,915 |
| Add: Options | — | — | — | — |
| Add: Common Stock Warrants | 32 | — | 51 | — |
| Assumed diluted weighted average common shares outstanding | 6,687 | 5,929 | 6,706 | 5,915 |
| Diluted earnings (loss) per share | \$ 0.31 | \$ (0.35) | \$ 0.64 | \$ (0.43) |

4. Share-based compensation

We recognized share-based compensation expense of \$9 and \$102 for the 13 weeks ended July 1, 2017, and July 2, 2016 respectively. We recognized share-based compensation expense of \$32 and \$140 for the 26 weeks ended July 1, 2017 and July 2, 2016, respectively. There is no estimated future share-based compensation expense as of July 1, 2017.

5. Variable interest entity

The financial position and results of operations of AAP are consolidated in our financial statements based on our conclusion that AAP is a variable interest entity due to our contribution in excess of 50% of the total equity, subordinated debt and other forms of financial support. We have provided substantial financial support to fund the operations of AAP since its inception. The financial position and results of operations for AAP are reported in our recycling segment. On August 15, 2017, we sold our 50% interest in AAP. See Note 14 – Subsequent Events to these condensed consolidated financial statements.

The following table summarizes the assets and liabilities of AAP as of July 1, 2017 and December 31, 2016:

| | July 1, 2017 | December 31, 2016 |
|---|-----------------|----------------------|
| <i>Assets</i> | | |
| Current assets | \$ 293 | \$ 438 |
| Property and equipment, net | 6,933 | 7,322 |
| Other assets | 93 | 83 |
| Total assets | \$ 7,319 | \$ 7,843 |
| <i>Liabilities</i> | | |
| Accounts payable | \$ 2,569 | \$ 1,388 |
| Accrued expenses | 585 | 523 |
| Current maturities of long-term debt obligations | 728 | 3,558 |
| Long-term debt obligations, net of current maturities | 3,166 | 435 |
| Other liabilities (a) | 289 | 1,126 |
| Total liabilities | \$ 7,337 | \$ 7,030 |

(a) Other liabilities represent loans and advances between ARCA and AAP that are eliminated in consolidation.

The following table summarizes the operating results of AAP for the 13 weeks and 26 weeks ended July 1, 2017, and July 2, 2016, respectively:

| | 13 Weeks Months Ended | |
|----------------|-----------------------|--------------|
| | July 1, 2017 | July 2, 2016 |
| Revenues | \$ 642 | \$ 1,695 |
| Gross profit | 100 | 319 |
| Operating loss | (236) | (93) |
| Net loss | (299) | (159) |

| | 26 Weeks Ended | |
|----------------|----------------|--------------|
| | July 1, 2017 | July 2, 2016 |
| Revenues | \$ 1,127 | \$ 3,480 |
| Gross profit | (14) | 475 |
| Operating loss | (708) | (364) |
| Net loss | (826) | (514) |

6. Property and equipment

Property and equipment as of July 1, 2017, and December 31, 2016, consist of the following:

| | Useful Life (Years) | July 1, 2017 | December 31, 2016 |
|--|------------------------|-----------------|----------------------|
| Land | | \$ - | \$ 1,140 |
| Buildings and improvements | 18-30 | 2,288 | 3,780 |
| Equipment (including computer software) | 3-15 | 18,687 | 19,260 |
| Projects under construction | | 205 | 204 |
| Property and equipment | | 21,180 | 24,384 |
| Less accumulated depreciation and amortization | | (13,191) | (14,268) |
| Property and equipment, net | | \$ 7,989 | \$ 10,116 |

Depreciation and amortization expense was \$284 and \$309 for the 13 weeks ended July 1, 2017 and July 2, 2016, respectively. Depreciation and amortization expense was \$609 and \$634 for the 26 weeks ended July 1, 2017 and July 2, 2016, respectively.

On January 25, 2017, the Company sold its Compton, California facility (the "Compton Facility") for \$7,103 to Terreno Acacia, LLC. The proceeds from the sale paid off the PNC term loan in the aggregate principal amount of \$1,020 that was secured by the property and costs of sale of \$325, with the remaining proceeds of \$5,758 paid towards the PNC Revolver (as defined below). The Company recorded a gain on the sale of property of \$5,163. The Company rented the Compton Facility back from Terreno Acacia, LLC after the completion of the sale from January 26, 2017 through April 10, 2017.

7. Deposits and other assets

Deposits and other assets as of July 1, 2017, and December 31, 2016, consist of the following:

| | July 1, 2017 | December 31, 2016 |
|-------------------------|-----------------|----------------------|
| Deposits | \$ 578 | \$ 453 |
| Other | 236 | 104 |
| Recycling contract, net | 19 | 19 |
| Goodwill | 38 | 38 |
| | \$ 871 | \$ 614 |

For the 13 weeks and 26 weeks ended July 1, 2017, we recorded amortization expense of \$0, related to our finite intangible assets.

8. Accrued liabilities

Accrued liabilities as of July 1, 2017, and December 31, 2016, consist of the following:

| | July 1, 2017 | December 31, 2016 |
|---|-----------------|----------------------|
| Sales tax estimates, including interest | \$ 4,573 | \$ 4,203 |
| Compensation and benefits | 1,147 | 2,431 |
| Accrued incentive and rebate checks | 471 | 358 |
| Accrued rent | 242 | 263 |
| Warranty | 42 | 26 |
| Accrued payables | 1,196 | 570 |
| Deferred revenue | 350 | 227 |
| Other | 586 | 810 |
| | <u>\$ 8,607</u> | <u>\$ 8,888</u> |

Sales and Use Tax Assessment

We operate in twenty-three states in the U.S. and in various provinces in Canada. From time to time, we are subject to sales and use tax audits that could result in additional taxes, penalties and interest owed to various taxing authorities.

As previously disclosed, the California Board of Equalization (“BOE”) conducted a sales and use tax examination covering the California operations of the Company for 2011, 2012 and 2013. The Company believed it was exempt from collecting sales taxes under service agreements with utility customers that included appliance replacement programs. During the fourth quarter of 2014, the Company received communication from the BOE indicating they were not in agreement with the Company’s interpretation of the law. As a result, the Company applied for and, as of February 9, 2015, received approval to participate in the California Board of Equalization’s Managed Audit Program. The period covered under this program included 2011, 2012, 2013 and extended through the nine-month period ended September 30, 2014.

On April 13, 2017 the Company received the formal BOE assessment for sales tax for tax years 2011, 2012 and 2013 in the amount of \$4.1 million plus applicable interest of \$0.5 million related to the appliance replacement programs that we administered on behalf of our customers on which we did not assess, collect or remit sales tax. The Company intends to appeal this assessment and continue to engage the services of our existing retained sales tax experts throughout the appeal process. The BOE tax assessment is subject to protest and appeal, and would not need to be funded until the matter has been fully resolved through the appeal process. The Company anticipates that resolution of the BOE assessment could take up to two years.

9. Line of credit - PNC Bank

We had a Revolving Credit, Term Loan and Security Agreement, as amended, (“PNC Revolver”) with PNC Bank, National Association (“PNC”) that provided us with a \$15,000 revolving line of credit. The Revolving Credit Agreement included a lockbox agreement and a subjective acceleration clause and as a result we have classified the revolving line of credit as a current liability. The PNC Revolver was collateralized by a security interest in substantially all of our assets and PNC was also secured by an inventory repurchase agreement with Whirlpool Corporation solely with respect to Whirlpool purchases only. We also issued a \$750 letter of credit in favor of Whirlpool Corporation. The PNC Revolver required, starting with the fiscal quarter ending April 2, 2016, that we meet a specified minimum earnings before interest, taxes, depreciation and amortization, and continuing at the end of each quarter thereafter, that we meet a minimum fixed charge coverage ratio of 1.1 to 1.0. The PNC Revolver limited investments that we could purchase, the amount of other debt and leases that we could incur, the amount of loans that we could issue to our affiliates and the amount we could spend on fixed assets, along with prohibiting the payment of dividends.

The interest rate on the PNC Revolver, as stated in our renewal agreement on January 22, 2016, was PNC Base Rate plus 1.75% to 3.25%, or 1-, 2- or 3-month PNC LIBOR Rate plus 2.75% to 4.25%, with the rate being dependent on our level of fixed charge coverage. The PNC Base Rate meant, for any day, a fluctuating per annum rate of interest equal to the highest of (i) the interest rate per annum announced from time to time by PNC as its prime rate, (ii) the Federal Funds Open Rate plus 0.5%, and (iii) the one-month LIBOR rate plus 100 basis points (1%).

The amount of revolving borrowings under the PNC Revolver was based on a formula using accounts receivable and inventories. We did not have access to the full \$15,000 revolving line of credit due to such formula, the amount of the letter of credit issued in favor of Whirlpool Corporation and the amount of outstanding loans owed to PNC by our AAP joint venture.

As disclosed by the Company in Item 2.01 of its Current Report on Form 8-K filed on January 31, 2017, the Company sold its the Compton Facility building and land for \$7,103. The net proceeds from the sale, after costs of sale and payoff of the Term Loan (as defined below), were used to reduce the outstanding balance under our PNC Revolver.

On May 1, 2017, the PNC Revolver loan agreement was amended and the term was extended through June 2, 2017. The amendment, effective May 2, 2017, also reduced the maximum amount of borrowing under the PNC Revolver to \$6 million. On May 10, 2017 we repaid in full and terminated our existing Revolving Credit, Term Loan and Security Agreement, as amended, with PNC Bank, National Association on the same date.

The PNC Revolver terminated and was paid in full on May 10, 2017 with funds from MidCap Financial Trust. A letter of credit to Whirlpool Corporation remains outstanding with PNC backed by restricted cash collateral of \$750 as of July 1, 2017. See Note 11, Borrowings, for additional information.

10. Long term obligations

Long term debt, capital lease and other financing obligations as of July 1, 2017, and December 31, 2016, consist of the following:

| | July 1, 2017 | December 31, 2016 |
|---|-----------------|----------------------|
| PNC term loan | \$ — | \$ 1,020 |
| MidCap financial trust asset based revolving loan | 1,066 | — |
| AFCO Finance | 820 | — |
| Susquehanna term loans | 3,242 | 3,242 |
| GE 8% loan agreement | 482 | 482 |
| EEl note | 103 | 103 |
| PIDC 2.75% note, due in month installments of \$3, including interest, due October 2024 | 270 | 287 |
| Capital leases and other financing obligations | 424 | 564 |
| Debt issuance costs, net | (988) | (779) |
| Total debt obligations | 5,419 | 4,919 |
| Less current maturities | (2,054) | (2,093) |
| Long-term debt obligations, net of current maturities | <u>\$ 3,365</u> | <u>\$ 2,826</u> |

On January 24, 2011, we entered into a \$2,550 Term Loan (“Term Loan”) with PNC Bank to refinance the mortgage on our Compton Facility. The Term Loan was payable in 119 consecutive monthly principal payments of \$21 plus interest commencing on February 1, 2011 and followed by a 120th payment of all unpaid principal, interest and fees on February 1, 2021. The Revolving Credit Agreement required a balloon payment of \$1,020 in principal plus interest and additional fees due on January 31, 2017. The Term Loan was collateralized with our California facility located in Compton, California. As disclosed by the Company in Item 2.01 of the Company’s Current Report on Form 8-K filed on January 31, 2017, the Term Loan was paid off in full on January 25, 2017 when the Compton Facility was sold.

MidCap Financial Trust

On May 10, 2017, we entered into a Credit and Security Agreement (“Credit Agreement”) with MidCap Financial Trust (“MidCap Financial Trust”), as a lender and as agent for itself and other lenders under the Credit Agreement. The Credit Agreement provides us with a \$12 million revolving line of credit, which may be increased to \$16 million under certain terms and conditions (the “MidCap Revolver”). The Credit Agreement has a stated maturity date of May 10, 2020, if not renewed. The Credit Agreement is collateralized by a security interest in substantially all of our assets. The lender is also secured by an inventory repurchase agreement with Whirlpool Corporation for Whirlpool purchases only. The Credit Agreement requires that we meet a minimum fixed charge coverage ratio of 1.00:1.00 for the applicable measuring period as of the end of each calendar month. The applicable measuring period is (i) the period commencing May 1, 2017 and ending on the last day of each calendar month from May 31, 2017 through April 30, 2018, and (ii) the twelve-month period ending on the last day of such calendar month thereafter. The Credit Agreement limits the amount of other debt we can incur, the amount we can spend on fixed assets, and the amount of investments we can make, along with prohibiting the payment of dividends.

The amount of revolving borrowings available under the Credit Agreement is based on a formula using receivables and inventories. We may not have access to the full \$12 million revolving line of credit due to the formula using our receivables and inventories and the amount of any outstanding letters of credit issued by the Lender. The interest rate on the revolving line of credit is the one month LIBOR rate plus four and one-half percent (4.50%).

On July 1, 2017 and December 31, 2016, our available borrowing capacity under the Credit Agreement is \$2,517 and \$0, respectively. The weighted average interest rate for the period of May 10, 2017 through July 1, 2017 was 5.73%. We borrowed \$16,030 and repaid \$14,964 on the Credit Agreement during the period of May 10, 2017 through July 1, 2017, leaving an outstanding balance on the Credit Agreement of \$1,066 and \$0 at July 1, 2017 and December 31, 2016, respectively.

On June 16, 2017, we entered into a financing agreement with AFCO Credit Corporation (“AFCO”) to fund the annual premiums on insurance policies purchased through Marsh Insurance. These policies relate to workers’ compensation and various liability policies including, but not limited to, General, Auto, Umbrella, Property, and Directors’ and Officers’. The total amount of the premiums financed is \$1,070 with an interest rate of 3.567%. An initial down payment of \$160 was paid on June 16, 2017 and an additional 10 monthly payments of \$92 will be made beginning July 1, 2017 and ending April 1, 2018. The outstanding principal at the end of July 1, 2017 and December 31, 2016 was \$820 and \$0, respectively.

On March 10, 2011, AAP entered into three separate commercial term loans (“BB&T Term Loans”) with Branch Banking Trust Company, as successor to Susquehanna Bank, (“BB&T”) pursuant to the guidelines of the U.S. Small Business Administration 7(a) Loan Program. The total amount of the BB&T Term Loans was \$4,750, divided into three separate loans of \$2,100; \$1,400; and \$1,250, respectively. The BB&T Term Loans matured in ten years and bore an interest rate of prime plus 2.75%. As of July 1, 2017 and July 2, 2016, the interest rate was 6.50% and 6.00%, respectively. Borrowings under the BB&T Term Loans were secured by substantially all of the assets of AAP along with liens on the business assets and certain personal assets of the owners of 4301 Operations, LLC. We were a guarantor of the BB&T Term Loans along with 4301 Operations, LLC and its members. In connection with the BB&T Term Loans, BB&T had a security interest in the recycling equipment assets of the Company. The BB&T Term Loans entered into by AAP were paid in full on August 15, 2017 and BB&T’s security interest in the recycling equipment assets of the Company was terminated and released. Please see Note 14, Subsequent Events, of these condensed consolidated financial statements.

On November 8, 2016, the Company entered into a securities purchase agreement with Energy Efficiency Investments, LLC, pursuant to which the Company agreed to issue up to \$7,732 principal amount of 3% Original Issue Discount Senior Convertible Promissory Notes of the Company and related common stock purchase warrants. These notes will be issued from time to time, up to such aggregate principal amount, at the request of the Company, subject to certain conditions, or at the option of Energy Efficiency Investments, LLC. Interest accrues at the rate of eight percent per annum on the principal amount of the notes outstanding from time to time, and is payable at maturity or, if earlier, upon conversion of these notes. The principal amount of these notes outstanding at July 1, 2017 and December 31, 2016, was \$103.

Capital leases and other financing obligations: We acquire certain equipment under capital leases and other financing obligations. The cost of the equipment was approximately \$2,527 and \$2,601 as of July 1, 2017, and December 31, 2016, respectively. Accumulated amortization as of July 1, 2017, and December 31, 2016, was approximately \$1,752 and 1,771, respectively. Depreciation and amortization expense is included in cost of revenues and selling, general and administrative expenses.

11. Commitments and Contingencies

Contracts: We have entered into material contracts with three appliance manufacturers. Under the agreements there are no minimum purchase commitments; however, we have agreed to indemnify the manufacturers for certain claims, allegations or losses with respect to appliances we sell.

Litigation

On November 6, 2015, a complaint was filed in the Minnesota District Court for Hennepin County, Minnesota, by David Gray and Michael Boller, purporting to bring suit derivatively on behalf of the Company against twelve current and former officers and directors of the Company. The complaint alleges that the defendants breached their fiduciary duties to the Company, and that the defendants have been unjustly enriched as a result thereof. The complaint seeks damages, disgorgement, an award of attorneys’ fees and other expenses, and an order compelling changes to the Company’s corporate governance and internal procedures. The parties have reached a settlement that, if approved by the court, will fully resolve plaintiffs’ claims and provide for the release of all claims asserted in the litigation. On August 2, 2017, the court entered an order granting preliminary approval of the settlement. The court has scheduled a final approval hearing to take place on September 29, 2017. We can make no assurances that the court will grant final approval of the settlement. This matter has been submitted to our insurance carriers.

In February 2012, various individuals commenced a class action lawsuit against Whirlpool Corporation (“Whirlpool”) and various distributors of Whirlpool products, including Sears, The Home Depot, Lowe’s and us, alleging certain appliances Whirlpool sold through its distribution chain, which includes us, were improperly designated with the ENERGY STAR® qualification rating established by the U.S. Department of Energy and the Environmental Protection Agency. The claims against us include breach of warranty claims, as well as various state consumer protection claims. The amount of the claim is, as yet, undetermined. Whirlpool has offered to fully indemnify and defend its distributors in this lawsuit, including us, and has engaged legal counsel to defend itself and the distributors. We are monitoring Whirlpool’s defense of the claims and believe the possibility of a material loss is remote.

AMTIM Capital Inc. (“AMTIM”) provides management and sales services in respect of our recycling services in Canada, and is paid pursuant to agreements between AMTIM and us. A dispute has arisen between AMTIM and us with respect to the calculation of amounts due to AMTIM pursuant to the agreements. In a lawsuit filed in the province of Ontario, AMTIM claims a discrepancy in the calculation of fees due to AMTIM by us in excess of \$1.6 million. The United States District Court for the District of Minnesota has issued a declaratory judgment to the effect that our method of calculating of the amounts due to AMTIM is correct. Although the outcome of this Ontario claim is uncertain, we believe that no further amounts are due under the terms of the agreement and we will continue to defend our position relative to this lawsuit.

We are party from time to time to ordinary course disputes that we do not believe to be material or have merit. We intend to vigorously defend ourselves against these ordinary course disputes.

12. Income Taxes

Our overall effective tax rate was 32.0% and (18.5)% for the six months ended July 1, 2017 and July 2, 2016, respectively. The effective tax rate varies from the U.S. federal statutory rate due to state taxes, foreign taxes, share-based compensation, non-controlling interest, valuation allowance, and certain non-deductible expenses.

We regularly evaluate both positive and negative evidence related to retaining a valuation allowance against certain deferred tax assets. The realization of deferred tax assets is dependent upon sufficient future taxable income during the periods when deductible temporary differences and carryforwards are expected to be available to reduce taxable income. We have concluded based on the weight of evidence that a valuation allowance should be maintained against certain deferred tax assets that we do not expect to utilize in the near future. The Company continues to have a full valuation allowance against its Canadian operations.

13. Segment Information

We operate within targeted markets through two reportable segments: retail and recycling. The retail segment is comprised of income generated through our ApplianceSmart stores, which includes appliance sales and byproduct revenues from collected appliances. The recycling segment includes all fees charged and costs incurred for collecting, recycling and installing appliances for utilities and other customers and includes byproduct revenue, which is primarily generated through the recycling of appliances. We have included the results from consolidating AAP in our recycling segment. The nature of products, services and customers for both segments varies significantly. As such, the segments are managed separately. Our Chief Executive Officer has been identified as the Chief Operating Decision Maker (“CODM”). The CODM evaluates performance and allocates resources based on revenues and income from operations of each segment. Income from operations represents revenues less cost of revenues and operating expenses, including certain allocated selling, general and administrative costs. There are no inter-segment sales or transfers.

The following tables present our segment information for periods indicated:

| | Three Months Ended | | Six Months Ended | |
|--------------------------------------|--------------------|-------------------|------------------|-------------------|
| | July 1, 2017 | July 2, 2016 | July 1, 2017 | July 2, 2016 |
| Revenues | | | | |
| Retail | \$ 15,038 | \$ 16,017 | \$ 30,827 | \$ 32,666 |
| Recycling | 11,344 | 8,739 | 18,794 | 17,435 |
| Total revenues | <u>\$ 26,382</u> | <u>\$ 24,756</u> | <u>\$ 49,621</u> | <u>\$ 50,101</u> |
| Gross profit | | | | |
| Retail | \$ 4,730 | \$ 4,373 | \$ 8,937 | \$ 9,060 |
| Recycling | 3,989 | 2,063 | 5,805 | 3,567 |
| Total gross profit | <u>\$ 8,719</u> | <u>\$ 6,436</u> | <u>\$ 14,742</u> | <u>\$ 12,627</u> |
| Operating income (loss) | | | | |
| Retail | \$ 1,880 | \$ (487) | \$ 1,802 | \$ (437) |
| Recycling | 705 | (606) | (926) | (1,443) |
| Total operating loss | <u>\$ 2,585</u> | <u>\$ (1,093)</u> | <u>\$ 876</u> | <u>\$ (1,880)</u> |
| Depreciation and amortization | | | | |
| Retail | \$ 44 | \$ 51 | \$ 89 | \$ 105 |
| Recycling | 263 | 258 | 520 | 529 |
| Total depreciation and amortization | <u>\$ 307</u> | <u>\$ 309</u> | <u>\$ 609</u> | <u>\$ 634</u> |
| Interest Expenses | | | | |
| Retail | \$ 6 | \$ 1 | \$ 7 | \$ 249 |
| Recycling | 126 | 303 | 422 | 338 |
| Total interest expenses | <u>\$ 132</u> | <u>\$ 304</u> | <u>\$ 429</u> | <u>\$ 587</u> |
| Total Assets | | | | |
| Retail | | | \$ 14,716 | \$ 17,559 |
| Recycling | | | 20,809 | 24,297 |
| | | | <u>\$ 35,525</u> | <u>\$ 41,856</u> |
| Intangible assets | | | | |
| Retail | | | \$ - | \$ - |
| Recycling | | | 56 | 56 |
| | | | <u>\$ 56</u> | <u>\$ 56</u> |

14. Subsequent Events

Sale of AAP Joint Venture Interest

On August 15, 2017, the Company sold its 50% joint venture interest in AAP to 4301, ARCA's joint venture partner in AAP, in consideration of \$800 in cash. In a separate related transaction on the same date, ARCA agreed to license certain intellectual property practiced by patent No. 8,931,289 to Recleim LLC, a Delaware limited liability company and parent company of Recleim PA, LLC ("licensee") for use at 4301 North Delaware Avenue, Philadelphia, PA or any successor facility within 15 miles where licensee conducts business.

On August 15, 2017 Recleim PA, LLC paid in full all BB&T indebtedness owed by AAP in the amount of \$3,454, and terminated and released all security interests in AAP and ARCA's equipment as part of Recleim PA LLC's purchase of certain equipment and assets from AAP on the same date. Recleim PA LLC is also assuming approximately \$768 in AAP liabilities and assuming all of ARCA's liabilities to Haier US Appliance Solutions, Inc, dba GE Appliances ("GEA"). See Item 1. Other Information – Legal Proceedings for additional information.

Acquisition of GeoTraq

On August 18, 2017, the Company acquired GeoTraq, Inc. ("GeoTraq"). GeoTraq is a development stage company that is engaged in the development, manufacture, and, ultimately, sale of cellular transceiver modules, also known as Cell-ID modules. As a result of this transaction, GeoTraq became a wholly-owned subsidiary of the Company. In connection with this transaction, the Company tendered to the owners of GeoTraq \$200, issued to them an aggregate of 288,588 shares of the Company's Series A Convertible Preferred Stock, and entered into one-year unsecured promissory notes for an aggregate of \$800. The Company is in discussions with its bank in respect of harmonizing this transaction with the Company's rights and obligations under its banking agreement with MidCap Financial Trust.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) is intended to provide a reader of our financial statements with a narrative from the perspective of our management on our financial condition, results of operations, liquidity and certain other factors that may affect our future results.

Forward-Looking and Cautionary Statements

This quarterly report contains statements that are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Any statements contained in this quarterly report that are not purely historical or relate to our future operations, performance and results, and anticipated liquidity are forward looking. These forward-looking statements are based on information available to us on the date of this quarterly report, but are subject to risks and uncertainties, including, but not limited to, those discussed herein. Our actual results could differ materially from those discussed in this quarterly report.

The forward-looking statements contained in this quarterly report, and other written and oral forward-looking statements made by us from time to time, are subject to risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Any forward-looking information regarding our operations will be affected primarily by individual retail stores’ profitability, the volume of appliance sales, the strength of energy conservation recycling programs and general economic conditions affecting consumer demand for appliances. Any forward-looking information will also be affected by our continued ability to purchase product from our suppliers at acceptable prices, the ability of individual retail stores to meet planned revenue levels, the number of retail stores, costs and expenses being realized at higher than expected levels, our ability to secure an adequate supply of special-buy appliances for resale, the ability to secure appliance recycling and replacement contracts with sponsors of energy efficiency programs, the ability of customers to supply units under their recycling contracts with us, the performance of our consolidated variable interest entity, the continued availability of our current line of credit and the outcome of the pending sales and use tax examination in California. Our MD&A should be read in conjunction with our Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (including the information presented therein under *Risk Factors*), as well as our Quarterly Reports on Forms 10-Q and other publicly available information. All amounts herein are unaudited.

Overview

Appliance Recycling Centers of America, Inc. and Subsidiaries (“we,” the “Company” or “ARCA”) are in the business of being the bridge between utilities or manufacturers to their customers by recycling, replacing, and selling major household appliances in North America. We are committed to energy efficiency and have been a pioneer in appliance recycling programs.

We operate two reportable segments:

- **Retail:** Our retail segment offers the latest in innovative appliances from major manufactures. We generate income from the sale of appliances and related services through 18 ApplianceSmart[®] stores in four geographic areas. We have an online presence and also include a portion of our revenue from byproducts from collected appliances. We have two product lines, new and out-of-the-box that give the large manufacturers a channel to move their product without disrupting their normal distribution channels.
- **Recycling:** Our recycling segment is a turnkey appliance recycling program. We receive fees charged for recycling, replacement and additional services for utility energy efficiency programs and have established 17 Regional Processing Centers (“RPCs”) for this segment throughout the United States and Canada. Our recycling segment also includes all income generated from our agreement with GE Appliances, a Haier Group Company (“GE”). GE sells us recyclable appliances in certain regions of the United States and we collect, process, and recycle the appliances. These appliances include units manufactured by GE and by other manufacturers. The agreement requires that we will only recycle, and will not sell for re-use or resale, the recyclable appliances. We have established Regional Processing Centers (“RPCs”) in Philadelphia and Louisville to support our agreement with GE. The RPC in Philadelphia is operated by ARCA Advanced Processing, LLC (“AAP”) through a joint venture agreement between ARCA and 4301 Operations, LLC (“4301”). AAP employs advanced technology to refine traditional appliance recycling techniques to achieve optimal revenue-generating and environmental benefits. We are also the exclusive North American distributor for UNTHA Recycling Technology (“URT”), one of the world’s leading manufacturers of technologically advanced refrigerator recycling systems and recycling facilities for electrical household appliances and electronic scrap.

With more than 850 million major household appliances currently used in the United States and Canada, ARCA’s business segments are positioned to work together to provide a full array of appliance-related services. ARCA’s recycling centers maximize materials recycling while protecting natural resources from the environmentally-damaging substances found in old appliances. We believe we are the future of appliance sales and recycling to manage a full life cycle that will maximize the economic, environmental and societal benefits that recycling provides for the next generation.

For the Thirteen Weeks Ended July 1, 2017 and July 2, 2016

Results of Operations

The following table sets forth certain statement of operations items and as a percentage of revenue, for the periods indicated:

| Statement of operations data (in thousands): | 13 Weeks Ended July 1, 2017 | | 13 Weeks Ended July 2, 2016 | |
|--|--------------------------------|-------------|--------------------------------|--------------|
| | | | | |
| Revenue | \$ 25,782 | 100.0% | \$ 24,756 | 100.0% |
| Cost of revenue | 17,063 | 66.2% | 18,320 | 74.0% |
| Gross profit | 8,719 | 33.8% | 6,436 | 26.0% |
| Selling, general and administrative expense | 6,134 | 23.8% | 7,529 | 30.4% |
| Operating income (loss) | 2,585 | 10.0% | (1,093) | -4.4% |
| Interest (expense), net | (132) | -0.5% | (304) | -1.2% |
| Other income (expense) | 62 | 0.2% | (26) | -0.1% |
| Net income (loss) before income taxes | 2,515 | 9.8% | (1,423) | -5.7% |
| Provision for income taxes | 602 | 2.3% | 758 | -3.1% |
| Net income (loss) before noncontrolling interest | 1,913 | 7.4% | (2,181) | -8.8% |
| Net loss attributed to noncontrolling interest | 150 | 0.6% | 78 | 0.3% |
| Net income (loss) attributed to ARCA | <u>\$ 2,063</u> | <u>8.0%</u> | <u>\$ (2,103)</u> | <u>-8.5%</u> |

The following tables set forth revenues for key product and service categories, percentages of total revenue and gross profits earned by key product and service categories and gross profit percent as compared to revenues for each key product category indicated:

| (in the Thousands) | 13 Weeks Ended July 1, 2017 | | 13 Weeks Ended July 2, 2016 | |
|--------------------------------------|--------------------------------|---------------------|--------------------------------|---------------------|
| | Net Revenue | Percent of Total | Net Revenue | Percent of Total |
| Revenue | | | | |
| Retail Boxed | \$ 9,106 | 35.3% | \$ 10,517 | 42.5% |
| Retail UnBoxed | 4,603 | 17.9% | 4,696 | 19.0% |
| Retail Delivery | 319 | 1.2% | 381 | 1.5% |
| Retail Service, Parts & Accessories | 239 | 0.9% | 288 | 1.2% |
| Extended Warranties, net | 657 | 2.5% | 214 | 0.9% |
| Recycling, Byproducts, Carbon Offset | 7,634 | 29.6% | 6,428 | 26.0% |
| Replacement Appliances | 3,224 | 12.5% | 2,232 | 9.0% |
| Total Revenue | <u>\$ 25,782</u> | <u>100.0%</u> | <u>\$ 24,756</u> | <u>100.0%</u> |

| Gross Profit | 13 Weeks Ended July 1, 2017 | | 13 Weeks Ended July 2, 2016 | |
|--------------------------------------|--------------------------------|-------------------|--------------------------------|-------------------|
| | Gross Profit | Gross Profit % | Gross Profit | Gross Profit % |
| Retail Boxed | \$ 1,543 | 16.9% | \$ 2,403 | 22.8% |
| Retail UnBoxed | 1,853 | 40.3% | 1,513 | 32.2% |
| Retail Delivery | 657 | 206.0% | 416 | 109.2% |
| Retail Service, Parts & Accessories | (290) | -121.3% | 236 | 81.9% |
| Extended Warranties, net | 657 | 100.0% | 214 | 100.0% |
| Recycling, Byproducts, Carbon Offset | 3,051 | 40.0% | 1,554 | 24.2% |
| Replacement Appliances | 1,248 | 38.7% | 100 | 4.5% |
| Total Gross Profit | <u>\$ 8,719</u> | <u>33.8%</u> | <u>\$ 6,436</u> | <u>26.0%</u> |

Revenue

Revenue increased \$1,026 or 4.1% for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016.

Revenue increased in the following categories as compared to the prior year period:

Recycling, Byproducts, Carbon Offset \$1,206 or 18.8%, Extended Warranties, net \$443 or 207% and Replacement Appliances \$992 or 44.4%. The revenue increases were partially offset by the following decreases in revenue as compared to the prior year period:

Retail Boxed \$1,411 or 13.4%, Retail UnBoxed \$93 or 2.0%, Retail Delivery \$62 or 16.3% and Retail Service, Parts and Accessories \$49 or 17.0%.

Cost of Revenue

Cost of revenue decreased \$1,257, or 6.9% for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016, primarily as a result of the change in revenue discussed above as well as the changes in gross profit discussed below.

Gross Profit

Gross profit increased \$2,283 or 35.5%, for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016.

Gross profit increased in the following categories as compared to the prior year period:

Retail UnBoxed \$340 or 22.5%, Retail Delivery \$241 or 57.9%, Extended Warranties, net \$443 or 207%, Recycling, Byproducts, Carbon Offset \$1,497 or 96.3% and Replacement Appliances \$1,148 or 114.8%.

Gross profit increases were partially offset by the following decreases in gross profit as compared to the prior year period.

Retail Boxed \$860 or 35.8% and Retail Service, Parts and Accessories \$526 or 222.9%.

Gross profit margin as a percentage of sales were improved for Retail UnBoxed 40.3% vs. 32.2%, Retail Delivery 206% vs. 109.2%, Recycling, Byproducts, Carbon Offset 40.0% vs. 24.2% and Replacement Appliances 38.7% vs. 4.5%.

Gross profit margin as a percentage of sales declined for Retail Boxed 16.9% vs. 22.8%, Retail Service, Parts and Accessories -121.3% vs. 81.9%.

Selling, General and Administrative Expense

Selling, general and administrative expense decreased \$1,395 or 18.5%, for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016.

Operating Income

As a result of the factors described above, operating income of \$2,585 for the 13 weeks ended July 1, 2017, represented an increase of \$3,938 over the comparable prior 13 week period of \$(1,093).

Interest Expense, net

Interest expense net decreased \$172 or 56.6%, for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016 primarily due to decreased rates and amounts of interest paid as a result of decreased borrowing.

Other Income and Expense

Other income and expense increased \$88 for the 13 weeks ended July 1, 2017 as compared to the 13 weeks ended July 2, 2016.

Provision for (benefit from) Income Taxes

We recorded a provision for income taxes of \$602 for the 13 weeks ended July 1, 2017, compared with a provision of \$758 in the same period of 2016. The provision for income taxes for the 13 weeks ended July 1, 2017, decreased over the same period of 2016 by \$156.

Net Income

The factors described above led to a net income of \$2,063 for the 13 weeks ended July 1, 2017, an increase of \$4,166 from a net loss of \$2,103 for the 13 weeks ended July 2, 2016.

For the Twenty-Six Weeks Ended July 1, 2017 and July 2, 2016

Results of Operations

The following table sets forth certain statement of operations items and as a percentage of revenue, for the periods indicated:

| Statement of operations data (in thousands): | 26 Weeks Ended July 1, 2017 | | 26 Weeks Ended July 2, 2016 | |
|--|--------------------------------|-------------|--------------------------------|--------------|
| | | | | |
| Revenue | \$ 49,021 | 100.0% | \$ 50,101 | 100.0% |
| Cost of revenue | 34,279 | 69.9% | 37,474 | 74.8% |
| Gross profit | 14,742 | 30.1% | 12,627 | 25.2% |
| Selling, general and administrative expense | 13,866 | 28.3% | 14,507 | 29.0% |
| Operating income (loss) | 876 | 1.8% | (1,880) | -3.8% |
| Gain on the sale of assets | 5,163 | 10.5% | – | 0.0% |
| Interest (expense), net | (429) | -0.9% | (587) | -1.2% |
| Other income (expense) | 67 | 0.1% | 94 | 0.2% |
| Net income (loss) before income taxes | 5,677 | 11.6% | (2,373) | -4.7% |
| Provision for income taxes | 1,819 | 3.7% | 438 | 0.9% |
| Net income (loss) before noncontrolling interest | 3,858 | 7.9% | (2,811) | -5.6% |
| Net loss attributed to noncontrolling interest | 413 | 0.8% | (257) | -0.5% |
| Net income (loss) attributed to ARCA | <u>\$ 4,271</u> | <u>8.7%</u> | <u>\$ (2,554)</u> | <u>-5.1%</u> |

The following tables set forth revenues for key product and service categories, percentages of total revenue and gross profits earned by key product and service categories and gross profit percent as compared to revenues for each key product category indicated:

| (in the Thousands) | 26 Weeks Ended July 1, 2017 | | 26 Weeks Ended July 2, 2016 | |
|--------------------------------------|--------------------------------|---------------------|--------------------------------|---------------------|
| | Net Revenue | Percent of Total | Net Revenue | Percent of Total |
| Revenue | | | | |
| Retail Boxed | \$ 19,686 | 76.4% | \$ 20,931 | 84.5% |
| Retail UnBoxed | 8,918 | 34.6% | 9,940 | 40.2% |
| Retail Delivery | 700 | 2.7% | 765 | 3.1% |
| Retail Service, Parts & Accessories | 489 | 1.9% | 561 | 2.3% |
| Extended Warranties, net | 862 | 3.3% | 469 | 1.9% |
| Recycling, Byproducts, Carbon Offset | 12,328 | 47.8% | 11,203 | 45.3% |
| Replacement Appliances | 6,038 | 23.4% | 6,232 | 25.2% |
| Total Revenue | <u>\$ 49,021</u> | <u>190.1%</u> | <u>\$ 50,101</u> | <u>202.4%</u> |

| | 26 Weeks Ended July 1, 2017 | | 26 Weeks Ended July 2, 2016 | |
|--------------------------------------|--------------------------------|-------------------|--------------------------------|-------------------|
| | Gross Profit | Gross Profit % | Gross Profit | Gross Profit % |
| Gross Profit | | | | |
| Retail Boxed | \$ 4,010 | 20.4% | \$ 4,982 | 23.8% |
| Retail UnBoxed | 3,351 | 37.6% | 3,163 | 31.8% |
| Retail Delivery | 210 | 30.0% | – | 0.0% |
| Retail Service, Parts & Accessories | (102) | -20.9% | 439 | 78.3% |
| Extended Warranties, net | 862 | 100.0% | 469 | 100.0% |
| Recycling, Byproducts, Carbon Offset | 4,323 | 35.1% | 2,061 | 18.4% |
| Replacement Appliances | 2,088 | 34.6% | 1,513 | 24.3% |
| Total Gross Profit | <u>\$ 14,742</u> | <u>30.1%</u> | <u>\$ 12,627</u> | <u>25.2%</u> |

Revenue

Revenue decreased \$1,080 or 2.2% for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016.

Revenue decreased in the following categories as compared to the prior year period:

Retail Boxed \$1,245 or 5.9%, Retail Unboxed \$1,022 or 10.3%, Retail Delivery \$65 or 8.5%, Retail Service, Parts and Accessories \$72 or 12.8% and Replacement Appliances \$194 or 3.1%.

The revenue decreases were partially offset by the following increases in revenue as compared to the prior year period:

Extended Warranties, net \$393 or 83.8% and Recycling, Byproducts, Carbon Offset \$1,125 or 10.0%.

Cost of Revenue

Cost of revenue decreased \$3,195, or 8.5% for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016, primarily as a result of the change in revenue discussed above as well as the changes in gross profit discussed below.

Gross Profit

Gross profit increased \$2,115 or 16.7%, for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016.

Gross profit increased in the following categories as compared to the prior year period:

Retail UnBoxed \$188 or 5.9%, Retail Delivery \$210, Extended Warranties, net \$393 or 83.8%, Replacement Appliances \$575 or 38.0% and Recycling, Byproducts, Carbon Offset \$2,262 or 109.8%.

Gross profit increases were partially offset by the following decreases in gross profit as compared to the prior year period.

Retail Boxed \$972 or 19.5% and Retail Service, Parts and Accessories \$541 or -123.2%.

Gross profit margin as a percentage of sales were improved for Retail UnBoxed 37.6% vs. 31.8%, Retail Delivery 30.0% vs. 0%, Recycling, Byproducts and Carbon Offset 35.1% vs. 18.4% and Replacement Appliances 34.6% vs. 24.3%.

Gross profit margin as a percentage of sales declined for Retail Boxed 20.4% vs. 23.8% and Retail Service, Parts and Accessories -20.9% vs. 78.3%.

Selling, General and Administrative Expense

Selling, general and administrative expense decreased \$641 or 4.4%, for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016.

Operating Income

As a result of the factors described above, operating income of \$4,271 for the 26 weeks ended July 1, 2017, represented an increase of \$6,825 over the comparable prior 26 week period of \$(2,554).

Interest Expense, net

Interest expense net decreased \$158 or 26.9%, for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016 primarily due to decreased rates of interest paid and amounts borrowed.

Other Income and Expense

Other income and expense increased \$5,136 for the 26 weeks ended July 1, 2017 as compared to the 26 weeks ended July 2, 2016, primarily due to the gain on sale of property of \$5,163.

Provision for (benefit from) Income Taxes

We recorded a provision for income taxes of \$1,819 for the 26 weeks ended July 1, 2017, compared with a provision of \$438 in the same period of 2016. The provision for income taxes for the 26 weeks ended July 1, 2017, increased over the same period of 2016 by \$1,381, primarily due to an increase in earnings from the disposition of our Compton California land and building.

Net Income

The factors described above and the gain from the sale of our Compton California land and building of \$5,163 led to a net income of \$4,271 for the 26 weeks ended July 1, 2017, an increase of \$6,825 from a net loss of \$2,554 for the 26 weeks ended July 2, 2016.

Segment Performance

We report our business in the following segments: Retail and Recycling. We identified these segments based on a combination of business type, customers serviced and how we divide management responsibility. Our revenues and profits are driven through our physical stores, our recycling centers, e-commerce, individual sales reps and our internet services.

Operating income (loss) by operating segment, is defined as income (loss) before net interest expense, other income and expense, provision for income taxes and income (loss) attributable to non-controlling interest.

| (in the Thousands) | 13 Weeks Ended July 1, 2017 | | | 13 Weeks Ended July 2, 2016 | | |
|---|-----------------------------|-----------|-----------|-----------------------------|-----------|------------|
| | Segments in \$ | | | Segments - \$ | | |
| | Retail | Recycling | Total | Retail | Recycling | Total |
| Revenue | \$ 15,038 | \$ 10,744 | \$ 25,782 | \$ 16,765 | \$ 7,991 | \$ 24,756 |
| Cost of Revenue | 10,308 | 6,755 | 17,063 | 12,391 | 5,929 | 18,320 |
| Gross Profit | 4,730 | 3,989 | 8,719 | 4,374 | 2,062 | 6,436 |
| Selling, General and Administrative Expense | 2,850 | 3,284 | 6,134 | 4,874 | 2,655 | 7,529 |
| Operating Income (Loss) | \$ 1,880 | \$ 705 | \$ 2,585 | \$ (500) | \$ (593) | \$ (1,093) |

| | 13 Weeks Ended July 1, 2017 | | | 13 Weeks Ended July 2, 2016 | | |
|---|-----------------------------|-----------|--------|-----------------------------|-----------|--------|
| | Segments in % | | | Segments - % | | |
| | Retail | Recycling | Total | Retail | Recycling | Total |
| Revenue | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of Revenue | 68.5% | 62.9% | 66.2% | 73.9% | 74.2% | 74.0% |
| Gross Profit | 31.5% | 37.1% | 33.8% | 26.1% | 25.8% | 26.0% |
| Selling, General and Administrative Expense | 19.0% | 30.6% | 23.8% | 29.1% | 33.2% | 30.4% |
| Operating Income (Loss) | 12.5% | 6.6% | 10.0% | -3.0% | -7.4% | -4.4% |

Retail Segment

Segment results for Retail include Appliancesmart. Revenue for the 13 weeks ended July 1, 2017 decreased \$1,727, or 10.3%, as compared to the prior year period, as a result of decreases in retail boxed \$1,411 or 13.4%, retail unboxed \$93 or 2.0%, retail delivery \$62 or 16.3%, retail service, parts and accessories \$49 or 17.0% and other revenue of \$555; partially offset by extended warranties, net \$443 or 207%.

Cost of revenue for the 13 weeks ended July 2, 2017 decreased \$2,083 or 16.8%, as compared to the prior year period, as a result of cost of revenue a decrease in retail boxed \$551 or 6.8%, retail unboxed \$433 or 13.6%, retail delivery \$303, other cost of revenue of \$1,273; partially offset by an increase in retail service, parts and accessories \$477.

Operating income for the 13 weeks ended July 2, 2017 increased \$2,380, as compared to the prior year period, as a result of increased gross profit of \$356 and decreased selling, general and administrative expense of \$2,024.

Recycling Segment

Segment results for ARCA Recycling, Customer Connexx, ARCA Canada and AAP. Revenue for the 13 weeks ended July 1, 2017 increased by \$2,753, or 34.5%, as compared to the prior year period, as a result of increases in recycling, byproducts, carbon offset revenue of \$1,206 or 18.8%, and replacement appliance revenue \$992 or 44.4% and other revenue of \$555.

Cost of revenue for the 13 weeks ended July 1, 2017 increased \$826 or 13.9%, as compared to the prior year period; as a result of an increase in other cost of revenue of \$1,273; partially offset by decreases in cost of revenue of replacement appliances \$156 or 7.3% and recycling, byproducts, carbon offset \$291 or 6.0%.

Operating income for the 13 weeks ended July 1, 2017 increased \$1,298, as compared to the prior year period; as a result of increased gross profit of \$1,927 and decreased selling, general and administrative expense of \$629.

| (in the Thousands) | 26 Weeks Ended July 1, 2017 | | | 26 Weeks Ended July 2, 2016 | | |
|---|-----------------------------|-----------|-----------|-----------------------------|------------|------------|
| | Segments in \$ | | | Segments - \$ | | |
| | Retail | Recycling | Total | Retail | Recycling | Total |
| Revenue | \$ 30,827 | \$ 18,194 | \$ 49,021 | \$ 33,433 | \$ 16,668 | \$ 50,101 |
| Cost of Revenue | 21,890 | 12,389 | 34,279 | 24,373 | 13,101 | 37,474 |
| Gross Profit | 8,937 | 5,805 | 14,742 | 9,060 | 3,567 | 12,627 |
| Selling, General and Administrative Expense | 7,135 | 6,731 | 13,866 | 9,497 | 5,010 | 14,507 |
| Operating Income (Loss) | \$ 1,802 | \$ (926) | \$ 876 | \$ (437) | \$ (1,443) | \$ (1,880) |

| | 26 Weeks Ended July 1, 2017 | | | 26 Weeks Ended July 2, 2016 | | |
|---|-----------------------------|-----------|--------|-----------------------------|-----------|--------|
| | Segments in % | | | Segments - % | | |
| | Retail | Recycling | Total | Retail | Recycling | Total |
| Revenue | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of Revenue | 71.0% | 68.1% | 69.9% | 72.9% | 78.6% | 74.8% |
| Gross Profit | 29.0% | 31.9% | 30.1% | 27.1% | 21.4% | 25.2% |
| Selling, General and Administrative Expense | 23.1% | 37.0% | 28.3% | 28.4% | 30.1% | 29.0% |
| Operating Income (Loss) | 5.8% | -5.1% | 1.8% | -1.3% | -8.7% | -3.8% |

Retail Segment

Segment results for Retail include Appliancesmart. Revenue for the 26 weeks ended July 1, 2017 decreased \$2,606, or 7.8%, as compared to the prior year period, as a result of decreases in retail boxed \$1,245 or 5.9%, retail unboxed \$1,022 or 10.3%, retail delivery \$65 or 8.5%, retail service, parts and accessories \$72 or 12.8% and other revenue of \$595; partially offset by extended warranties, net \$393 or 83.8%.

Cost of revenue for the 26 weeks ended July 1, 2017 decreased \$2,483 or 10.2%, as compared to the prior year period, as a result of cost of revenue a decrease in retail boxed \$273 or 1.7%, retail unboxed \$1,210 or 17.9%, retail delivery \$275 or 35.9% and other cost of revenue of \$1,194; partially offset by an increase in retail service, parts and accessories \$393 or 83.8%.

Operating income for the 26 weeks ended July 1, 2017 increased \$2,239, as compared to the prior year period, as a result of decreased selling, general and administrative expense of \$2,362 partially offset by a decrease in gross profit of \$123.

Recycling Segment

Segment results for ARCA Recycling, Customer Connexx, ARCA Canada and AAP. Revenue for the 26 weeks ended July 1, 2017 increased by \$1,526, or 9.2%, as compared to the prior year period, as a result of increases in recycling, byproducts, carbon offset revenue of \$1,125 or 10.0% and other revenue of \$595; partially offset by a decrease in replacement appliance revenue \$194 or 3.1%.

Cost of revenue for the 26 weeks ended July 1, 2017 decreased \$712 or 5.4%, as compared to the prior year period; as a result of decreases in cost of revenue of replacement appliances \$769 or 16.3% and recycling, byproducts, carbon offset \$1,137 or 12.4%; partially offset by an increase in cost of revenue other of \$1,194.

Operating income for the 26 weeks ended July 1, 2017 increased \$517, as compared to the prior year period; as a result of increased gross profit of \$2,238 partially offset by an increase in selling, general and administrative expense of \$1,721.

Liquidity and Capital Resources

Overview

Based on our current operating plans, we believe that available cash balances, cash generated from our operating activities and funds available under (“the MidCap Revolver”), will provide sufficient liquidity to fund our operations, our continued investments in store openings and remodeling activities for at least the next 12 months. The Company refinanced and replaced the PNC Bank Revolver loan facility with the MidCap Revolver.

As of July 1, 2017, we had total cash on hand of \$191 and an additional \$2,517 of available borrowing under the MidCap Revolver. As we continue to pursue strategic transactions to expand and grow our business, we regularly monitor capital market conditions and may raise additional funds through borrowings or public or private sales of debt or equity securities. The amount, nature and timing of any borrowings or sales of debt or equity securities will depend on our operating performance and other circumstances; our then-current commitments and obligations; the amount, nature and timing of our capital requirements; any limitations imposed by our current credit arrangements; and overall market conditions.

Cash Flows

During the 26 weeks ended July 1, 2017, cash provided by operations was \$3,298, compared to cash provided by operations of \$5,657 during the 26 weeks ended July 2, 2016. The decrease in cash provided by operations of \$2,359 as compared to the prior period; was primarily due to a decrease in cash provided by non-cash depreciation and amortization of \$25, change in reserve for uncollectible accounts \$27 and other of \$254; non-cash income of gain on sale of property of \$5,163, stock compensation expense of \$109; partially offset by an increase in cash provided by non-cash change in deferred income taxes of \$155, amortization of debt issuance costs of \$46 and change in reserve for inventory obsolescence of \$32. Change in net income represented a positive change in operating cash flow of \$6,669 offset by uses of cash in working capital accounts of \$3,683.

Cash provided by investing activities was \$5,883 and used by investing activities \$141 for the 26 weeks ended July 1, 2017 and the 26 weeks ended July 2, 2016, respectively. The \$6,079 increase in cash provided by investing activities, as compared to the prior period, is primarily attributable to the proceeds from the sale of property and equipment of \$6,785 and a decrease in purchase of property and equipment of \$89 and other of \$3; partially offset by an increase in restricted cash of \$798.

Cash used by financing activities was \$9,068 and \$5,214 for the 26 weeks ended July 2, 2017 and the 26 weeks ended July 1, 2016, respectively. The \$4,754 increase in cash used, as compared to the prior period, was attributable to increased payments under the PNC Revolver of \$5,451, debt obligations of \$1,120, debt issuance costs \$219; partially offset by an increase in the proceeds from the issuance of debt obligations of \$970 and an increase in net borrowing under the MidCap Revolver of \$1,066.

Sources of Liquidity

We utilize cash on hand and cash generated from operations and have funds available to us under our revolving loan facility with MidCap Financial Trust to cover normal and seasonal fluctuations in cash flows and to support our various growth initiatives. Our cash and cash equivalents are carried at cost and consist primarily of demand deposits with commercial banks.

MidCap Revolver

On July 1, 2017 and December 31, 2016, our available borrowing capacity under the Credit Agreement is \$2,517 and \$0, respectively. The weighted average interest rate for the period of May 10, 2017 through July 1, 2017 was 5.73%. We borrowed \$16,030 and repaid \$14,964 on the Credit Agreement during the period of May 10, 2017 through July 1, 2017, leaving an outstanding balance on the Credit Agreement of \$1,066 and \$0 at July 1, 2017 and December 31, 2016, respectively.

Future Sources of Cash; New Acquisitions, Products and Services

We may require additional debt financing and/or capital to finance new acquisitions, refinance existing indebtedness or other strategic investments in our business. Other sources of financing may include stock issuances and additional loans; or other forms of financing. Any financing obtained may further dilute or otherwise impair the ownership interest of our existing stockholders.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Market Risk and Impact of Inflation

Foreign Currency Exchange Rate Risk. We currently generate revenues in Canada. The reporting currency for our consolidated financial statements is U.S. dollars. It is not possible to determine the exact impact of foreign currency exchange rate changes; however, the effect on reported revenue and net earnings can be estimated. We estimate that the U.S. dollar against the Canadian dollar had an immaterial impact on revenues and net income for the three months and six months ended July 1, 2017. We do not currently hedge foreign currency fluctuations and do not intend to do so for the foreseeable future.

We do not hold any derivative financial instruments nor do we hold any securities for trading or speculative purposes.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have established disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer (principal executive officer) and Chief Financial Officer (principal financial officer), to allow timely decisions regarding required disclosure.

Our management, including our Chief Executive Officer and Acting Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act), at July 1, 2017. Based on that evaluation, our Chief Executive Officer and Acting Chief Financial Officer concluded that, at July 1, 2017, our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

During the second quarter of fiscal 2017, covered by this Quarterly Report on Form 10-Q, we made certain changes to our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). We have upgraded to a new accounting system and improved our control structure by adding and making changes in accounting management and staff for each subsidiary company. We do not believe this has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. Other Information

Item 1. Legal Proceedings

On November 6, 2015, a complaint was filed in the Minnesota District Court for Hennepin County, Minnesota, by David Gray and Michael Boller, purporting to bring suit derivatively on behalf of the Company against twelve current and former officers and directors of the Company. The complaint alleges that the defendants breached their fiduciary duties to the Company, and that the defendants have been unjustly enriched as a result thereof. The complaint seeks damages, disgorgement, an award of attorneys' fees and other expenses, and an order compelling changes to the Company's corporate governance and internal procedures. The parties have reached a settlement that, if approved by the court, will fully resolve plaintiffs' claims and provide for the release of all claims asserted in the litigation. On August 2, 2017, the court entered an order granting preliminary approval of the settlement. The court has scheduled a final approval hearing to take place on September 29, 2017. We can make no assurances that the court will grant final approval of the settlement. This matter has been submitted to our insurance carriers.

In February 2012, various individuals commenced a class action lawsuit against Whirlpool Corporation ("Whirlpool") and various distributors of Whirlpool products, including Sears, The Home Depot, Lowe's and us, alleging certain appliances Whirlpool sold through its distribution chain, which includes us, were improperly designated with the ENERGY STAR® qualification rating established by the U.S. Department of Energy and the Environmental Protection Agency. The claims against us include breach of warranty claims, as well as various state consumer protection claims. The amount of the claim is, as yet, undetermined. Whirlpool has offered to fully indemnify and defend its distributors in this lawsuit, including us, and has engaged legal counsel to defend itself and the distributors. We are monitoring Whirlpool's defense of the claims and believe the possibility of a material loss is remote.

AMTIM Capital Inc. ("AMTIM") provides management and sales services in respect of our recycling services in Canada, and is paid pursuant to agreements between AMTIM and us. A dispute has arisen between AMTIM and us with respect to the calculation of amounts due to AMTIM pursuant to the agreements. In a lawsuit filed in the province of Ontario, AMTIM claims a discrepancy in the calculation of fees due to AMTIM by us in excess of C\$1.6 million. The United States District Court for the District of Minnesota has issued a declaratory judgment to the effect that our method of calculating of the amounts due to AMTIM is correct. Although the outcome of this Ontario claim is uncertain, we believe that no further amounts are due under the terms of the agreement and we will continue to defend our position relative to this lawsuit.

On December 29, 2016, ARCA served a Minnesota state court complaint for breach of contract on Skybridge Americas, Inc. ("SA"), ARCA's primary call center vendor throughout 2015 and most of 2016. ARCA seeks damages in the millions of dollars as a result of alleged overcharging by SA and lost client contracts. On January 25, 2017, SA served a counterclaim for unpaid invoices in the amount of approximately \$460,000 plus interest and attorneys' fees. On March 29, 2017, the Hennepin County district court dismissed ARCA's claim based on the currency differential between the United States and Canada, but permitted ARCA's remaining claims to proceed. The parties are currently conducting discovery. ARCA intends to vigorously dispute SA's counterclaims.

On November 15, 2016, ARCA served an arbitration demand on Haier US Appliance Solutions, Inc, dba GE Appliances ("GEA"), alleging breach of contract and interference with prospective business advantage. ARCA seeks over \$2 million in damages. On April 18, 2017, GEA served a counterclaim for approximately \$337,000 in alleged obligation under the parties' recycling agreement. Simultaneously with serving its counterclaim in the arbitration, which is venued in Chicago, GEA filed a complaint in the United States District Court for the Western District of Kentucky seeking damages of approximately \$530,000 plus interest and attorneys' fees allegedly owed under a previous agreement between the parties. On May 31, 2017, ARCA moved to dismiss or stay the Kentucky lawsuit in favor of the pending arbitration. ARCA's motions have not been ruled upon.

We are party from time to time to other ordinary course disputes that we do not believe to be material.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 5. Other Information

[Sale of AAP Information]

[Acquisition of Geotraq Information]

Departure of Directors or Certain Officers; Election of Directors, Appointment of Certain Officers; Compensatory Arrangement of Certain Officers.

On August 21, 2017, the Board of Directors of the Company appointed Mr. Virland A. Johnson to serve as the Chief Financial Officer of the Company effective immediately. Mr. Tony Isaac will no longer serve as Chief Financial Officer of the Company but will remain as Chief Executive Officer, President and as a Director of the Company. Mr. Johnson joined the Company in February 2017 as a consultant.

Mr. Johnson continues to serve as Chief Financial Officer for Live Ventures Incorporated a diversified public holding company (NASDAQ symbol – LIVE). Prior to joining Live Ventures Incorporated Mr. Johnson was Sr. Director of Revenue for JDA Software for the last six years, where he was responsible for revenue recognition determination, sales and contract support while acting as a subject matter expert. Prior to joining JDA, Mr. Johnson provided leadership and strategic direction while serving in C-Level executive roles in public and privately held companies such as Cultural Experiences Abroad, Inc., Fender Musical Instruments Corp., Triumph Group, Inc., Unitech Industries, Inc. and Younger Brothers Group, Inc. Mr. Johnson's 25+ years of experience is primarily in the areas of process improvement, complex debt financings, SEC and financial reporting, turn-arounds, corporate restructuring, global finance, merger and acquisitions and returning companies to profitability and enhancing shareholder value. Early on in his career, Mr. Johnson worked in public accounting while attending Arizona State University. Mr. Johnson holds a Bachelor's degree in Accountancy from Arizona State University, and is a licensed Certified Public Accountant in Arizona. Mr. Johnson shall receive an annual base salary of \$125,000 and be eligible to participate in all benefit programs or plans sponsored by the Company. The Company shall pay or reimburse Mr. Johnson for reasonable expenses incurred or paid in the performance of his duties in accordance with the generally applicable policies and procedures of the Company. If Mr. Johnson is terminated by the Company or if he terminates his employment, he shall be entitled to (i) his annual base salary through the termination date, (ii) any accrued but unused paid time off as of the termination date and (iii) reimbursement for outstanding, but unreimbursed business expenses as of the termination date. There are no family relationships between Mr. Johnson and any of the officers or directors of the Company. Mr. Johnson has not engaged in any related party transactions.

Item 6. Exhibits.

Index to Exhibits

| Exhibit No. | Description |
|-------------|---|
| 3.1+ | Certificate of Designation of Series A Convertible Preferred Stock of Appliance Recycling Centers of America, Inc., as filed August 18, 2017 |
| 10.1+ | Credit and Security Agreement dated May 10, 2017, among the Company, ApplianceSmart, Inc., ARCA Recycling, Inc., Customer Connexx LLC, and MidCap Financial Trust |
| 10.2+ | Revolving Loan Note dated May 10, 2017, among the Company, ApplianceSmart, Inc., ARCA Recycling, Inc., Customer Connexx LLC, and MidCap Financial Trust |
| 10.3+ | Pledge Agreement dated May 10, 2017, between the Company and MidCap Financial Trust |
| 10.4+ | Letter Agreement dated August 14, 2017, between the Company and MidCap Financial Trust |
| 10.5+ | Equity Purchase Agreement dated August 15, 2017, between 4301 Operations, LLC and the Company |
| 10.6+ | Asset Purchase Agreement dated August 15, 2017, among ARCA Advanced Processing, LLC, 4301 Operations, LLC, Brian Connors, James Ford and Recleim PA, LLC |
| 10.7+ | Agreement dated August 14, 2017 between Recleim, LLC and the Company |
| 10.8+ | Patent License Agreement dated August 14, 2017 between the Company and Recleim PA, LLC |
| 10.9+ | Agreement and Plan of Merger dated August 18, 2017, between the Company, Appliance Recycling Acquisition Corp., Geotraq Inc., and the stockholders of Geotraq Inc. |
| 31.1+ | Certification by Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2+ | Certification by Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1† | Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2† | Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101** | The following materials from our Quarterly Report on Form 10-Q for the three-month period ended April 1, 2017 formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations and Comprehensive Income (Loss), (iii) the Consolidated Statements of Cash Flows, (iv) the Notes to Consolidated Financial Statements, and (v) document and entity information. |

+ Filed herewith.

† Furnished herewith.

** Pursuant to Rule 406T of Regulation S-T, the XBRL related information in Exhibit 101 to this Quarterly Report on Form 10-Q shall not be deemed to be “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be deemed part of a registration statement, prospectus or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filings.

SIGNATURES

Pursuant to the requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on our behalf by the undersigned, thereunto duly authorized.

Appliance Recycling Centers of America, Inc.
(Registrant)

Date: August 21, 2017

By: /s/ Tony Isaac
Tony Isaac
Chief Executive Officer
(Principal Executive Officer)

Date: August 21, 2017

By: /s/ Virland A Johnson
Virland A Johnson
Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATE OF DESIGNATION
OF
APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
Pursuant to Section 302A.401 of the
Minnesota Statutes

Pursuant to Minnesota Statutes, Section 302A.401, Subd. 3(b), Appliance Recycling Centers of America, Inc., a corporation organized and existing under the laws of the State of Minnesota (the "**Company**"),

DOES HEREBY CERTIFY that, pursuant to the authority conferred upon the Board of Directors by the Articles of Incorporation of the Company, and pursuant to Section 302A.401 of the Minnesota Statutes, the Board of Directors, at a meeting duly noticed and held on July 20, 2017, duly adopted a resolution providing for the designation of a series of preferred stock, to be known as the Company's Series A Convertible Preferred Stock, which resolution is and reads as follows:

RESOLVED, that, pursuant to the authority expressly granted to and vested in the Board of Directors of Appliance Recycling Centers of America, Inc. (the "**Company**"), by the provisions of the Articles of Incorporation of the Company, as amended, a series of the preferred stock, no par value per share, of the Company be, and it hereby is, established; and

FURTHER RESOLVED, that the series of preferred stock of the Company be, and it hereby is, given the distinctive designation of "**Series A Convertible Preferred Stock**"; and

FURTHER RESOLVED, that the Series A Convertible Preferred Stock shall consist of Two Hundred Eighty-eight Thousand Five Hundred Eighty-eight (288,588) shares; and

FURTHER RESOLVED, that the Series A Convertible Preferred Stock shall have the powers and preferences, and the relative, participating, optional and other rights, and the qualifications, limitations, and restrictions thereon set forth below (the "**Designation**" or the "**Certificate of Designation**");

Section 1. DESIGNATION OF SERIES. The authorized number of shares of Series A Convertible Preferred Stock shall initially consist of Two Hundred Eighty-eight Thousand Five Hundred Eighty-eight (288,588) shares.

Section 2. DEFINITIONS.

For purposes of this Designation, the following definitions shall apply:

- (a) “**Business Day**” means a day in which a majority of the banks in the State of Minnesota in the United States of America are open for business.
- (b) “**Common Stock**” means the Company’s no par value common stock, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.
- (c) “**Conversion Date**” shall mean the date on which a share or shares of the Series A Convertible Preferred Stock is converted pursuant to this Certificate of Designation.
- (d) “**Distribution**” shall mean the transfer of cash or other property without consideration, whether by way of dividend or otherwise (other than dividends on Common Stock payable in Common Stock), or the purchase or redemption of shares of the Company for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of capital stock of the Company in connection with the settlement of disputes with any shareholder, (iv) any other repurchase or redemption of capital stock of the Company approved by the holders of (a) a majority of the Common Stock and (b) a majority of the Preferred Stock of the Company voting as separate classes.
- (e) “**Holder**” shall mean the person or entity in which the Series A Convertible Preferred Stock is registered on the books of the Company, which shall initially be the person or entity that subscribes for the Series A Convertible Preferred Stock, and shall thereafter be the permitted and legal assigns of which the Company is notified by the Holder and in respect of which the Holder has provided a valid legal opinion in connection therewith to the Company.
- (f) “**Holders**” shall mean all Holders of the Series A Convertible Preferred Stock.
- (g) “**Junior Stock**” shall mean the Common Stock and each other class of capital stock or series of preferred stock of the Company established prior to or after the Original Issue Date, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Series A Convertible Preferred Stock upon the liquidation, winding-up or dissolution of the Company.
- (h) “**Original Issue Date**” shall mean the date upon which the shares of Series A Convertible Preferred Stock are first issued.

- (i) **“Preferred Stock Certificates”** means the certificates, as replaced from time to time, evidencing the outstanding Preferred Stock shares.
- (j) **“Recapitalization”** shall mean any stock dividend, stock split, and combination of shares, reorganization, recapitalization, reclassification, or

other similar event.

Section 3. DIVIDENDS.

(a) The Company shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Company unless (in addition to the obtaining of any consents required elsewhere in the Articles of Incorporation) the holders of the Series A Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Convertible Preferred Stock pursuant to this Section 3. The holders of the Series A Convertible Preferred Stock shall be entitled to receive, as declared by the Board of Directors and out of funds legally available for the purpose, a dividend in the aggregate amount of one (1) dollar, regardless of the number of then-issued and outstanding shares of Series A Convertible Preferred Stock. The remaining dividends allocated by the Board of Directors shall be distributed in an equal amount per share to the holders of outstanding Common Stock and Series A Convertible Preferred Stock (on an as-if-converted to Common Stock basis pursuant to the Conversion Ratio as defined below).

(b) To the fullest extent permitted by the Minnesota Statutes, the Company shall be expressly permitted, but not required, to redeem, repurchase or make distributions on the shares of its capital stock in all circumstances other than where doing so would cause the Company to be unable to pay its debts as they become due in the usual course of business.

Section 4. NO LIQUIDATION PREFERENCE. Immediately prior to the occurrence of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, all shares of Series A Convertible Preferred Stock shall automatically convert into shares of Common Stock based upon the then-applicable Conversion Ratio and shall participate in the liquidation proceeds in the same manner as other shares of Common Stock.

Section 5. CONVERSION. The Series A Convertible Preferred Stock shall not be convertible into Common Stock and have no other conversion rights except as specifically set forth below:

(a) Conversion. The **“Conversion Ratio”** per share of the Series A Convertible Preferred Stock in connection with any Conversion shall be at a ratio of 1:100, meaning every (1) one share of Series A Convertible Preferred Stock, if and when converted into Common Stock, shall convert into 100 shares of Common Stock (the **“Conversion”**). Each Holder shall have the right, exercisable at any time and from time to time (unless otherwise prohibited by law, rule or regulation, or as restricted below), to convert any or all of such Holder’s shares of Series A Convertible Preferred Stock into shares of Common Stock at the Conversion Ratio. Notwithstanding anything to the contrary herein, the Holders may not effectuate any Conversion and the Company may not issue any shares of Common Stock in connection therewith that would trigger any NASDAQ requirement to obtain shareholder approval prior to a Conversion or any issuance of shares of Common Stock in connection therewith that would be in excess of that number of shares of Common Stock equivalent to 19.9% of the number of shares of Common Stock as of the date hereof; *provided, however*, that the Holders may effectuate any Conversion and the Company shall be obligated to issue shares of Common Stock in connection therewith that would not trigger such a requirement. This restriction shall be of no further force or effect upon the approval of the shareholders in compliance with NASDAQ’s shareholder voting requirements. Notwithstanding anything to the contrary contained herein, the Holders may not effectuate any Conversion and the Company shall not issue any shares of Common Stock in connection therewith until the later of (x) February 28, 2019, or (y) sixty-one (61) days following the date on which the shareholders of the Company shall have approved the voting, Conversion, and other potential rights of the holders of Series A Convertible Preferred Stock otherwise set forth in this Certificate of Designation in accordance with the relevant NASDAQ requirements.

(b) Taxes. The Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock upon conversion in a name other than that in which the shares of the Series A Convertible Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid. The Company shall withhold from any payment due whatsoever in connection with the Series A Convertible Preferred Stock any and all required withholdings and/or taxes the Company, in its sole discretion deems reasonable or necessary, absent an opinion from Holder's accountant or legal counsel, acceptable to the Company in its sole determination, that such withholdings and/or taxes are not required to be withheld by the Company.

(c) Stock Dividends, Splits, and Reclassifications. If the Company shall (i) declare a dividend or other distribution payable in securities or (ii) split its outstanding shares of Common Stock into a larger number, including any such reclassification in connection with a merger, consolidation or other business combination in which the Company is the continuing entity (any such corporate event, an "**Event**"), then in each instance the Conversion Ratio shall be adjusted such that the number of shares issued upon conversion of one share of Series A Convertible Preferred Stock will equal the number of shares of Common Stock that would otherwise be issued but for such Event.

(d) Fractional Shares. If any Conversion of Series A Convertible Preferred Stock would result in the issuance of a fractional share of Common Stock (aggregating all shares of Series A Convertible Preferred Stock being converted pursuant to each Conversion), such fractional share shall be rounded up to the nearest whole share and the Holder shall be entitled to receive, in lieu of the final fraction of a share, one additional whole share of Common Stock.

(e) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Convertible Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then-outstanding shares of the Series A Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A Convertible Preferred Stock, the Company will within a reasonable time period make a good faith effort to take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) Effect of Conversion. On any Conversion Date, all rights of any Holder with respect to the shares of the Series A Convertible Preferred Stock so converted, including the rights, if any, to receive distributions of the Company's assets or notices from the Company, will terminate, except only for the rights of any such Holder to receive certificates (if applicable) for the number of shares of Common Stock into which such shares of the Series A Convertible Preferred Stock have been converted.

Section 6. VOTING. The Holder of each share of Series A Convertible Preferred Stock shall have such number of votes as is determined by multiplying (a) the number of shares of Series A Convertible Preferred Stock held by such holder, and (b) 100. Such voting calculation is hereby authorized by the Company and the Company acknowledges such calculation may result in the total number of possible votes cast by the Series A Holders and all other classes of the Company's common stock in any given voting matter exceeding the total aggregate number of shares that this Company shall have authority to issue. With respect to any shareholder vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the Bylaws of this Company, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. The holders of Series A Convertible Preferred Stock shall vote together with all other classes and series of common and preferred stock of the Company as a single class on all actions to be taken by the Common Stock shareholders of the Company, except to the extent that voting as a separate class or series is required by law. Notwithstanding anything to the contrary herein, the Holders of shares of Series A Convertible Preferred Stock may not engage in any vote where the voting power would trigger any NASDAQ requirement to obtain shareholder approval; *provided, however*, the Holders shall have the right to vote that portion of their voting power that would not trigger such a requirement. This restriction shall lapse upon the requisite approval of the shareholders in compliance with NASDAQ's shareholder voting requirements in effect at the time of such approval.

Section 7. REDEMPTION. The Series A Convertible Preferred Stock shall have no redemption rights.

Section 8. PROTECTIVE PROVISIONS. In addition to any other rights provided by law, at any time any shares of Series A Convertible Preferred Stock are outstanding, as a legal party in interest, the Company, through action directly initiated by the Company's Board of Directors or indirectly initiated by the Company's Board of Directors through judicial action or process, including any action by the shareholders of the Company's Common Stock, shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, take any of the following actions without first obtaining the affirmative approval of a majority of the Holders.

(a) Increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Convertible Preferred Stock;

(b) Effect an exchange, reclassification, or cancellation of all or a part of the Series A Convertible Preferred Stock, but excluding a stock split or reverse stock split or combination of the Common Stock or Preferred Stock;

(c) Effect an exchange, or create a right of exchange, of all or part of the shares of another class of shares into shares of Series A Convertible Preferred Stock; or

(d) Alter or change the rights, preferences or privileges of the shares of Series A Convertible Preferred Stock so as to affect adversely the shares of such series, including the rights set forth in this Designation;

PROVIDED, HOWEVER, that the Company may, by any means authorized by law and without any vote of the Holders of shares of the Series A Convertible Preferred Stock, make technical, corrective, administrative or similar changes in this Certificate of Designation that do not, individually or in the aggregate, materially adversely affect the rights or preferences of the Holders of shares of the Series A Convertible Preferred Stock.

Section 9. PREEMPTIVE RIGHTS. Holders of Series A Convertible Preferred Stock and holders of Common Stock shall not be entitled to any preemptive, subscription or similar rights in respect to any securities of the Company, except as specifically set forth herein or in any other document agreed to by the Company.

Section 10. REPORTS. The Company shall mail to all holders of Series A Convertible Preferred Stock those reports, proxy statements and other materials that it mails to all of its holders of Common Stock.

Section 11. NOTICES. In addition to any other means of notice provided by law or in the Company's Bylaws, any notice required by the provisions of this Certificate of Designation to be given to the Holders shall be deemed given if deposited in the United States mail, postage prepaid, return receipt requested and addressed to each Holder of record at such Holder's address appearing on the books of the Company.

Section 12. MISCELLANEOUS.

(a) The headings of the various sections and subsections of this Certificate of Designation are for convenience of reference only and shall not affect the interpretation of any of the provisions of this Certificate of Designation.

(b) Whenever possible, each provision of this Certificate of Designation shall be interpreted in a manner as to be effective and valid under applicable law and public policy. If any provision set forth herein is held to be invalid, unlawful, or incapable of being enforced by reason of any rule of law or public policy, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions of this Certificate of Designation. No provision herein set forth shall be deemed dependent upon any other provision unless so expressed herein. If a court of competent jurisdiction should determine that a provision of this Certificate of Designation would be valid or enforceable if a period of time were extended or shortened, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

(c) The Company will provide to the Holders of the Series A Convertible Preferred Stock all communications sent by the Company to the holders of the Common Stock.

(d) Except as may otherwise be required by law, the shares of the Series A Convertible Preferred Stock shall not have any powers, designations, preferences or other special rights, other than those specifically set forth in this Certificate of Designations.

(e) Shares of the Series A Convertible Preferred Stock converted into Common Stock shall be retired and canceled and shall have the status of authorized but unissued shares of preferred stock of the Company undesignated as to any specific series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or re-designated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company.

(f) Notwithstanding the above terms and conditions of this Certificate of Designation and the dollar amounts and share numbers set forth herein shall be subject to adjustment, as appropriate, whenever there shall occur a stock split, stock dividend, combination, reclassification or other similar event involving shares of the Series A Convertible Preferred Stock. Such adjustments shall be made in such manner and at such time as the Board of Directors in good faith determines to be equitable in the circumstances, any such determination to be evidenced in a resolution duly adopted by the Board of Directors. Upon any such equitable adjustment, the Company shall promptly deliver to each Holder a notice describing in reasonable detail the event requiring the adjustment and the method of calculation thereof and specifying the increased or decreased Liquidation Preference following such adjustment.

(g) With respect to any notice to a Holder required to be provided hereunder, such notice shall be mailed to the registered address of such Holder, and neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any redemption, conversion, distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation, winding-up or other action, or the vote upon any action with respect to which the Holders are entitled to vote. All notice periods referred to herein shall commence on the date of the mailing of the applicable notice. Any notice that was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

IN WITNESS WHEREOF, the Company has caused this statement to be duly executed by its sole director this 18th day of August, 2017.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: /s/ Tony Isaac
Tony Isaac – Chief Executive Officer



Work Item 961708000031
Original File Number 4K-30

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE
FILED
08/18/2017 11:59 PM

Steve Simon

Steve Simon
Secretary of State

CREDIT AND SECURITY AGREEMENT

dated as of May 10, 2017

by and among

Appliance Recycling Centers of America, Inc., ApplianceSmart, Inc., ARCA Recycling, Inc. and Customer Connexx LLC

each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Administrative Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



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CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of May 10, 2017 by and among Appliance Recycling Centers of America, Inc., a Minnesota corporation, ApplianceSmart, Inc., a Minnesota corporation, ARCA Recycling, Inc., a California corporation and Customer Connexx LLC, a Nevada limited liability company, and any additional borrower that may hereafter be added to this Agreement (each individually as a "**Borrower**", and collectively as "**Borrowers**"), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Additional Title Agents**" has the meaning set forth in Section 11.15.

“**Additional Tranche**” means an additional amount of Revolving Loan Commitment equal to \$4,000,000 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of \$1,000,000 each for a total of up to \$4,000,000).

“**Affected Lender**” has the meaning set forth in Section 11.17(c).

“**Agent**” means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

“**Affiliate**” means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person’s (other than, with respect to any Lender, any Lender’s) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliated Financing Documents**” means any credit, loan, letter of credit or related documents which are, by their terms and by the terms of this Agreement, cross-defaulted with the Financing Documents, and for which a Credit Party hereunder is liable or contingently liable for payment or as security for which a Credit Party hereunder has pledged, assigned or subjected any assets to Agent, a Lender or an Affiliate of Agent or a Lender.

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“**Applicable Margin**” means with respect to Revolving Loans and all other Obligations four and one-half percent (4.50%).

“**Asset Disposition**” means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party of any asset.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

“**Base LIBOR Rate**” means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of \$1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (Eastern time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error.

“**Base Rate**” means the per annum rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its “prime rate,” with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however*, that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

“**Blocked Person**” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list or is named as a “listed person” or “listed entity” on other lists made under any Anti-Terrorism Law.

“**Borrower**” and “**Borrowers**” mean the entity(ies) described in the first paragraph of this Agreement and each of their successors and permitted assigns.

“**Borrower Representative**” means Appliance Recycling Centers of America, Inc., a Minnesota corporation, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

“**Borrowing Base**” means:

- (a) the product of (i) eighty-four percent (84%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*
- (b) the product of (i) fifty percent (50%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Unbilled Accounts; *plus*
- (c) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of Eligible Credit Card Receivables; *plus*
- (d) the lesser of (i) eighty-five percent (85%) *multiplied by* the Orderly Liquidation Value of the Eligible Inventory, or (ii) sixty-five percent (65%) *multiplied by* the value of the Eligible Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *minus*
- (e) the amount of any reserves and/or adjustments required by Agent from time to time in its sole discretion.

It is expressly understood and agreed that the total Eligible Unbilled Accounts and Eligible Credit Card Receivables counted toward the Borrowing Base will not exceed, in the aggregate, at any time, 20% of the total Borrowing Base.

“**Borrowing Base Certificate**” means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

“**Business Day**” means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

“**Change in Control**” means any of the following events: (a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of any Borrower (or other securities convertible into such voting stock) representing 40% or more of the combined voting power of all voting stock of any Borrower or (b) Appliance Recycling Centers of America, Inc., a Minnesota corporation ceases to own, directly or indirectly, 100% of the capital stock of any of its Subsidiaries (or such lesser portion as may be owned by Appliance Recycling Centers of America, Inc. as of the date hereof); or (c) the occurrence of any “Change of Control”, “Change in Control”, or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, “beneficial ownership” shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

“**Closing Date**” means the date of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

“**Commitment Annex**” means Annex A to this Agreement.

“**Commitment Expiry Date**” means the date that is three (3) years following the Closing Date.

“**Compliance Certificate**” means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

“**Consolidated Subsidiary**” means, at any date, any Subsidiary the accounts of which would be consolidated with those of “parent” Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

“**Contingent Obligation**” means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a **Third Party Obligation**) if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

“**Controlled Group**” means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“**Credit Card Receivables**” shall mean each Account, together with all income, payments and proceeds thereof, owed by a credit or debit card issuer (including, but not limited to, Visa, MasterCard and American Express, and such other issuers approved by the Agent) to a Borrower resulting from charges by a customer of a Borrower on credit or debit cards issued by such issuer in connection with the sale of goods by a Borrower, or services performed by a Borrower, in each case, in the Ordinary Course of Business.

“**Credit Exposure**” means, at any time, any portion of the Revolving Loan Commitment that remains outstanding, or any Reimbursement Obligation or other Obligation that remains unpaid or any Letter of Credit or Support Agreement not supported with cash collateral required by this Agreement that remains outstanding; *provided, however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

“**Credit Party**” means any Guarantor under a Guarantee of the Obligations or any part thereof, any Borrower and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and “**Credit Parties**” means all such Persons, collectively.

“**Debt**” of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans and Letter of Credit Liabilities.

“**Default**” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“**Deposit Account**” means a “deposit account” (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

“**Deposit Account Control Agreement**” means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account.

“Dollars” or “\$” means the lawful currency of the United States of America.

“Eligible Account” means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent’s option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

- (a) the Account remains unpaid more than ninety (90) days past the claim or invoice date (but in no event more than one hundred twenty (120) days after the applicable goods or services have been rendered or delivered);
- (b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;
- (c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);
- (d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;
- (e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;
- (f) the Account is subject to a Lien other than a Permitted Lien, or Agent does not have a first priority, perfected Lien on such Account;
- (g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;
- (h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

- (i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);
- (j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;
- (k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);
- (l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;
- (m) the Account is unbilled (unless such Account qualifies as an Eligible Unbilled Account) or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;
- (n) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement;
- (o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;
- (p) the Account Debtor has its principal place of business or executive office outside the United States;
- (q) the Account is payable in a currency other than United States dollars;
- (r) the Account Debtor is an individual;
- (s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;
- (t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);
- (u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien;
- (v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment and discretion; or

(w) the Account is a Credit Card Receivable.

“**Eligible Credit Card Receivables**” mean Credit Card Receivables of any Borrower which meets all of the criteria for Eligible Receivables other than clause (w) thereof, and are outstanding for less than two (2) days.

“**Eligible Inventory**” means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower’s performance with respect to that Inventory);

(b) such Inventory is placed on consignment or is in transit;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent;

(d) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;

(e) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent;

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(h) such Inventory is not covered by casualty insurance acceptable to Agent;

(i) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(j) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than \$10,000;

(k) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent;

(l) such Inventory consists of (A) discontinued items, (B) slow-moving (i.e., purchased more than 2 years before the date of the applicable Borrowing Base Certificate which includes such Inventory) or excess items held in inventory, or (C) used items held for resale;

(m) such Inventory does not consist of finished goods;

- (n) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);
- (o) such Inventory has an expiration date within the next six (6) months;
- (p) such Inventory consists of products for which Borrowers have a greater than three (3) month supply on hand;
- (q) such Inventory is held for rental or lease by or on behalf of Borrowers;
- (r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or
- (s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

“Eligible Swap Counterparty” means Agent, any Affiliate of Agent, any Lender and/or any Affiliate of any Lender, that (a) at any time it occupies such role or capacity (whether or not it remains in such capacity) enters into a Swap Contract permitted hereunder with any Borrower, and (b) in the case of a Lender or an Affiliate of a Lender other than Agent, maintains a reporting system acceptable to Agent with respect to Swap Contract exposure and agrees with Agent to provide regular reporting to Agent, in form and substance reasonably satisfactory to Agent, with respect to such exposure. In addition thereto, any Affiliate of a Lender shall, upon Agent’s request, execute and deliver to Agent a letter agreement pursuant to which such Affiliate designates Agent as its agent and agrees to share, pro rata, all expenses relating to liquidation of the Collateral for the benefit of such Affiliate.

“Eligible Unbilled Account” mean an Account which (i) is eligible to be billed to the Account Debtor in accordance with the applicable contract within thirty (30) days of the “as of” date of the applicable Borrowing Base Certificate (with no additional performance required by any Person, and no condition to payment by the Account Debtor (as applicable), other than receipt of an appropriate invoice); (ii) has not been billed to the Account Debtor solely as a result of timing differences between the date the revenue is recognized on such Borrower’s books and the date the invoice is actually rendered; (iii) may, in accordance with GAAP, be included as current assets of Borrower, even though such amounts have not been billed to the Account Debtor; and (iv) otherwise meets the criteria for an Eligible Account.

“Environmental Laws” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

“Environmental Liens” means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of any Borrower or any other Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“ERISA Plan” means any “employee benefit plan”, as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“Event of Default” has the meaning set forth in Section 10.1.

“Fee Letter” means that certain letter agreement dated of even date herewith between the Borrowers and Agent.

“Financing Documents” means this Agreement, any Notes, the Fee Letter, the Security Documents, any subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements (other than any Swap Contract) related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“Foreign Lender” has the meaning set forth in Section 2.8(c).

“GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

“General Intangible” means any “general intangible” as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Guarantee” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term **“Guarantee”** used as a verb has a corresponding meaning.

“Guarantor” means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls (“**PCB’s**”), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“Hazardous Materials Contamination” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“Instrument” means “instrument”, as defined in Article 9 of the UCC.

“Intellectual Property” means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

“**Interest Period**” means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

“**Inventory**” means “inventory” as defined in Article 9 of the UCC.

“**Investment**” means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise), making or holding Debt, securities, capital contributions, loans, time deposits, advances, Guarantees or otherwise. The amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

“**Laws**” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. “**Laws**” includes, without limitation, Environmental Laws.

“**LC Issuer**” means one or more banks, trust companies or other Persons in each case expressly identified by Agent from time to time, in its sole discretion, as an LC Issuer for purposes of issuing one or more Letters of Credit hereunder. Without limitation of Agent’s discretion to identify any Person as an LC Issuer, no Person shall be designated as an LC Issuer unless such Person maintains reporting systems acceptable to Agent with respect to letter of credit exposure and agrees to provide regular reporting to Agent satisfactory to it with respect to such exposure.

“**Lender**” means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and “**Lenders**” means all of the foregoing. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral as more fully set forth in this Agreement and the Security Documents, the term “**Lender**” shall include Eligible Swap Counterparties. In connection with any such distribution of payments and collections, Agent shall be entitled to assume that no amounts are due to any Eligible Swap Counterparty unless such Eligible Swap Counterparty has notified Agent of the amount of any such liability owed to it prior to such distribution.

“**Lender Letter of Credit**” means a Letter of Credit issued by an LC Issuer that is also, at the time of issuance of such Letter of Credit, a Lender.

“**Letter of Credit**” means a standby letter of credit issued for the account of any Borrower by an LC Issuer which expires by its terms within one year after the date of issuance and in any event at least thirty (30) days prior to the Commitment Expiry Date. Notwithstanding the foregoing, a Letter of Credit may provide for automatic extensions of its expiry date for one or more successive one (1) year periods, *provided, however*, that the LC Issuer that issued such Letter of Credit has the right to terminate such Letter of Credit on each such annual expiration date and no renewal term may extend the term of the Letter of Credit to a date that is later than the thirtieth (30th) day prior to the Commitment Expiry Date. Each Letter of Credit shall be either a Lender Letter of Credit or a Supported Letter of Credit.

“**Letter of Credit Liabilities**” means, at any time of calculation, the sum of (a) without duplication, the amount then available for drawing under all outstanding Lender Letters of Credit and all Supported Letters of Credit, in each case without regard to whether any conditions to drawing thereunder can then be met, *plus* (b) without duplication, the aggregate unpaid amount of all reimbursement obligations in respect of previous drawings made under all such Lender Letters of Credit and Supported Letters of Credit.

“**LIBOR Rate**” means, for each Loan, a per annum rate of interest equal to the greater of (a) 0.50% and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for “Eurocurrency Liabilities” (as defined therein).

“**Lien**” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“**Litigation**” means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

“**Loan Account**” has the meaning set forth in Section 2.6(b).

“**Loan(s)**” means the Revolving Loans.

“**Lockbox**” has the meaning set forth in Section 2.11.

“**Lockbox Account**” means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

“**Lockbox Bank**” has the meaning set forth in Section 2.11.

“**Material Adverse Effect**” means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business, properties or prospects of any of the Credit Parties, (ii) the rights and remedies of Agent or Lenders under any Financing Document or the ability of Agent or Lenders to enforce the Obligations or realize upon the Collateral, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral; (b) an impairment to the likelihood that Eligible Accounts in general will be collected and paid in the Ordinary Course of Business of any Borrower and upon the same schedule and with the same frequency as such Borrowers’ recent collections history; or (c) the imposition of a fine against or the creation of any liability of any Credit Party to any Governmental Authority in excess of \$50,000.00.

“**Material Contracts**” has the meaning set forth in Section 3.17.

“**Maximum Lawful Rate**” has the meaning set forth in Section 2.7.

“**MCF**” means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

“**Non-Funding Lender**” has the meaning set forth in Section 11.18.

“**Notes**” has the meaning set forth in Section 2.3.

“**Notice of Borrowing**” means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

“**Notice of LC Credit Event**” means a notice from a Responsible Officer of Borrower Representative to Agent with respect to any issuance, increase or extension of a Letter of Credit specifying: (a) the date of issuance or increase of a Letter of Credit; (b) the identity of the LC Issuer with respect to such Letter of Credit, (c) the expiry date of such Letter of Credit; (d) the proposed terms of such Letter of Credit, including the face amount; and (e) the transactions that are to be supported or financed with such Letter of Credit or increase thereof.

“**Obligations**” means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. In addition to, but without duplication of, the foregoing, the Obligations shall include, without limitation, all obligations, liabilities and indebtedness arising from or in connection with (a) all Support Agreements, (b) all Lender Letters of Credit, and (c) all Swap Contracts entered into with any Eligible Swap Counterparty.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operative Documents**” means the Financing Documents, Subordinated Debt Documents, and any documents effecting any purchase or sale or other transaction that is closing contemporaneously with the closing of the financing under this Agreement.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

“**Orderly Liquidation Value**” means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its good faith discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis.

“Organizational Documents” means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

“Participant” has the meaning set forth in Section 11.17(b).

“Payment Account” means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

“PBGC” means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

“Pension Plan” means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

“Permits” means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals of a Credit Party required under all applicable Laws and required for such Credit Party in order to carry on its business as now conducted.

“Permitted Affiliate” means with respect to any Person (a) any Person that directly or indirectly controls such Person, and (b) any Person which is controlled by or is under common control with such controlling Person. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote eighty percent (80%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Permitted Acquisition” means the acquisition of stock or substantially all of the assets of another Person by a Borrower so long as (i) the equity or assets acquired are free and clear of any and all liens, claims and encumbrances, other than Permitted Liens, (ii) both immediately prior to and after giving effect to the acquisition, no Default or Event of Default exists or would result from such acquisition; (iii) the representations and warranties made by the Borrowers in the Operative Documents shall be true and correct in all respects (or in all material respects if such representation or warranty is not by its terms already qualified as to materiality) at and as of the date of such acquisition (after giving effect thereto), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all respects (or in all material respects if such representation or warranty is not by its terms already qualified as to materiality) as of such date; (iv) such acquisition is not a “hostile” acquisition and has been approved by the board of directors (or comparable governing body) of the target Person; (v) the target is a U.S. entity with a similar or complementary line or lines of business as that of the Borrowers; (vi) the target is a going concern, has positive net income and is not involved in any material litigation; (vii) the aggregate amount of cash consideration (whether in cash, or by way of a seller note, assumed liability or earnout) for all Permitted Acquisitions during the term hereof shall not exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00); (viii) any and all seller notes or earn-out payments owing in connection with the subject acquisition must be expressly subordinated to the Loans pursuant to subordination agreements in form and substance acceptable to the Agent in all respects; (ix) Borrowers shall have certified in writing immediately prior to such acquisition that the subject acquisition satisfies all of the requirements of a Permitted Acquisition; and (x) if the target will be a majority owned Subsidiary of a Borrower, such target shall have been joined as a “Borrower” party hereto, and the Borrower making such acquisition shall have pledged the equity interests in such target to the Agent, in each case within ten (10) days of the effective date of such acquisition.

“Permitted Asset Dispositions” means the following Asset Dispositions, *provided, however*, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition: (a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale, (b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries, and (c) dispositions approved by Agent.

“Permitted Contest” means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers’ and its Subsidiaries’ title to, and its right to use, the Collateral is not adversely affected thereby and Agent’s Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower’s or its Subsidiary’s intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

“Permitted Contingent Obligations” means (a) Contingent Obligations arising in respect of the Debt under the Financing Documents; (b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms); (d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$25,000 in the aggregate at any time outstanding; (f) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies; (g) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6; (h) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; and (i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed \$25,000 in the aggregate at any time outstanding.

“Permitted Debt” means: (a) Borrowers’ and its Subsidiaries’ Debt to Agent and each Lender under this Agreement and the other Financing Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) purchase money Debt not to exceed \$500,000 at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment; (d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms); (e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (f) Debt in the form of insurance premiums financed through the applicable insurance company; (g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business; and (h) Subordinated Debt.

“Permitted Distributions” means the following Restricted Distributions: (a) dividends by any Subsidiary of any Borrower to such parent Borrower; (b) dividends payable solely in common stock; (c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however*, that such repurchase does not exceed \$50,000 in the aggregate per fiscal year; and (d) dividends or distributions paid to a Borrower’s shareholder(s) or member(s) solely to the extent and at the times necessary for such shareholder(s) or member(s) to pay its or their respective federal (and, if applicable, state) income taxes arising from such shareholder(s)’ or member(s)’ respective allocable shares of such Borrower’s income that are taxable directly to such shareholder(s) or member(s), *provided, however*, that no Event of Default shall exist, and no act, event or condition shall have occurred or exist which with notice or the lapse of time, or both, would constitute an Event of Default.

“Permitted Investments” means: (a) Investments shown on Schedule 5.7 and existing on the Closing Date; (b) cash and cash equivalents; (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business; (d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers’ Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed \$50,000 at any time; (e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; (f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary; (g) Investments consisting of deposit accounts in which Agent has received a Deposit Account Control Agreement; (h) Investments by any Borrower in any other Borrower made in compliance with Section 4.11(c); (i) other Investments in an amount not exceeding \$50,000 in the aggregate; (j) Investments permitted pursuant to Section 5.17; and (k) any Permitted Acquisitions.

“Permitted Liens” means: (a) deposits or pledges of cash to secure obligations under workmen’s compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA) pertaining to a Borrower’s or its Subsidiary’s employees, if any; (b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) carrier’s, warehousemen’s, mechanic’s, workmen’s, materialmen’s or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest; (e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts, for sums not exceeding \$100,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest; (f) [reserved]; (g) Liens and encumbrances in favor of Agent under the Financing Documents; (h) Liens on Collateral, other than Collateral which is part of the Borrowing Base, existing on the date hereof and set forth on Schedule 5.2; and (i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof.

“Permitted Modifications” means (a) such amendments or other modifications to a Borrower’s or Subsidiary’s Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower’s or Subsidiary’s Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of the Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

“Permitted Transfers” means the collective reference to one or more transfers, via a sale and not by pledge or hypothecation, which, in the aggregate during the term of this Agreement, result in a transfer of legal or beneficial ownership or control of up to twenty (20%) of the direct or indirect ownership or voting interests in the Borrowers or any Guarantor to a Person, (a) that is purchasing such ownership interest in a public offering registered with the SEC, or (b) other than a Blocked Person, that is (i) a venture capital investor so long as Borrowers have given Agent at least fifteen (15) days prior written notice of the identity of the assignees, together with such information as Agent shall deem necessary to confirm that such assignee is not a Blocked Person or (ii) at the time of such transfer, already a holder of direct or indirect ownership or voting interests in the Borrowers. Notwithstanding the limitations set forth in the foregoing sentence (a) any holder of direct or indirect ownership or voting interests in the Borrowers which is a partnership may transfer such holder’s rights to such holder’s constituent partners, retired partners (including spouses, ancestors, lineal descendants and siblings of such partners or spouses who acquire such interests by gift, will or intestate succession) or their respective Affiliates, (b) any holder of direct or indirect ownership or voting interests in the Borrowers which is a limited liability company may transfer such holder’s right to such holder’s members, (c) any holder of direct or indirect ownership or voting interests in the Borrowers which is a natural person may transfer such holder’s rights to any immediate family member or to any trust created for the benefit of such holder or his or her immediate family members, and (d) any holder of direct or indirect ownership or voting interests in the Borrowers may transfer such holder’s rights to a Permitted Affiliate of such holder (*provided, however*, that no transfer of any given interest pursuant to this subpart may be made more often than once per twelve (12) month period), subject in each case to such transferee’s agreeing in writing to be bound by the rights and restrictions of this Agreement; and any such transfer described in the foregoing clauses (a) through (d) shall be deemed a “Permitted Transfer” and shall not count toward the twenty percent (20%) limitation described above.

“Person” means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“Pro Rata Share” means with respect to a Lender’s obligation to make Revolving Loans, (a) such Lender’s right to receive the unused line fee described in Section 2.2(b), (b) such Lender’s obligation to purchase interests and participations in Letters of Credit and related Support Agreement liabilities and obligations, and such Lender’s obligation to share in Letter of Credit Liabilities and to receive the related Letter of Credit fee described in Section 2.5(b), in accordance with the Revolving Loan Commitment Percentage of such Lender, (c) with respect to a Lender’s right to receive payments of principal and interest with respect to Revolving Loans, such Lender’s Revolving Loan Exposure with respect thereto; and (d) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the sum of the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender’s then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

“Reimbursement Obligations” means, at any date, the obligations of each Borrower then outstanding to reimburse (a) Agent for payments made by Agent under a Support Agreement, and/or (b) any LC Issuer, for payments made by such LC Issuer under a Lender Letter of Credit.

“Replacement Lender” has the meaning set forth in Section 11.17(c).

“Required Lenders” means at any time Lenders holding (a) sixty-six and two thirds percent (66 2/3%) or more of the Revolving Loan Commitment, or (b) if the Revolving Loan Commitment has been terminated, sixty-six and two thirds percent (66 2/3%) or more of the sum of (x) the then aggregate outstanding principal balance of the Loans *plus* (y) the then aggregate amount of Letter of Credit Liabilities.

“Responsible Officer” means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

“Restricted Distribution” means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

“Revolving Lender” means each Lender having a Revolving Loan Commitment Amount in excess of \$0 (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of \$0).

“Revolving Loan Availability” means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstandings.

“Revolving Loan Borrowing” means a borrowing of a Revolving Loan.

“Revolving Loan Commitment” means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

“Revolving Loan Commitment Amount” means, as to any Lender, the dollar amount set forth opposite such Lender’s name on the Commitment Annex under the column “Revolving Loan Commitment Amount” (if such Lender’s name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender’s portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be \$12,000,000 and if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to \$16,000,000.

“Revolving Loan Commitment Percentage” means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender’s name on the Commitment Annex under the column “Revolving Loan Commitment Percentage” (if such Lender’s name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

“Revolving Loan Exposure” means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender’s Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

“Revolving Loan Limit” means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

“Revolving Loan Outstandings” means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of Revolving Loans *plus* the then existing Letter of Credit Liabilities, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of Revolving Loans advanced by such Lender *plus* the then existing Letter of Credit Liabilities for the account of such Lender.

“Revolving Loans” has the meaning set forth in Section 2.1(b).

“SEC” means the United States Securities and Exchange Commission.

“Securities Account” means a “securities account” (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

“Securities Account Control Agreement” means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain “control” (as defined in Article 9 of the UCC) over such Securities Account.

“Security Document” means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Settlement Date**” has the meaning set forth in Section 11.13(a)(ii).

“**Settlement Service**” has the meaning set forth in Section 11.17(a)(v).

“**Solvent**” means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

“**Subordinated Debt**” means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there is no Subordinated Debt.

“**Subordinated Debt Documents**” means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

“**Subordinated Swap Contract**” means a Swap Contract between a Borrower and an Eligible Swap Counterparty that Agent has designated, in its discretion, as being secured by the Collateral on a basis that is subordinate to all of the other Obligations.

“**Subordination Agreement**” means any agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

“**Subsidiary**” means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

“**Support Agreement**” has the meaning set forth in Section 2.5(a).

“**Supported Letter of Credit**” means a Letter of Credit issued by an LC Issuer in reliance on one or more Support Agreements.

“**Swap Contract**” means any “swap agreement”, as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such “swap agreement”.

“**Taxes**” has the meaning set forth in Section 2.8.

“**Termination Date**” means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

“**UCC**” means the Uniform Commercial Code of the State of Maryland or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“**United States**” means the United States of America.

“**Work-In-Process**” means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower’s normal business practices for release and delivery to customers.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, the Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided, however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits”, or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term “material” or the phrase “in all material respects” is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower’s and each other Credit Party’s performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS AND LETTERS OF CREDIT

Section 2.1 Loans.

(a) Reserved

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a “**Revolving Loan**”, and collectively, “**Revolving Loans**”) equal to such Lender’s Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided, however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, (A) as provided in Section 2.5(c), with respect to obligations arising under Support Agreements and/or Lender Letters of Credit, and (B) to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent’s continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent’s good faith credit judgment and discretion, such reserves are necessary.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however*, that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans or cash collateralize Letter of Credit Liabilities in the manner specified in Section 2.5(e) or cause the cancellation of outstanding Letters of Credit, or any combination of the foregoing, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part *provided, however*, that any such partial prepayment shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by 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, in each case, 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), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however*, that notwithstanding anything in this Agreement 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 and (ii) all requests, rules, guidelines or directives 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, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers 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 Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) 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 Loans bearing interest based upon the LIBOR Rate 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 Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however*, that Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Percentage of the Revolving Loan Commitment as such Lender held immediately prior to such activation. In the event Agent and all Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitment shall not be increased and, within the next ninety (90) days, Borrowers may terminate this Agreement upon written notice to Agent and, if the Borrowing Base on the date of such request would have supported such increased Revolving Loan Commitment, upon repayment in full of all Obligations, no fee shall be due pursuant to Section 2.2(f) in connection with such termination.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a three (3) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) 0.50% per annum. Such fee is to be paid monthly in arrears on the first day of each month.

(c) Fee Letter. Borrowers shall pay to Agent all amounts as set forth in the Fee Letter, at the times specified therein.

(d) Reserved.

(e) Reserved.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the Revolving Loan Commitment *by* the following applicable percentage amount: 2.00% for the first year following the Closing Date, 0.50% for the second year following the Closing Date, and 0.50% thereafter. All fees payable pursuant to this paragraph shall be paid on the date of termination of such Revolving Loan Commitment, and be deemed fully earned and non-refundable as of the Closing Date. Notwithstanding the above, in the event that a sale of all or substantially all of the Borrowers' assets and/or a Change in Control transaction causes such termination, the above referenced fees shall be 1.00% for the first year following the Closing Date and 0% thereafter.

(g) Reserved

(h) Reserved

(i) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(j) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(k) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(l) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(m) Automated Clearing House Payments. If Agent so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a “**Note**”) in an original principal amount equal to such Lender’s Revolving Loan Commitment Amount. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender’s Revolving Loan Commitment Amount.

Section 2.4 Reserved.

Section 2.5 Letters of Credit and Letter of Credit Fees

(a) Letter of Credit. On the terms and subject to the conditions set forth herein, the Revolving Loan Commitment may be used by Borrowers, in addition to the making of Revolving Loans hereunder, for the issuance, prior to that date which is one year prior to the Termination Date, by (i) Agent, of letters of credit, Guarantees or other agreements or arrangements (each, a “Support Agreement”) to induce an LC Issuer to issue or increase the amount of, or extend the expiry date of, one or more Letters of Credit and (ii) a Lender, identified by Agent, as an LC Issuer, of one or more Lender Letters of Credit, so long as, in each case:

(i) Agent shall have received a Notice of LC Credit Event at least five (5) Business Days before the relevant date of issuance, increase or extension; and

(ii) after giving effect to such issuance, increase or extension, (A) the aggregate Letter of Credit Liabilities do not exceed \$0, and (B) the Revolving Loan Outstandings do not exceed the Revolving Loan Limit.

Nothing in this Agreement shall be construed to obligate any Lender to issue, increase the amount of or extend the expiry date of any Letter of Credit, which act or acts, if any, shall be subject to agreements to be entered into from time to time between Borrowers and such Lender. Each Lender that is an LC Issuer hereby agrees to give Agent prompt written notice of each issuance of a Lender Letter of Credit by such Lender and each payment made by such Lender in respect of Lender Letters of Credit issued by such Lender.

Notwithstanding anything to the contrary set forth herein, Borrowers agree and acknowledge that no part of the Revolving Loan Commitment will be available for the issuance of a Letter of Credit until such times as Agent notifies Borrower Representative that a Lender party to this Agreement is an LC Issuer.

(b) Letter of Credit Fee. Borrowers shall pay to Agent, for the benefit of the Revolving Lenders in accordance with their respective Pro Rata Shares, a letter of credit fee with respect to the Letter of Credit Liabilities for each Letter of Credit, computed for each day from the date of issuance of such Letter of Credit to the date that is the last day a drawing is available under such Letter of Credit, at a rate per annum equal to the Applicable Margin then applicable to Loans bearing interest based upon the LIBOR Rate. Such fee shall be payable in arrears on the last day of each calendar month prior to the Termination Date and on such date. In addition, Borrowers agree to pay promptly to the LC Issuer any fronting or other fees that it may charge in connection with any Letter of Credit.

(c) Reimbursement Obligations of Borrowers. If either (i) Agent shall make a payment to an LC Issuer pursuant to a Support Agreement, or (ii) any Lender shall notify Agent that it has made payment in respect of, a Lender Letter of Credit, (A) the applicable Borrower shall reimburse Agent or such Lender, as applicable, for the amount of such payment by the end of the day on which Agent or such Lender shall make such payment and (B) Borrowers shall be deemed to have immediately requested that Revolving Lenders make a Revolving Loan, in a principal amount equal to the amount of such payment (but solely to the extent such Borrower shall have failed to directly reimburse Agent or, with respect to Lender Letters of Credit, the applicable LC Issuer, for the amount of such payment). Agent shall promptly notify Revolving Lenders of any such deemed request and each Revolving Lender hereby agrees to make available to Agent not later than noon (Eastern time) on the Business Day following such notification from Agent such Revolving Lender's Pro Rata Share of such Revolving Loan. Each Revolving Lender hereby absolutely and unconditionally agrees to fund such Revolving Lender's Pro Rata Share of the Loan described in the immediately preceding sentence, unaffected by any circumstance whatsoever, including, without limitation, (x) the occurrence and continuance of a Default or Event of Default, (y) the fact that, whether before or after giving effect to the making of any such Revolving Loan, the Revolving Loan Outstandings exceed or will exceed the Revolving Loan Limit, and/or (z) the non-satisfaction of any conditions set forth in Section 7.2. Agent hereby agrees to apply the gross proceeds of each Revolving Loan deemed made pursuant to this Section 2.5(c) in satisfaction of Borrowers' reimbursement obligations arising pursuant to this Section 2.5(c). Borrowers shall pay interest, on demand, on all amounts so paid by Agent pursuant to any Support Agreement or to any applicable Lender in honoring a draw request under any Lender Letter of Credit for each day from the date of such payment until Borrowers reimburse Agent or the applicable Lender therefor (whether pursuant to clause (A) or (B) of the first sentence of this subsection (c)) at a rate per annum equal to the sum of two percent (2%) *plus* the interest rate applicable to Revolving Loans for such day.

(d) Reimbursement and Other Payments by Borrowers. The obligations of each Borrower to reimburse Agent and/or the applicable LC Issuer pursuant to Section 2.5(c) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including the following:

- (i) any lack of validity or enforceability of, or any amendment or waiver of or any consent to departure from, any Letter of Credit or any related document;
- (ii) the existence of any claim, set-off, defense or other right which any Borrower may have at any time against the beneficiary of any Letter of Credit, the LC Issuer (including any claim for improper payment), Agent, any Lender or any other Person, whether in connection with any Financing Document or any unrelated transaction, *provided, however,* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (iii) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
- (iv) any affiliation between the LC Issuer and Agent; or
- (v) to the extent permitted under applicable law, any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(e) Deposit Obligations of Borrowers. In the event any Letters of Credit are outstanding at the time that Borrowers prepay in full or are required to repay the Obligations or the Revolving Loan Commitment is terminated, Borrowers shall (i) deposit with Agent for the benefit of all Revolving Lenders cash in an amount equal to one hundred ten percent (110%) of the aggregate outstanding Letter of Credit Liabilities to be available to Agent, for its benefit and the benefit of issuers of Letters of Credit, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto, and (ii) prepay the fee payable under Section 2.5(b) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit assuming that the full amount of such Letters of Credit as of the date of such repayment or termination remain outstanding until the end of such remaining terms. Upon termination of any such Letter of Credit and so long as no Event of Default has occurred and is continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit shall be refunded to Borrowers, together with the deposit described in the preceding clause (i) attributable to such Letter of Credit, but only to the extent not previously applied by Agent in the manner described herein.

(f) Participations in Support Agreements and Lender Letters of Credit

(i) Concurrently with the issuance of each Supported Letter of Credit, Agent shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from Agent, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, Agent's Support Agreement liabilities and obligations in respect of such Supported Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Concurrently with the issuance of each Lender Letter of Credit, the LC Issuer in respect thereof shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, such Lender Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Any purchase obligation arising pursuant to the immediately two preceding sentences shall be absolute and unconditional and shall not be affected by any circumstances whatsoever.

(ii) If either (A) Agent makes any payment or disbursement under any Support Agreement and/or (B) an LC Issuer makes any payment or disbursement under any Lender Letter of Credit, and (I) Borrowers have not reimbursed Agent or the applicable LC Issuer, as applicable, in full for such payment or disbursement in accordance with Section 2.5(c), or (II) any reimbursement under any Support Agreement or Lender Letter of Credit received by Agent or any LC Issuer, as applicable, from any Credit Party is or must be returned or rescinded upon or during any bankruptcy or reorganization of any Credit Party or otherwise, each Revolving Lender shall be irrevocably and unconditionally obligated to pay to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of such payment or disbursement (but no such payment shall diminish the Obligations of Borrowers under Section 2.5(c)). To the extent any such Revolving Lender shall not have made such amount available to Agent or the applicable LC Issuer, as applicable, before 12:00 Noon (Eastern time) on the Business Day on which such Lender receives notice from Agent or the applicable LC Issuer, as applicable, of such payment or disbursement, or return or rescission, as applicable, such Lender agrees to pay interest on such amount to Agent or the applicable LC Issuer, as applicable, forthwith on demand accruing daily at the Federal Funds Rate, for the first three (3) days following such Lender's receipt of such notice, and thereafter at the Base Rate *plus* the Applicable Margin in respect of Revolving Loans. Any such Revolving Lender's failure to make available to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of any such payment or disbursement, or return or rescission, as applicable, shall not relieve any other Lender of its obligation hereunder to make available such other Revolving Lender's Pro Rata Share of such payment, but no Revolving Lender shall be responsible for the failure of any other Lender to make available such other Lender's Pro Rata Share of any such payment or disbursement, or return or rescission.

Section 2.6 General Provisions Regarding Payment; Loan Account

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of Maryland or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, payroll, employment, property or franchise taxes and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding taxes imposed on or measured by Agent's or any Lender's net income by the jurisdictions under which Agent or such Lender is organized or conducts business (other than solely as the result of entering into any of the Financing Documents or taking any action thereunder) (all non-excluded items being called "**Taxes**"). If any withholding or deduction from any payment to be made by any Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then Borrowers will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Agent an official receipt or other documentation satisfactory to Agent evidencing such payment to such authority; and (iii) pay to Agent for the account of Agent and Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. If any Taxes are directly asserted against Agent or any Lender with respect to any payment received by Agent or such Lender hereunder, Agent or such Lender may pay such Taxes and Borrowers will promptly pay such additional amounts (including any penalty, interest or expense) as is necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such Person would have received had such Taxes not been asserted so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which Agent or such Lender first made written demand therefor.

(b) If any Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to Agent, for the account of Agent and the respective Lenders, the required receipts or other required documentary evidence, Borrowers shall indemnify Agent and Lenders for any incremental Taxes, interest or penalties that may become payable by Agent or any Lender as a result of any such failure.

(c) Each Lender that (i) is organized under the laws of a jurisdiction other than the United States, and (ii)(A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a “**Foreign Lender**”) shall execute and deliver to each of Borrowers and Agent one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender’s entitlement to a complete exemption from withholding or deduction of Taxes. Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in law.

(d) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender’s or such controlling Person’s capital as a consequence of such Lender’s obligations hereunder or under any Support Agreement or Lender Letter of Credit to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender’s or such controlling Person’s policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; provided, however, that notwithstanding anything in this Agreement 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 and (ii) all requests, rules, guidelines or directives 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, in each case pursuant to Basel III, shall in each case be deemed to be a “change in applicable Law”, regardless of the date enacted, adopted or issued.

(e) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, 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 (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, Notices of LC Credit Events and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, and LC Issuer may provide such Letters of Credit for the account of a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, or the issuance of any Letter of Credit requested on behalf of a Borrower hereunder, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders and LC Issuer with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" shall mean such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrowers.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in a Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to \$0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11

Collections and Lockbox Account

(a) Borrowers shall maintain a lockbox (the “**Lockbox**”) with a United States depository institution designated from time to time by Agent (the “**Lockbox Bank**”), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts (other than Accounts for which the Account Debtor is a Governmental Account Debtor) are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) [Reserved]

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox and the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys’ fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent’s gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to the applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within two (2) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to \$500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus expenses*)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however*, that no such termination shall be effective until Borrowers have (i) paid or collateralized to Agent's satisfaction all of the Obligations in immediately available funds, all Letters of Credit and Support Agreements have expired, terminated or have been cash collateralized to Agent's satisfaction, (ii) complied with Section 2.2(f). Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans or issue or procure any Letters of Credit or Support Agreements on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2(f) and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law applicable to any Credit Party or any of the Organizational Documents of any Credit Party, or (b) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (b), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2016, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an “investment company” or a company “controlled” by an “investment company” or a “subsidiary” of an “investment company,” all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any “margin stock” (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any “margin stock” or for any other purpose which might cause any of the Loans to be considered a “purpose credit” within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws: Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan or the issuance of any Letter of Credit, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents: Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Related Transactions. All transactions contemplated by the Operative Documents to be consummated on or prior to the date hereof have been so consummated (including, without limitation, the disbursement and transfer of all funds in connection therewith) in all material respects pursuant to the provisions of the applicable Operative Documents, true and complete copies of which have been delivered to Agent, and in compliance with all applicable Law, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.17 Material Contracts. Except for the Operative Documents and the other agreements set forth on Schedule 3.17 (collectively with the Operative Documents, the "**Material Contracts**"), as of the Closing Date there are no (a) employment agreements covering the management of any Credit Party, (b) collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party, (c) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (d) agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, (e) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), (f) customer, distribution, marketing or supply agreements to which any Credit Party is a party, in each case with respect to the preceding clauses (a) through (e) requiring payment of more than \$100,000 in any year, (g) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party, (h) third party billing arrangements to which any Credit Party is a party, or (i) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect. Schedule 3.17 sets forth, with respect to each real estate lease agreement to which any Borrower is a party (as a lessee) as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements: No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all licenses under which any Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Borrower's interest in such license or agreement or other property. To such Borrower's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, each Borrower and each additional Credit Party is Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided, however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 Interest Rate. The rate of interest paid under the Notes and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Operative Documents.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities except for Permitted Investments.

Section 3.24 Representations and Warranties Incorporated from Operative Documents. As of the Closing Date, each of the representations and warranties made in the Operative Documents by each of the parties thereto is true and correct in all material respects, and such representations and warranties are hereby incorporated herein by reference with the same effect as though set forth in their entirety herein, as qualified therein, except to the extent that such representation or warranty relates to a specific date, in which case such representation and warranty shall be true as of such earlier date.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent: (a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, cash flow and income statement (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Agent; (b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month; (c) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC; (e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Fifty Thousand Dollars (\$50,000) or more; (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; and (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request. Each Borrower will, within thirty (30) days after the last day of each month, deliver to Agent with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Swap Contracts and Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Borrowers shall, every ninety (90) days on a schedule to be designated by Agent, and at such other times as Agent shall request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter, such Account Debtor's credit rating(s), if any, as rated by A.M. Best Company, Standard & Poor's Corporation, Moody's Investors Service, Inc., FITCH, Inc. or other applicable rating agent. Additionally, Borrowers will immediately deliver to Agent copies of any and all notices or other written communications received (and will advise Agent of any oral communications received) from Branch Banking and Trust Company (or its designee) in connection with the BB&T Notes (hereinafter defined) or any of the guarantees executed by the Borrower Representative in connection therewith.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, their respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any, following which Agent shall return the security, if any, deposited with Agent pursuant to the definition of Permitted Contest.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage in such amounts and with respect to such risks as Agent may request from time to time, pursuant to the Insurance Requirements attached hereto as Schedule 4.4; *provided, however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least 60 days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of Revolving Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the refinancing on the Closing Date of Debt, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Litigation and Defaults. Borrowers will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (b) upon any Borrower becoming aware of the existence of any Default or Event of Default, (c) if any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (e) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that involve more than \$100,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations. Without limiting the generality of the foregoing, (x) Borrowers shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed supplement to the applicable Credit Party's Patent Security Agreement or Trademark Security Agreement in the form of the respective Exhibit thereto, and (y) at the request of Agent, following the disclosure by Borrowers on any Compliance Certificate of the acquisition by any Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person, Borrowers shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent, to the extent legally possible, in such Borrower's rights under such license and shall use their commercially reasonable best efforts to obtain the written consent of the licensor which such license to the granting in favor of Agent of a Lien on such Borrower's rights as licensee under such license.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary, Borrowers shall (i) pledge, have pledged or cause or have caused to be pledged to the Agent pursuant to a pledge agreement in form and substance satisfactory to the Agent, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of the Agent in order to grant the Agent, acting on behalf of the Lenders, a first priority Lien on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by the Agent, in each case, in form and substance satisfactory to the Agent.

(d) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

Section 4.12 Reserved

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) days after the date of this Agreement (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least twice per year and at such other times as Agent requests, and Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiaries.

(d) In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports, at the Borrower's expense, in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Intellectual Property and furniture, fixtures and equipment owned by each Borrower or any Subsidiaries.

Section 4.15 Maintenance of Management. Borrower will cause its business to be continuously managed by its present chief executive officer or such other individuals serving in such capacities as shall be reasonably satisfactory to Agent. Borrowers will notify Agent promptly in writing of any change in its board of directors or executive officers.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Restricted Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Restricted Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agents or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor other than Permitted Transfers with respect to such Persons.

Section 5.7 Purchase of Assets, Investments. Other than a Permitted Acquisition, no Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or as permitted under clause (h) of the definition of Permitted Investments; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, and except for transactions that are disclosed to Agent in advance of being entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of the Agent or the Lenders or their ability to enforce the same; (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Borrower or any Subsidiary; or (d) reduces in any material respect any rights or benefits of any Borrower or any Subsidiaries (it being understood and agreed that any such determination shall be in the discretion of the Agent). Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such; *provided, however*, that at all times that any Obligations or Affiliated Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices. No Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; *provided, however*, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the ordinary course of business or (ii) which discount, credit or allowance exceeds an amount equal to \$100,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts or Eligible Inventory provided in Section 1.1.

Section 5.17 Non-Borrower Affiliates. Except as expressly permitted hereunder, and except for investments not to exceed \$300,000 in the aggregate in any fiscal year, no Borrower may suffer or permit the transfer of assets to (including by way of capital contribution), the making of loans to or the use of Loan proceeds by Affiliates of the Borrowers which are not Borrowers hereunder, including, without limitation, ARCA Canada Inc., and any other non-borrower Subsidiaries (it being expressly understood and agreed that no more than \$50,000 in investments, cash or other assets, in the aggregate, during the term hereof, may be made or contributed by the Borrowers to ARCA Advanced Processing, LLC).

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Additional Defined Terms. The following additional definitions are hereby appended to Section 1.1 of this Agreement:

“**Defined Period**” means, for purposes of calculating the Fixed Charge Coverage Ratio (i) for the May 31, 2017 test date, the one (1) month period ending on the last day of such calendar month, (ii) for the June 30, 2017 test date, the two (2) month period ending on the last day of such calendar month, (iii) for the July 31, 2017 test date, the three (3) month period ending on the last day of such calendar month, (iv) for the August 31, 2017 test date, the four (4) month period ending on the last day of such calendar month, (v) for the September 30, 2017 test date, the five (5) month period ending on the last day of such calendar month, (vi) for the October 31, 2017 test date, the six (6) month period ending on the last day of such calendar month, (vii) for the November 30, 2017 test date, the seven (7) month period ending on the last day of such calendar month, (viii) for the December 31, 2017 test date, the eight (8) month period ending on the last day of such calendar month, (ix) for the January 31, 2018 test date, the nine (9) month period ending on the last day of such calendar month, (x) for the February 28, 2018 test date, the ten (10) month period ending on the last day of such calendar month, (xi) for the March 31, 2018 test period, the eleven (11) month period ending on the last day of such calendar month, (xii) for the April 30, 2018 test period, the twelve (12) month period ending on the last day of such calendar month and (xiii) for any testing period thereafter, the twelve (12) month period ending on the last day of such calendar month.

“**EBITDA**” has the meaning provided in the Compliance Certificate.

“**Fixed Charge Coverage Ratio**” means the ratio of Operating Cash Flow (as defined in the Compliance Certificate) to Fixed Charges (as defined in the Compliance Certificate) for each Defined Period.

Section 6.2 Fixed Charge Coverage Ratio. Borrowers will not permit the Fixed Charge Coverage Ratio for any Defined Period, as tested monthly, to be less than 1.00 to 1.00.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, together with the financial reporting required of Borrowers in Section 4.1 hereof, a Compliance Certificate as evidence of Borrowers’ compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers’ calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loan, of Agent to issue any Support Agreements on the Closing Date and of any LC Issuer to issue any Lender Letter of Credit on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

- (a) evidence of the consummation of the transactions (other than the funding of the Loan) contemplated by the Operative Documents including, without limitation, the funding of any and all investments contemplated by the Operative Documents;
- (b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;
- (c) since December 31, 2016, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party, or any event or condition which could reasonably be expected to result in such a material adverse change; and
- (d) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan, Support Agreement and Lender Letter of Credit. The obligation of the Lenders to make a Loan (other than Revolving Loans made pursuant to Section 2.5(c)) or an advance in respect of any Loan, of Agent to issue any Support Agreement or of any LC Issuer to issue any Lender Letter of Credit (including on the Closing Date) is subject to the satisfaction of the following additional conditions:

- (a) in the case of a Revolving Loan Borrowing, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate, in the case of any Support Agreement or Lender Letter of Credit, receipt by Agent of a Notice of LC Credit Event in accordance with Section 2.5(a);
- (b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;
- (c) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;
- (d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(e) the fact that no adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement.

Each giving of a Notice of LC Credit Event hereunder, each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds, all issuances of Lender Letters of Credit and all undertakings in respect of Support Agreements: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post Closing Requirements. Borrowers shall complete each of the post closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent.

Section 7.5 EEI Debt. Prior to making any payments on the indebtedness owing to Energy Efficiency Investments, LLC pursuant to the EEI SPA (hereinafter defined) or the notes issued in connection therewith, Borrowers will provide evidence to Agent that Borrowers are in compliance (on a pro forma basis after giving effect to the proposed payment), with the financial covenants in Article 6 hereof. Any failure to provide such evidence prior to making any such payment will result in an Event of Default hereunder.

ARTICLE 8 - [RESERVED]

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) Schedule 9.2 sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any of the Collateral are kept, which such Schedule 9.2 indicates in each case which Borrower(s) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(b) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(c) As of the Closing Date, no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents or investment property. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(d) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least thirty (30) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(e) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(f) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Accounts and Inventory in an aggregate amount of \$25,000, no Accounts or Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrower has notified Agent that Inventory is currently located at the locations set forth on Schedule 9.2. Borrowers shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the “secured party” and such Borrower as the “debtor” and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as “all assets” of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an “**Event of Default**”:

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6 and Article 5, or (iii) there shall occur any default in the performance of or compliance with Section 4.1 and/or Article 6 of this Agreement and Borrower Representative has received written notice from Agent or Required Lenders of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans) or in respect of any Swap Contract, or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) or in respect of any Swap Contract, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or the counterparty under any such Swap Contract, to cause, Debt or other liabilities having an individual principal amount in excess of \$25,000 (or any amount, solely with respect to Swap Contracts) or having an aggregate principal amount in excess of \$25,000 (or any amount, solely with respect to Swap Contracts) to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$25,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$25,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$25,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent;

(o) Agent determines, based on information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrowers shall fail to comply with one or more financial covenants in Article 6 during the next succeeding financial reporting period;

(p) there shall occur any default or event of default under the Affiliated Financing Documents;

(q) there shall occur any default or event of default under (i) that certain Securities Purchase Agreement dated as of November 8, 2016 between Energy Efficiency Investments, LLC and the Borrower Representative (the "EEI SPA"), or under any of the promissory notes or other documents executed or issued in connection therewith and/or (ii) that certain Remedy Standstill Agreement dated of even date herewith among Energy Efficiency Investments, LLC, Agent and the Borrower Representative;

(r) there shall be any increase to the outstanding principal balance of (i) that certain promissory note dated March 10, 2011 (**BB&T Note #1**), made by ARCA Advanced Processing, LLC (the "**BB&T Borrower**") and payable to the order of Branch Banking and Trust Company, in the original principal amount of \$2,100,000 (SBA Loan #44712650-04), (ii) that certain promissory note dated March 10, 2011 ("**BB&T Note #2**"), made by the BB&T Borrower and payable to the order of Branch Banking and Trust Company, in the original principal amount of \$1,400,000 (SBA Loan #447114350-07), and/or (iii) that certain promissory note dated March 10, 2011 ("**BB&T Note #3**"), and together with BB&T Note #1 and BB&T Note#2, collectively, the "**BB&T Notes**", made by the BB&T Borrower and payable to the order of Branch Banking and Trust Company in the original principal amount of \$1,250,000 (SBA Loan #44714950-03);

(s) there shall occur a material adverse change in the financial condition or business prospects of any Borrower, or if Agent in good faith deems the Lenders insecure as a result of acts or events bearing upon the financial condition of any Borrower or the repayment of the Notes, which default shall have continued unremedied for a period of ten (10) days after written notice from Agent.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Borrowers would be entitled under this Section before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrowers any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided, however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Cash Collateral. If (a) any Event of Default specified in Section 10.1(e) or 10.1(f) shall occur, (b) the Obligations shall have otherwise been accelerated pursuant to Section 10.2, or (c) the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall have been terminated pursuant to Section 10.2, then without any request or the taking of any other action by Agent or the Lenders, Borrowers shall immediately comply with the provisions of Section 2.5(e) with respect to the deposit of cash collateral to secure the existing Letter of Credit Liability and future payment of related fees.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, (a) the Loans and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement, and (b) the fee described in Section 2.5(b) shall increase by a rate that is five percent (5.0%) in excess of the rate otherwise payable under such Section; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: first, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; second, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; third, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); fourth, to the principal amount of the Obligations outstanding and to provide cash collateral to secure any and all Letter of Credit Liability and future payment of related fees, as provided for in Section 2.5(e); fifth to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents; and sixth, to the Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error 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 to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other 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 any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Loan Commitment and payment in full of all Obligations, and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Swap Contracts secured, in whole or in part, by any Collateral; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall give notice to the Lenders and Borrowers. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a “**Settlement Date**”), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender’s percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender’s actual percentage interest of the Revolving Loans to such Lender’s required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender’s percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender’s Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however*, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender’s respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender’s commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender’s Pro Rata Share of such Loans unless Agent receives such Lender’s Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Reserved

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided, however*, that Agent shall be entitled, in its sole and absolute discretion, to provide its written consent to a proposed Swap Contract, in each case without the consent of any other Lender.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

- (i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender;
 - (ii) if the rights or duties of Agent or LC Issuer are affected thereby, by Agent and LC Issuer, as the case may be;
- and/or

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or Reimbursement Obligation or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan or Reimbursement Obligation; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan or of any Reimbursement Obligation, or of interest on any Loan or Reimbursement Obligation (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage, or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

(c) Without limitation of the provisions of the preceding clause (a) and (b), no waiver, amendment or other modification to this Agreement shall, unless signed by each Eligible Swap Counterparty then in existence, modify the provisions of Section 10.7 in any manner adverse to the interests of each such Eligible Swap Counterparty.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500 to be paid by the assigning Lender; *provided, however*, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof. The entries in such register shall be conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, 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; *provided, however*, 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.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the “**Settlement Service**”). At any time when the Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent’s approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower’s Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a “**Participant**”). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender’s obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an “**Affected Lender**”) each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers’ election, the Agent, of such Person’s intention to obtain, at Borrowers’ expense, a replacement Lender (“**Replacement Lender**”) for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a “**Lender**” for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist.

So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Section 7.2 any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a “**Non-Funding Lender**”) for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loans Outstanding in excess of \$0; *provided, however*, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be \$0.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Reserved

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party, other than reimbursement obligations that have arisen pursuant to Section 2.5(c) in respect of Letters of Credit issued at the time such Non-Funding Lender was not then a Non-Funding Lender.

(f) Agent shall have no right to (i) make or disburse Revolving Loans as provided in Section 2.1(b)(i) for the account of any Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), or (ii) assume that any Revolving Lender that was a Non-Funding Lender at the time of issuance of such Letter of Credit will fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect of such Letter of Credit. In addition, no Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), shall have an obligation to fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect to such Letter of Credit, or to make any payment to Agent or the L/C Issuer, as applicable, under Section 2.5(f)(ii) in respect of such Letter of Credit, or be deemed to have purchased any interest or participation in such Letter of Credit from Agent or the L/C Issuer, as applicable, under Section 2.5(f)(i).

(g) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Buy-Out Upon Refinancing. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

Section 11.20 Definitions. As used in this Article 11, the following terms have the following meanings:

“**Approved Fund**” means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Assignment Agreement**” means an assignment agreement in form and substance acceptable to Agent.

“**Defaulted Lender**” means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

“**Eligible Assignee**” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, (x) “**Eligible Assignee**” shall not include any Borrower or any of a Borrower’s Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

“**Federal Funds Rate**” means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.9 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified the Agent that it is incapable of receiving notices by electronic communication. The Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) 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 (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, the Agent or a Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided, however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" shall mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MONTGOMERY, STATE OF MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 WAIVER OF JURY TRIAL. (a) **EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.**

(b) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.

Section 12.10 Publication: Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans and Letters of Credit, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR,” and further waives any similar rights under applicable Laws.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem

Name: Maurice Amsellem

Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for ARCA transaction
Facsimile: 301-941-1450

Copying, for notice purposes only:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450

Payment Account Designation

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: XXX-XXX-XXX
Account Name: MidCap Funding X Trust- Collections
Account #: XXXXXXXXXXXX
Attention: ARCA

Signature Page to Credit and Security Agreement

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem

Name: Maurice Amsellem

Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for ARCA transaction
Facsimile: 301-941-1450

Signature Page to Credit and Security Agreement

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A Commitment Annex

EXHIBITS

Exhibit A [Reserved]
Exhibit B Form of Compliance Certificate
Exhibit C Borrowing Base Certificate
Exhibit D Form of Notice of Borrowing

SCHEDULES

Schedule 3.1 Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4 Capitalization
Schedule 3.6 Litigation
Schedule 3.17 Material Contracts
Schedule 3.18 Environmental Compliance
Schedule 3.19 Intellectual Property
Schedule 4.4 Insurance
Schedule 4.9 Litigation, Governmental Proceedings and Other Notice Events
Schedule 5.1 Debt; Contingent Obligations
Schedule 5.2 Liens
Schedule 5.7 Permitted Investments
Schedule 5.8 Affiliate Transactions
Schedule 5.11 Business Description
Schedule 5.14 Deposit Accounts and Securities Accounts
Schedule 7.4 Post-Closing Obligations
Schedule 9.1 Collateral
Schedule 9.2 Location of Collateral

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

| Lender | Revolving Loan Commitment Amount | Revolving Loan Commitment Percentage |
|------------------------|---|---|
| MidCap Financial Trust | \$12,000,000 | 100% |
| TOTALS | \$12,000,000 | 100% |

EXHIBIT A TO CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO CREDIT AGREEMENT (COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

Date: _____, 201__

This Compliance Certificate is given by _____, a Responsible Officer of Appliance Recycling Centers of America, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May ____, 2017 among the Borrower Representative, ApplianceSmart, Inc., a Minnesota corporation, ARCA Recycling, Inc., a California corporation, Customer Connexx LLC, a Nevada limited liability company and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

- (a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;
- (b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;
- (c) except as noted on Schedule 2 attached hereto, the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantor conduct business;
- (d) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or Guarantors to make required payments of withholding or other tax obligations of any Borrower or Guarantors during the accounting period to which the attached statements pertain or any subsequent period.
- (e) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;
- (f) except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against any Borrower or Guarantor; (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of any Borrower or Guarantor; or (iii) any default by any Borrower or Guarantor under any Material Contract to which it is a party.

(g) except as noted on Schedule 5 attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any Schedule 5 to any previous Compliance Certificate delivered by the Company to Agent.

(h) except as noted on Schedule 6 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 6 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(i) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(j) Borrowers and Guarantors (if any) are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: [See attached worksheets]. Such calculations and the certifications contained therein are true, correct and complete.

The foregoing certifications and computations are made as of _____, 201__ (end of month) and as of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

EBITDA Worksheet (Attachment to Compliance Certificate)

EBITDA for the applicable Defined Period is calculated as follows:

| | |
|--|----------|
| Net income (or loss) for the Defined Period of Borrowers and their Consolidated Subsidiaries, but excluding: (a) the income (or loss) of any Person (other than Subsidiaries of Borrowers) in which Borrowers or any of their Subsidiaries has an ownership interest unless received by Borrower or their Subsidiary in a cash distribution; and (b) the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers | \$ _____ |
| <i>Plus:</i> Any provision for (or <i>minus</i> any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period | \$ _____ |
| <i>Plus:</i> Interest expense, net of interest income, deducted in the determination of net income for the Defined Period | \$ _____ |
| <i>Plus:</i> Amortization and depreciation deducted in the determination of net income for the Defined Period | \$ _____ |
| EBITDA for the Defined Period: | \$ _____ |

Fixed Charge Coverage Ratio Worksheet (Attachment to Compliance Certificate)

Fixed Charges for the applicable Defined Period is calculated as follows:

| | |
|--|----------|
| Interest expense, net of interest income, interest paid in kind and amortization of capitalized fees and expenses incurred to consummate the transactions contemplated by the Financing Documents and included in interest expense, included in the determination of net income of Borrowers and their Consolidated Subsidiaries for the Defined Period (“ Total Interest Expense ”) | \$ _____ |
| <i>Plus:</i> Any provision for (or minus any benefit from) income or franchise taxes included in the determination of net income for the Defined Period * | \$ _____ |
| <i>Plus:</i> Payments of principal and interest for the Defined Period with respect to all Debt (including the portion of scheduled payments under capital leases allocable to principal and excluding scheduled repayments of Revolving Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the Revolving Loan Commitment (or equivalent loan commitment)) | \$ _____ |
| <i>Plus:</i> Permitted Distributions | \$ _____ |
| Fixed Charges for the applicable Defined Period: | \$ _____ |

Operating Cash Flow for the applicable Defined Period is calculated as follows:

| | |
|--|----------|
| EBITDA for the Defined Period (calculated pursuant to the EBITDA Worksheet) | \$ _____ |
| <i>Minus:</i> Unfinanced capital expenditures for the Defined Period | \$ _____ |
| <i>Minus:</i> To the extent not already reflected in the calculation of EBITDA, other capitalized costs, defined as the gross amount paid in cash and capitalized during the Defined Period, as long term assets, other than amounts capitalized during the Defined Period as capital expenditures for property, plant and equipment or similar fixed asset accounts | \$ _____ |
| Operating Cash Flow for the Defined Period: | \$ _____ |

Covenant Compliance:

Fixed Charge Coverage Ratio (Ratio of Operating Cash Flow to Fixed Charges) for the Defined Period _____ to 1.0

Minimum Fixed Charge Coverage for the Defined Period _____ to 1.0

In Compliance Yes/No

EXHIBIT C TO CREDIT AGREEMENT (BORROWING BASE CERTIFICATE)

Exhibit C - Page 1

EXHIBIT D TO CREDIT AGREEMENT (NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of _____, 201__ among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 201__ borrow \$ _____ of Loans on _____, 201__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

**SCHEDULES
TO
CREDIT AND SECURITY AGREEMENT**

SCHEDULES

| | |
|---------------|--|
| Schedule 3.1 | Existence, Organizational ID Numbers, Foreign Qualification, Prior Names |
| Schedule 3.4 | Capitalization |
| Schedule 3.6 | Litigation |
| Schedule 3.17 | Material Contracts |
| Schedule 3.18 | Environmental Compliance |
| Schedule 3.19 | Intellectual Property |
| Schedule 4.4 | Insurance |
| Schedule 4.9 | Litigation, Governmental Proceedings and Other Notice Events |
| Schedule 5.1 | Debt; Contingent Obligations |
| Schedule 5.2 | Liens |
| Schedule 5.7 | Permitted Investments |
| Schedule 5.8 | Affiliate Transactions |
| Schedule 5.11 | Business Description |
| Schedule 5.14 | Deposit Accounts and Securities Accounts |
| Schedule 7.4 | Post-Closing Obligations |
| Schedule 9.1 | Collateral |
| Schedule 9.2 | Location of Collateral |

**Schedule 3.1
Existence, Organizational ID Numbers, Foreign Qualification, Prior Names**

| Name of Entity | Prior Names | Type of Entity / State of Formation | States Qualified | State Org. ID Number | Federal Tax ID Number | Place of Business / Address |
|--|---|--|--|---------------------------------|----------------------------------|--|
| Appliance Recycling Centers of America, Inc. | | Minnesota corporation | CA KY NC CO MN OH CT MO PA FL NJ TX GA NM WA | 4K-30 | 41-1454591 | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 |
| ARCA Recycling, Inc. | Appliance Recycling Centers of America-California, Inc. | California corporation | AZ MA RI CA MI SC CO MN TX DE NV UT GA NH VT ID NJ VA IL NC WA IN OH WV KY OR WI ME PA WY | C1811270 | 36-3893973 | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 |
| ApplianceSmart, Inc. | | Minnesota corporation | GA OH TX MN | 4383092-3 | 45-2794102 | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 |
| Customer Connexx LLC | | Nevada limited liability company | NV | NV20161606045 | 81-4118020 | 325 E. Warm Springs Rd., Suite 102 Las Vegas NV 89119-4240 |

**Schedule 3.4
Capitalization**

| Subject Grantor | Authorized Equity Interests | Outstanding Equity Interests | Outstanding Options & Warrants | Owner | Percentage |
|--|---|---|---|--|-------------------|
| Appliance Recycling Centers of America, Inc. | 52,000,000 shares of capital stock: Common: 50,000,000 shs. Preferred: 2,000,000 shs. | As of March 31, 2017: 6,655,365 shares | As of March 31, 2017: 710,250 options 190,317 warrants (with 73,854 presently exercisable) | Publicly traded company | N/A |
| ARCA Recycling, Inc. | 1,000 shares | 1,000 shares | None | Appliance Recycling Centers of America, Inc. | 100% |
| ApplianceSmart, Inc. | 100,000 shares | 10,000 shares | None | Appliance Recycling Centers of America, Inc. | 100% |
| Customer Connexx LLC | N/A | N/A | None | Appliance Recycling Centers of America, Inc. | 100% |

Pursuant to a Securities Purchase Agreement dated November 8, 2016, between Energy Efficiency Investments, LLC ("EEI") and the Company, EEI has certain rights to acquire additional securities of Appliance Recycling Centers of America, Inc.

**Schedule 3.6
Litigation**

- (a) Michael Boller vs. Appliance Recycling Centers of America, Inc., Case No. 27CV1519456 (11/10/2015) On November 6, 2015, a complaint was filed in the Minnesota District Court for Hennepin County, Minnesota, by David Gray and Michael Boller, purporting to bring suit derivatively on behalf of the Company against twelve current and former officers and directors of the Company. The complaint alleges that misstatements and omissions occurred in press releases and filings by the Company with the Securities and Exchange Commission and that these misstatements or omissions constitute violations of Section 20 (a) and Section 10(b) of, and Rule 10b-5 under, the Securities Exchange Act of 1934, that the defendants breached their fiduciary duties based on such alleged misstatements or omissions, and that the defendants have been unjustly enriched as a result thereof. The complaint seeks damages, disgorgement, an award of attorneys' fees and other expenses, and an order compelling changes to the Company's corporate governance and internal procedures. This matter has been stayed by the court, pursuant to a stipulation of the parties, until the United States District Court for the Central District of California determines the legal sufficiency of Mr. Feola's complaint or other specified developments occur in that case. This matter has been submitted to our insurance carriers.
- (b) Class Action Lawsuit Involving Energy Star Designations. In February 2012, various individuals commenced a class action lawsuit against Whirlpool Corporation ("Whirlpool") and various distributors of Whirlpool products, including Sears, The Home Depot, Lowe's and us, alleging certain appliances Whirlpool sold through its distribution chain, which includes us, were improperly designated with the ENERGY STAR® qualification rating established by the U.S. Department of Energy and the Environmental Protection Agency. The claims against us include breach of warranty claims, as well as various state consumer protection claims. The amount of the claim is, as yet, undetermined. Whirlpool has offered to fully indemnify and defend its distributors in this lawsuit, including us, and has engaged legal counsel to defend itself and the distributors. We are monitoring Whirlpool's defense of the claims and believe the possibility of a material loss is remote.
- (c) Appliance Recycling Centers of America, Inc. vs. Amtim Capital, Case No. 27CV115361 (03/14/2011). AMTIM Capital, Inc. ("AMTIM") acts as our representative to market our recycling services in Canada under an arrangement that pays AMTIM for revenues generated by recycling services in Canada as set forth in the agreement between the parties. A dispute has arisen between AMTIM and us with respect to the calculation of amounts due to AMTIM pursuant to the agreement. In a lawsuit filed in the province of Ontario, AMTIM claims a discrepancy in the calculation of fees due to AMTIM by us of approximately \$2.0 million. Although the outcome of this claim is uncertain, we believe that no further amounts are due under the terms of the agreement and that we will continue to defend our position relative to this lawsuit.
- (d) TLF Logistics II Tualatin Corporate Center, LLC vs. Appliance Recycling Centers of America, Inc. (April 2017). The Company formerly leased the premises located at 19701-19799 SW 95th Ave. Tualatin, Oregon, from the plaintiff, but has closed the recycling center it operated at that location and vacated the premises. The plaintiff has filed suit seeking payment of \$73,302.48 plus certain costs, which it claims is owed to it under the lease. This matter is still in its early stages, but is being contested by the Company.

Schedule 3.17
Material Contracts

- (a) Employment agreements covering the management of any Credit Party requiring payment of more than \$100,000 in any year:
 - None
- (b) Collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party requiring payment of more than \$100,000 in any year:
 - None
- (c) Agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound requiring payment of more than \$100,000 in any year:
 - Agreements between ARCA Canada, Inc. and AMTIM Management Consulting and/or Joseph M. Berta
- (d) Agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound requiring payment of more than \$100,000 in any year:
 - Securities Purchase Agreement dated November 8, 2016, between Energy Efficiency Investments, LLC and Appliance Recycling Centers of America, Inc.
- (e) Real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of “off the shelf” products) requiring payment of more than \$100,000 in any year:
 - The Credit Parties are lessees under the real estate leases identified in Appendix A to this Schedule 3.17.
- (f) Customer, distribution, marketing or supply agreements to which any Credit Party is a party requiring payment of more than \$100,000 in any year:
 - None
- (g) Partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party,
 - ARCA Advanced Processing, LLC Joint Venture Agreement dated October 20, 2009, between 4301 Operations, LLC and Appliance Recycling Centers of America, Inc., as amended. The Company is negotiating the termination of its participation in the joint venture and expects such termination to occur within 90 days after the Closing.
- (h) Third party billing arrangements to which any Credit Party is a party:
 - None
- (i) Any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect:
 - None. [*Revolving Credit, Term Loan and Security Agreement dated January 24, 2011, between PNC Bank, National Association and the Company, as amended, to be terminated at Closing*]

**Appendix A to Schedule 3.17
Real Estate Leases**

| | Lessee | Street Address | Brief Description of Current Use | Lessor | Term end date; Annual Rent |
|-----|--|--|---|--|-----------------------------------|
| 1. | Appliance Recycling Centers of America, Inc. | 175 Jackson Avenue North Suite 102 Minneapolis, Minnesota 55343 | Executive offices | Hopkins Mainstreet II | 07/23/23; \$84,543 |
| 2. | ARCA Canada Inc. | 105 Akerley Boulevard, Unit E Dartmouth, Nova Scotia B3B 1R7 | ARCA CAD Recycling Center | Dream | 01/31/17; \$36,946 |
| 3. | ARCA Canada Inc. | 2125 South Service Road W., Unit A Oakville, Ontario L6L 5W2 | ARCA CAD Recycling Center | Elli-Fin Construction Limited | 60 day term notice; \$218,835 |
| 4. | ARCA Recycling, Inc. | 4019 Edith Blvd., Bldg 6C Albuquerque, New Mexico | ARCA Recycling Center | New West Property Management Ltd. Company | 05/31/19; \$38,350 |
| 5. | Appliance Recycling Centers of America, Inc. | 2211 Hubbard Ave. Decatur, Illinois ^[1] | ARCA Recycling Center | Seckel-Blanchard, Inc. | 12/31/16; \$68,040 |
| 6. | ARCA Recycling, Inc. | 40 Kenwood Circle, Unit 6 Franklin, Massachusetts | ARCA Recycling Center | LMF Franklin Corp. | 06/30/18; \$97,500 |
| 7. | Appliance Recycling Centers of America, Inc. | 5750 East 58th Ave., Unit A Commerce City, Colorado | ARCA Recycling Center | Kew Realty Corporation | 01/31/19; \$60,000 |
| 8. | ARCA Recycling, Inc. | 22420 - 72nd Ave S, Bldg C Kent, Washington | ARCA Recycling Center | Separators, LLC | 02/28/17; \$83,700 |
| 9. | Appliance Recycling Centers of America, Inc. | 7715 National Turnpike Louisville, Kentucky | ARCA Recycling Center | LIT Industrial Limited Partnership | 04/30/18; \$115,920 |
| 10. | ARCA Advanced Processing, LLC | 4301 Delaware Ave. Philadelphia, Pennsylvania | AAP Processing and Recycling Center | Delaware Avenue, LLC | 11/30/20; \$463,260 |
| 11. | ARCA Recycling, Inc. | 606/611 Parkway View Dr. Pittsburgh, Pennsylvania | ARCA Recycling Center | Samdoz, Inc. | 10/31/19; \$64,356 |
| 12. | ARCA Recycling, Inc. | 5383-5387 Glen Alden Dr. Henrico, Virginia | ARCA Recycling Center | Interair Associates | 08/31/17; \$51,420 |
| 13. | ARCA Recycling, Inc. | 1290 Refugee Lane Columbus, Ohio | ARCA Recycling Center | Refugee Industrial Partners, LLC | 07/31/18; \$94,020 |
| 14. | Appliance Recycling Centers of America, Inc. | 1350 Market Place Blvd., Space 51 Cumming, Georgia 30041 | ApplianceSmart Store Location | JDN Realty Corporation | 06/30/19; \$167,400 |
| 15. | Appliance Recycling Centers of America, Inc. | 320 Thornton Rd., #11 Lithia Springs, Georgia 30122 | ApplianceSmart Store Location | Taurus CD 176 Atlanta Westfork LLC | 08/14/21; \$226,032 |
| 16. | Appliance Recycling Centers of America, Inc. | 1355 Roswell Rd. NE Marietta, Georgia 30062 | ApplianceSmart Store Location | SRPF A/Town & Country, LLC | 12/31/18; \$175,776 |
| 17. | ApplianceSmart, Inc. | 2960 Olympic Industrial Dr. Building 200, Suite 220 Atlanta, Georgia 30339 | ApplianceSmart Store Location | North Church Lane Properties I, LLC | 10/31/19; \$139,711 |

[1] Item #5: The premises located at 2211 Hubbard Ave., Decatur, Illinois are occupied on a month-to-month basis. The Company has plans to terminate the lease as soon as arrangements are made for alternate facilities.

| | Lessee | Street Address | Brief Description of Current Use | Lessor | Term end date; Annual Rent |
|-----|---|---|---|--|-----------------------------------|
| 18. | ApplianceSmart, Inc. | 7370 153rd St. W. Apple Valley, Minnesota 55124 | ApplianceSmart Store Location | Seventy-Three Seventy LLC | 08/31/18; \$319,641 |
| 19. | Appliance Recycling Centers of America, Inc. | 8900 109th Ave. N Champlin, Minnesota 55316 | ApplianceSmart Store Location | OIRE National Minnesota, LLC | 12/31/17; \$229,868 |
| 20. | Appliance Recycling Centers of America, Inc. & ApplianceSmart, Inc. | 1735A Beam Ave. Maplewood, Minnesota 55109 | ApplianceSmart Store Location | CW Birch Run LLC | 12/31/20; \$194,480 |
| 21. | Appliance Recycling Centers of America, Inc. & ApplianceSmart, Inc. | 2475 Doswell Ave. St. Paul, Minnesota 55108 | ApplianceSmart Store Location and ARCA Recycling Center | 280 Business Center, LLC | 12/31/22; \$370,881 |
| 22. | Appliance Recycling Centers of America, Inc. | 3551 Commercial Dr. SW Rochester, Minnesota 55902 | ApplianceSmart Store Location | MSIR6, LLC | 12/31/18; \$196,612 |
| 23. | ApplianceSmart, Inc. | 265 Division St. Waite Park, Minnesota 56387 | ApplianceSmart Store Location | Sterling Properties, LLLP | 06/30/21; \$192,000 |
| 24. | ApplianceSmart, Inc. | 14675 Martin Dr. Eden Prairie, Minnesota 55344 | ApplianceSmart Store Location | Martin Drive, LLC | 07/31/22; \$180,778 |
| 25. | ApplianceSmart, Inc. | 125 Jackson Ave N., Suite 200 Hopkins, Minnesota 55343 | ApplianceSmart Store Location | Hopkins Mainstreet II, LLC | 07/31/20; \$91,324 |
| 26. | Appliance Recycling Centers of America, Inc. | 6080 E. Main St. Columbus, Ohio 43213 | ApplianceSmart Store Location | Schottenstein Trustees | 06/30/18; \$275,076 |
| 27. | Appliance Recycling Centers of America, Inc. d/b/a ApplianceSmart, Inc. | 5700 Columbus Square Columbus, Ohio 43231 | ApplianceSmart Store Location | Westerville Square Inc., f/k/a Columbus Mall, Inc. | 04/30/21 \$205,504 |
| 28. | ApplianceSmart, Inc. | 2620 Sawmill Place Blvd. Columbus, Ohio 43235 | ApplianceSmart Store Location | PlazaMill Limited Partnership | 11/16/17; \$172,348 |
| 29. | Appliance Recycling Centers of America, Inc. & ApplianceSmart, Inc. | 3700 Parkway Ln., Suite G Hilliard, Ohio 43026 | ApplianceSmart Store Location | 3700 Parkway Lane, LLC | 02/28/19; \$218,400 |
| 30. | Appliance Recycling Centers of America, Inc. | 114 SW Military Dr. San Antonio, Texas 78221 | ApplianceSmart Store Location | CFREI Limited Partnership, LLLP | 06/30/18; \$185,000 |
| 31. | Appliance Recycling Centers of America, Inc. | 5819 NW Loop 410 San Antonio, Texas 78238 | ApplianceSmart Store Location | FF Exchange, LLC | 09/30/18; \$113,600 |
| 32. | Customer Connexx LLC | 325 E. Warm Springs Rd., Ste. 102 Las Vegas, Nevada 89119-4240 | Call Center Location | In negotiations to sublease from LiveDeal, Inc., who leases from 2005-GG5 Warm Springs Office, LLC | Est. Annual rent: \$127,181 |

The Company formerly leased the following, but has closed the recycling center it operated at that location and vacated the premises:

| | | | | | |
|-----|--|--|-----------------------|---------------------------|-----------------------|
| 33. | Appliance Recycling Centers of America, Inc. | 19701-19799 SW 95th Ave. Tualatin, Oregon | ARCA Recycling Center | CH Realty V/Tualatin, LLC | 01/31/18; \$51,288 |
|-----|--|--|-----------------------|---------------------------|-----------------------|

Schedule 3.18
Environmental Compliance

- (a) Notices, Demands, etc.
 - None

- (b) Properties Listed on National Priorities List.
 - None

**Schedule 3.19
Intellectual Property**

1. PATENTS

(a) U.S. Patent Registrations.

| U.S. Patent No. | Title | Owner | Status |
|-----------------|------------------------------|--|---------|
| 8931289 | Refrigerant Recycling System | Appliance Recycling Centers of America, Inc. | Granted |

(b) U.S. Patent Applications

· None.

(c) Patent Licenses: Grantor as Licensor

· None.

(d) Patent Licenses: Grantor as Licensee

· None.

2. TRADEMARKS/TRADE NAMES

(a) U.S. Trademarks

| Trademark | Serial/Reg. No | Filing/Reg. Date | Country | Loan Party |
|--|---|--|---------|--|
|  | App 85371167 Reg 4093915 | App 14-JUL-2011 Reg 31-JAN-2012 | U.S. | Appliance Recycling Centers of America, Inc. |
| LIFT AND VAC | App 85318138 Reg 4305816 | App 11-MAY-2011 Reg 19-MAR-2013 | U.S. | Appliance Recycling Centers of America, Inc. |
| REFRIGERATOR ROUNDUP | App 77270596 Reg 3519141 | App 04-SEP-2007 Reg 21-OCT-2008 | U.S. | Appliance Recycling Centers of America, Inc. |
| SMARTVALVE | App 85318098 Reg 4434038 | App 11-MAY-2011 Reg 12-NOV-2013 | U.S. | Appliance Recycling Centers of America, Inc. |
| SMARTVALVE | App 85318143 Reg 4827243 | App 11-MAY-2011 Reg 06-OCT-2015 | U.S. | Appliance Recycling Centers of America, Inc. |
| APPLIANCESMART | App 76401497 Reg 2677930 | App 29-APR-2002 Reg 21-JAN-2003 | U.S. | Appliancesmart, Inc. |
| INNOVATIVE. UNRIVALED. SMART. | App 85371026 Reg 4077284 | App 14-JUL-2011 Reg 27-DEC-2011 | U.S. | Appliancesmart, Inc. |

Security Interest between APPLIANCE RECYCLING CENTERS OF AMERICA, INC. and PNC BANK, NATIONAL ASSOCIATION, PENNSYLVANIA NATIONAL ASSOCIATION, signed on January 24, 2011 and recorded with the U.S. Trademark Office on February 15, 2011, to be terminated at Closing.

(b) U.S. Trademark Applications

- None.

(c) Trademark; Licenses; Loan Party as Licensee

- License granted by Appliance Recycling Centers of America, Inc. to ARCA Advanced Processing, LLC, a Minnesota limited liability company, pursuant to the ARCA Advanced Processing, LLC Joint Venture Agreement dated October 20, 2009, between 4301 Operations, LLC and Appliance Recycling Centers of America, Inc., as amended.

3. COPYRIGHTS/COPYRIGHT APPLICATIONS

- None

4. INTELLECTUAL PROPERTY LICENSES

- License granted by Appliance Recycling Centers of America, Inc. to ARCA Advanced Processing, LLC, a Minnesota limited liability company, pursuant to the ARCA Advanced Processing, LLC Joint Venture Agreement dated October 20, 2009, between 4301 Operations, LLC and Appliance Recycling Centers of America, Inc., as amended.

**Schedule 4.4
Insurance**

Insurance requirements:

| <u>Type</u> | <u>Insurers</u> | <u>Policy Number</u> | <u>Term</u> |
|--------------------------------|--|----------------------|-------------------------|
| Commercial General Liability | · Liberty Mutual Fire Insurance Company · The First Liberty Insurance Corporation · Travelers Casualty and Surety Company of America | TB2-Z91-426090-106 | 04/01/2016 – 06/01/2017 |
| Automobile Liability | · Liberty Mutual Fire Insurance Company · The First Liberty Insurance Corporation · Travelers Casualty and Surety Company of America | AS6-Z91-426090-016 | 04/01/2016 – 06/01/2017 |
| Umbrella Coverage | · Liberty Mutual Fire Insurance Company · The First Liberty Insurance Corporation · Travelers Casualty and Surety Company of America | ZUP-10N64634-16-NF | 04/01/2016 – 06/01/2017 |
| Workers' Compensation | · Liberty Mutual Fire Insurance Company · The First Liberty Insurance Corporation · Travelers Casualty and Surety Company of America | WC6- Z91-426090-047 | 04/01/2017 – 04/01/2018 |
| Commercial Property Coverage | · Liberty Mutual Fire Insurance Company | YU2-Z11-261860-016 | 04/01/2016 – 06/01/2017 |
| Employment Practices Liability | · Travelers Casualty and Surety Company of America | 105588552 | 04/01/2016 – 06/01/2017 |

Schedule 4.9
Litigation, Governmental Proceedings and Other Notice Events

See Schedule 3.6

Schedule 5.1
Debt; Contingent Obligations

1. Permitted Debt existing on Date of Agreement

(a) Loan Obligations

| Date | Parties | Original Amount | Outstanding Amount | Maturity Date | Secured? | Paid Off at closing? |
|-------------|---|------------------------|---------------------------|----------------------|-----------------|-----------------------------|
| 11/08/16 | Energy Efficiency Investments, LLC & Appliance Recycling Centers of America, Inc. | Up to \$7,500,000 | \$103,093 | 11/08/21 | No | No |
| 03/10/11 | BB&T Bank as assignee of Susquehanna Bank & Appliance Recycling Centers of America, Inc. as guarantor | \$4,750,000 | \$3,241,627 | 03/10/21 | Yes | No |
| 01/24/11 | PNC Bank/ All Grantors except Customer Connexx LLC | \$10,219,000 | \$2,885,205 | 05/01/17 | Yes | Yes |

(b) Lease Obligations

| Grantor | Lessor | Principal Amount Outstanding | Date of Note |
|--|---------------------------|-------------------------------------|---------------------|
| ApplianceSmart, Inc. | United Trailer Leasing | \$34,855 | 11/07/14 |
| Appliance Recycling Centers of America, Inc. | General Electric Company | \$481,852 | 03/09/16 |
| Appliance Recycling Centers of America, Inc. | Ford Motor Credit Company | \$12,291 | 04/26/13 |
| Appliance Recycling Centers of America, Inc. | Ford Motor Credit Company | \$7,855 | 09/23/13 |

2. Permitted Contingent Obligations existing on Date of Agreement

- Contingent obligations under Securities Purchase Agreement dated November 8, 2016, between Energy Efficiency Investments, LLC (“EEI”) and the Company, EEI has certain rights to acquire additional securities of Appliance Recycling Centers of America, Inc.
- Contingent obligations under guaranties and related security agreements in favor of BB&T Bank as assignee of Susquehanna Bank (as set forth in 1(a) above).

**Schedule 5.2
Liens**

Permitted Liens

| Debtor | Secured Party | Filing Date | Filing No. | Collateral |
|--|--|--|------------------------|--|
| Appliance Recycling Centers of America, Inc. | De Lage Landen Financial Services, Inc. | Filed 08/20/10; Continuation filed 05/11/15 | MN SOS 201021248981 | Equipment Lease |
| Appliance Recycling Centers of America, Inc. | Branch Banking & Trust Company (formerly Susquehanna Bank) | Filed 03/24/11; Continuation filed 01/25/16 | MN SOS 201123589641 | "All Equipment" |
| Appliance Recycling Centers of America, Inc. | Branch Banking & Trust Company (formerly Susquehanna Bank) | Filed 03/24/11; Continuation filed 01/25/16 | MN SOS 201123590014 | "All Equipment" |
| Appliance Recycling Centers of America, Inc. | Branch Banking and Trust Company, as successor to Susquehanna Bank | Filed 01/15/2017 | __ SOS 928663600024 | "All Equipment under BB&T Loan XXXXXX7271 Note #003" |

Schedule 5.7
Permitted Investments

Equity interests held in the following entities:

1. ARCA Recycling, Inc., a wholly-owned subsidiary
2. ApplianceSmart, Inc., a wholly-owned subsidiary
3. Customer Connexx LLC, a wholly-owned subsidiary
4. ARCA Canada, Inc., a wholly-owned subsidiary.
5. ARCA Advanced Processing, LLC, a 50% owned joint venture

Schedule 5.8
Affiliate Transactions

| Loan Party | Affiliates | Agreements with Affiliates |
|--|-------------------------------|--|
| Appliance Recycling Centers of America, Inc. | ARCA Advanced Processing, LLC | ARCA Advanced Processing, LLC Joint Venture Agreement dated October 20, 2009, between 4301 Operations, LLC and the Company, as amended |

The Company is negotiating the termination of its participation in the joint venture and expects such termination to occur within 90 days after the Closing.

Schedule 5.11
Business Description
(Borrowers and Subsidiaries)

| Loan Party | Business Description |
|--|---|
| Appliance Recycling Centers of America, Inc. | Corporate holding company for entities below |
| ARCA Recycling, Inc. | Providing a service of picking up old appliance and replacing |
| ApplianceSmart, Inc. | Selling Retail Appliances |
| Customer Connexx LLC | Call Center Services |
| ARCA Canada Inc. | Providing a service of picking up old appliance and replacing |

**Schedule 5.14
Deposit Accounts and Securities Accounts**

| | Grantor | Bank | Account Type | Account Number |
|-----|--|---------------------------------|-------------------------------------|-----------------------|
| 1. | Appliance Recycling Centers of America, Inc. | Wells Fargo | Operating Account | 4121762132 |
| 2. | Appliance Recycling Centers of America, Inc. | Wells Fargo | Controlled Disbursement | 9600119785 |
| 3. | Appliance Recycling Centers of America, Inc. | Wells Fargo | Collateral Account - Partial ARP | 4121762140 |
| 4. | Appliance Recycling Centers of America, Inc. | Wells Fargo | Payroll | 4638797217 |
| 5. | Appliance Recycling Centers of America, Inc. | Wachovia - Smyrna | Checking Account | 2000021062698 |
| 6. | Appliance Recycling Centers of America, Inc. | Wachovia - Lithia Springs | Checking Account | 2000028662677 |
| 7. | Appliance Recycling Centers of America, Inc. | Wachovia - Marietta | Checking Account | 2000035359591 |
| 8. | Appliance Recycling Centers of America, Inc. | Wachovia - Cumming | Checking Account | 2000003720589 |
| 9. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Como | Collateral Account - Partial ARP | 4945282499 |
| 10. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Apple Valley | Collateral Account - Partial ARP | 4945282507 |
| 11. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Maplewood | Collateral Account - Partial ARP | 4945282515 |
| 12. | Appliance Recycling Centers of America, Inc. | Wells Fargo - St. Louis Park | Collateral Account - Partial ARP | 4945282523 |
| 13. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Champlin | Collateral Account - Partial ARP | 4945282531 |
| 14. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Military | Collateral Account - Partial ARP | 4945282556 |
| 15. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Compton | Collateral Account - Partial ARP | 4945282564 |
| 16. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Rochester | Collateral Account - Partial ARP | 4945291573 |
| 17. | Appliance Recycling Centers of America, Inc. | Wells Fargo - St. Cloud | Collateral Account - Partial ARP | 4948817309 |
| 18. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Exchange Plaza | Collateral Account - Partial ARP | 4945291599 |
| 19. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Eden Prairie | Collateral Account - Partial ARP | 4946307477 |
| 20. | Appliance Recycling Centers of America, Inc. | Wells Fargo - Contract Sales | Collateral Account - Partial ARP | 4941817710 |
| 21. | Appliance Recycling Centers of America, Inc. | Wells Fargo | Collateral Account - Partial ARP | 4845456846 |

| | Grantor | Bank | Account Type | Account Number |
|-----|--|------------------------------|-----------------------------------|-----------------------|
| 22. | Appliance Recycling Centers of America, Inc. | Wells Fargo - CA Checking | Checking Account | 4121887509 |
| 23. | Appliance Recycling Centers of America, Inc. | Wells Fargo - GA Checking | Checking Account | 4121887525 |
| 24. | ARCA Canada Inc. | Scotia Bank | Checking Account | 0037710 |
| 25. | ARCA Canada Inc. | Scotia Bank | Checking Account | 0025119 |
| 26. | ARCA Canada Inc. | Scotia Bank | Savings Account | 0118419 |
| 27. | Appliance Recycling Centers of America, Inc. | PNC Bank | Operating Account | 8026276319 |
| 28. | Appliance Recycling Centers of America, Inc. | PNC Citizens | Operating Account | 738902 |
| 29. | Appliance Recycling Centers of America, Inc. | PNC Citizens | Operating Account | 802160 |
| 30. | Appliance Recycling Centers of America, Inc. | PNC Bank | CC (Retail) Account | 8026276327 |
| 31. | Appliance Recycling Centers of America, Inc. | PNC Bank | Collection (Recycling) Account | 8026276335 |
| 32. | Appliance Recycling Centers of America, Inc. | PNC - Hilliard | Deposit Account | 8026347519 |
| 33. | Appliance Recycling Centers of America, Inc. | PNC - Columbus Square | Deposit Account | 8026347498 |
| 34. | Appliance Recycling Centers of America, Inc. | PNC - Reynoldsburg | Deposit Account | 8026347471 |
| 35. | Appliance Recycling Centers of America, Inc. | PNC - Sawmill | Deposit Account | 8026347463 |

Schedule 7.4
Post Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within 60 days of the date hereof, Borrowers will close the following PNC bank accounts: #8026276327, 8026276335, 8026347519, 8026347498, 8026347471, and 8026347463, and establish new accounts with Wells Fargo to replace such accounts (and will have the Deposit Account Control Agreement with Wells Fargo updated to include all such new accounts). Additionally, within 30 days of the date hereof, Borrowers will close the following PNC bank accounts: #738902 and #802160.
2. Within 90 days of the date hereof, Borrowers shall have provided evidence that the sale of all of the equity interests of ARCA Advanced Processing, LLC held by Borrowers has been sold pursuant to a purchase agreement and other sale documents (the "ARCA Sale Documents") reasonably acceptable to Agent and that the (i) the Unconditional Guarantees of the BB&T Notes (the "Guarantees") have been released (by substitution or otherwise), or the BB&T Notes paid in full (and the Guarantees and security agreements executed in connection therewith released/terminated), or Tony Isaac or his affiliate have acquired the BB&T Notes (and executed a subordination agreement with Agent in form and substance acceptable to the Agent in all respects); and (ii) the indebtedness owing to General Electric Company has been paid in full and the Borrowers released from all liability thereunder Agent hereby agrees that upon Agent's confirmation that (i) the sale of Borrowers equity interests in ARCA Advanced Processing, LLC has been consummated in accordance with the ARCA Sale Documents reviewed by and reasonably acceptable to Agent and (ii) the proceeds of the sale of Borrowers equity interests in ARCA Advanced Processing, LLC have been used to reduce the outstanding principal balance of the Loans, Agent's lien on the equity interests in ARCA Advanced Processing, LLC upon such sale will be deemed automatically released.
3. Within 15 days of the date hereof, Borrowers shall have provided revised, fully executed Landlord Agreements for the following locations fixing the matters described below:

Lease at 2960 Olympic Industrial Dr., Building 200, Suite 220, Atlanta, GA 30339

Need to (i) confirm the address, (ii) fix the date of the Credit Agreement and (iii) attach the proper Exhibit A that was missing.

Lease at 7370 West 153rd St., Apple Valley, MN

Need to: (i) confirm the correct tenant and date of the lease (which we believe should be ApplianceSmart and January 19, 2012), (ii) fix the date of the Credit Agreement, (iii) have it signed by the correct tenant, and (iv) attach the proper Exhibit A that was missing.

Lease at Birch Run Station Shopping Center, 1735A Beam Ave., Maplewood, MN

Need to (i) change the Disposition Period from 30 days to 90 days; (ii) change the period of extension when a stay prohibits Agent from exercising rights from 30 days to 90 days, (iii) fix the date of the Credit Agreement and (iv) attach the proper Exhibit A that was missing.

Lease at 265 Division St., Waite Park, MN 56387

Need to (i) fix to have the landlord (rather than tenant) provide the Default Notice and Termination Notice in Sections 2 and 7, respectively (ii) confirm the correct date of the lease, (iii) fix the date of the Credit Agreement and (iv) attach the proper Exhibit A that was missing.

Lease at 14675 Martin Dr., Eden Prairie, MN 55344

Need to (i) fix the date of the Credit Agreement and (ii) attach the proper Exhibit A that was missing.

Lease at 125 Jackson Ave. N., Suite 200, Hopkins, MN 55343

Need to: (i) confirm the correct date of the lease (which we believe should be April 9, 2015), (ii) fix the date of the Credit Agreement and (iii) attach the proper Exhibit A that was missing.

Lease at 5700 Columbus Square in Columbus Square Shopping Center

Need to: (i) fix the date of the Credit Agreement and (ii) attach the proper Exhibit A that was missing.

Lease at 175 Jackson Ave., Suite 102, N. Hopkins, MN 55343

Need to: (i) fix the date of the Credit Agreement and (ii) attach the proper Exhibit A that was missing.

4. Within 30 days of the date hereof, Borrowers shall have provided fully executed Landlord Agreements in form and substance acceptable to Agent for the following locations:

- Lease at 1350 Market Place Blvd., Space 51, Cumming, GA 30041
- Lease at 320 Thornton Rd., #11, Lithia Springs, GA 30122
- Lease at Town & Country Shopping Center, 1355 Roswell Rd, N.E., Suites 690, 720, and 750, Marietta, Georgia 30062
- Lease at 8900 109th Ave. N., Champlin, MN 55316
- Lease at 2475 Doswell Ave., Suites B, C, & D, St. Paul, MN
- Lease at 3551 Commercial Dr. SW, Rochester, MN 55902
- Lease at 6080 E. Main St., Columbus, OH 43213
- Lease at 2620 Sawmill Place Blvd, Columbus OH 43235
- Lease at 3700 Parkway Lane, Suites D-J, Hilliard, OH
- Lease at 114 SW Military Dr., San Antonio, TX 78221
- Lease at 5819 NW Loop 410, San Antonio, TX 78238

5. Within five (5) days from the date hereof, Borrowers must close account number 8026276319 held at PNC Bank.

6. Borrowers will renew prior to May 20, 2017, all insurance policies with an expiration date of June 1, 2017.

7. Borrowers shall use commercially reasonable efforts to provide Landlord Agreements in form and substance acceptable to Agent within 120 days of the date hereof for the recycling center locations listed on Schedule 3.17 to this Agreement.

8. As soon as possible, but in any case within thirty (30) days after the Closing Date, Borrowers shall deliver to Agent. Additional Insured, Notice of Cancellation and Lender's Loss Payable endorsements and/or declaration pages acceptable to the Agent, such insurances to be in compliance with Section 4.4 of this Agreement.

9. Borrowers will, within ten (10) days after the date hereof, replace the share certificate of ARCA Canada to fix the name of the holder of the certificate with the correct name of the Borrower Representative.

10. Borrowers will file, within ten (10) days after the date hereof, a name change with New Mexico to fix the name of ARCA Recycling, Inc.

11. Within thirty (30) days after the date hereof, Borrowers will deliver a fully executed collateral assignment of the Subscription Services Agreement between Oracle America, Inc. and the Borrower Representative, in form and substance acceptable to Agent in all respects.

1 2 . Within five (5) days after the date hereof, the following Wells Fargo accounts will have been converted to subaccounts under Account #xxxxxxx: Account #s xxxxxxxxxxx, #xxxxxxxx, #xxxxxxxx and #xxxxxxxx

Borrowers' failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrowers' failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

**Schedule 9.1
Collateral**

The Collateral consists of all of Borrower's assets, including without limitation, all of Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

- (a) all goods, Accounts (including health-care insurance receivables), Equipment (as defined in the UCC), machinery, furniture, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, vehicles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;
- (b) all of Borrowers' books and records relating to any of the foregoing; and
- (c) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

**Schedule 9.2
Location of Collateral**

1. Chief Executive Offices and Principal Place of Business of Borrowers and Subsidiaries; Location of Books and Records of Borrowers

| Entity | Address of Chief Executive Office and Principal Place of Business | Size | Owned/Leased/ Operated by Third Party | Name and Address of Owner (if leased) or Third-Party Operator (if operated by a third party) |
|---|--|-------------|--|---|
| Borrowers: | | | | |
| Appliance Recycling Centers of America, Inc | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 | 13,000 sf | Leased | Hopkins Mainstreet II 750-2nd Street, NE, Ste 100 Hopkins, MN 55343 |
| ARCA Recycling, Inc | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 | 13,000 sf | Leased | Hopkins Mainstreet II 750-2nd Street, NE, Ste 100 Hopkins, MN 55343 |
| ApplianceSmart, Inc. | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 | 13,000 sf | Leased | Hopkins Mainstreet II 750-2nd Street, NE, Ste 100 Hopkins, MN 55343 |
| Customer Connexx LLC | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 (Chief executive office) | 13,000 sf | Leased | Hopkins Mainstreet II 750-2nd Street, NE, Ste 100 Hopkins, MN 55343 |
| | 325 E. Warm Springs Rd., Ste. 102 Las Vegas, Nevada 89119-4240 (Principal place of business) | | Leased | In negotiations to sublease from LiveDeal, Inc., who leases from 2005-GG5 Warm Springs Office, LLC |
| Subsidiaries: | | | | |
| ARCA Canada Inc. | 175 Jackson Ave. N. Suite 102 Hopkins MN 55343 | 13,000 sf | Leased | Hopkins Mainstreet II 750-2nd Street, NE, Ste 100 Hopkins, MN 55343 |

2. Other Collateral Locations

- See Schedule 3.17, Items #14 through #31.

REVOLVING LOAN NOTE

\$12,000,000.00

Bethesda, Maryland
May 10, 2017

FOR VALUE RECEIVED, each of APPLIANCE RECYCLING CENTERS OF AMERICA, INC., a Minnesota corporation, APPLIANCESMART, INC., a Minnesota corporation, ARCA RECYCLING, INC., a California corporation and CUSTOMER CONNEXX LLC, a Nevada limited liability company (individually, each a “**Borrower**” and collectively, the “**Borrowers**”), hereby jointly and severally unconditionally promises to pay to the order of **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (together with its successors and assigns, “**Lender**”) at the office of Agent (as defined herein) at c/o MidCap Financial Services, LLC, as servicer, 7255 Woodmont Avenue, Suite 200, Bethesda, Maryland 20814, or at such other place as Agent may from time to time designate in writing, in lawful money of the United States of America and in immediately available funds, in the principal sum of Twelve Million and No/100 Dollars (\$12,000,000.00), or, if less, the aggregate unpaid principal amount of all Revolving Loans made or deemed made by Lender to Borrowers under the terms of that certain Credit and Security Agreement dated as of May 10, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Borrowers, such other borrowers that may become “**Borrowers**” under the Credit Agreement, various financial institutions as are, or may from time to time become, parties thereto as lenders (including without limitation, Lender) and MidCap Financial Trust, individually as Lender, and as administrative agent (in such capacity and together with its successors and assigns, “**Agent**”). All capitalized terms used herein (which are not otherwise specifically defined herein) shall be used in this Revolving Loan Note (this “**Note**”) as defined in the Credit Agreement.

1. The outstanding principal balance of the Revolving Loans evidenced by this Note shall be payable in full on the Termination Date, or on such earlier date as provided for in the Credit Agreement.

2. This Note is issued in accordance with the provisions of the Credit Agreement and is entitled to the benefits and security of the Credit Agreement and the other Financing Documents, and reference is hereby made to the Credit Agreement for a statement of the terms and conditions under which the Revolving Loans evidenced hereby were made and are required to be repaid.

3. Each Borrower promises to pay interest from the date hereof until payment in full hereof on the unpaid principal balance of the Revolving Loans evidenced hereby at the per annum rate or rates set forth in the Credit Agreement. Interest on the unpaid principal balance of the Revolving Loans evidenced hereby shall be payable on the dates and in the manner set forth in the Credit Agreement. Interest as aforesaid shall be calculated in accordance with the terms of the Credit Agreement.

4. Upon and after the occurrence of an Event of Default, and as provided in the Credit Agreement, the Revolving Loans evidenced by this Note may be declared, and immediately shall become, due and payable without demand, notice or legal process of any kind; *provided, however*, that upon the occurrence of an Event of Default pursuant to the provisions of Section 10.1(e) or Section 10.1(f) of the Credit Agreement, the Revolving Loans evidenced by this Note shall automatically be due and payable, without demand, notice or acceleration of any kind whatsoever.

5. Payments received in respect of the Revolving Loans shall be applied as provided in the Credit Agreement.

6. Presentment, demand, protest and notice of presentment, demand, nonpayment and protest are each hereby waived by Borrowers.

7. No waiver by Agent or any Lender of any one or more defaults by the undersigned in the performance of any of its obligations under this Note shall operate or be construed as a waiver of any future default or defaults, whether of a like or different nature, or as a waiver of any obligation of Borrowers to any other lender under the Credit Agreement.

8. No provision of this Note may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other lender under the Credit Agreement to the extent required under Section 11.16 of the Credit Agreement.

9. **THIS NOTE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.**

10. Whenever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision of or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

11. Whenever in this Note reference is made to Agent, Lender or Borrowers, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon each Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

12. In addition to and without limitation of any of the foregoing, this Note shall be deemed to be a Financing Document and shall otherwise be subject to all of the general terms and conditions contained in Article 12 of the Credit Agreement, *mutatis mutandis*.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this agreement constitute an agreement executed under seal, the undersigned have executed this Note under seal as of the day and year first hereinabove set forth.

BORROWERS:

APPLIANCE RECYCLING CENTERS OF AMERICA, INC., a Minnesota corporation

By: /s/ Tony Isaac
Name: Tony Isaac
Title: Chief Executive Officer

APPLIANCESMART, INC., a Minnesota corporation

By: /s/ Tony Isaac
Name: Tony Isaac
Title: Chief Executive Officer

ARCA RECYCLING, INC., a California corporation

By: /s/ Tony Isaac
Name: Tony Isaac
Title: Chief Executive Officer

CUSTOMER CONNEXX LLC, a Nevada limited liability company

By: /s/ Tony Isaac
Name: Tony Isaac
Title: President / Chief Manager

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this “**Agreement**”) is made as of May 10, 2017, by and between **APPLIANCE RECYCLING CENTERS OF AMERICA, INC.**, a Minnesota corporation (“**Pledgor**”), and **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, as agent (in such capacity, together with its successors and assigns, “**Agent**”) for itself and the other Lenders (as defined herein).

RECITALS

A. The term “**Borrowers**”, as used herein, shall mean collectively all of the following entities: Pledgor, ApplianceSmart, Inc., a Minnesota corporation, ARCA Recycling, Inc., a California corporation and Customer Connexx LLC, a Nevada limited liability company, and such other borrowers that may become “**Borrowers**” under the Credit Agreement (as defined herein); the term “**Borrower**”, as used herein, shall mean individually each entity that is one of the Borrowers; and the term “**Company**” as used herein shall mean individually and collectively, as the context may require, ApplianceSmart, Inc., a Minnesota corporation, ARCA Recycling, Inc., a California corporation, ARCA Canada, Inc., a Canadian corporation, ARCA Advanced Processing, LLC and Customer Connexx LLC, a Nevada limited liability company.

B. Pursuant to that certain Credit and Security Agreement dated as of even date herewith among Borrowers, the financial institutions from time to time parties thereto, as lenders (collectively, the “**Lenders**”), and Agent (as the same may be amended, supplemented, modified, increased, renewed or restated from time to time, the “**Credit Agreement**”), Agent and Lenders have agreed to make available to Borrowers a revolving loan facility in the maximum principal amount of \$12,000,000. Borrowers have executed and delivered one or more promissory notes evidencing the indebtedness incurred by Borrowers under the Credit Agreement (as the same may be amended, modified, increased, renewed or restated from time to time, and together with all renewal notes issued in respect thereof, collectively the “**Notes**”). The terms and provisions of the Credit Agreement and Notes are hereby incorporated by reference in this Agreement.

C. The terms and provisions of the Credit Agreement and Notes are hereby incorporated by reference in this Agreement. This Agreement, the Notes, the Credit Agreement and all of the other documents evidencing, securing and/or governing or executed in connection with the Notes, as the same may be amended, modified, increased, renewed or restated from time to time, are herein referred to collectively as the “**Financing Documents**”.

D. The term “**Obligations**”, as used herein, means (1) the principal of, and interest on, the Notes and all other sums, fees, charges and expenses due or payable to Agent and the Lenders under this Agreement or the other Financing Documents, (2) all agreements and covenants with and obligations to Agent and the Lenders arising under, out of, or as a result of or in connection with the Financing Documents, (3) all amounts advanced by Agent and the Lenders to preserve, protect, defend, and enforce their rights under this Agreement and the other Financing Documents or in the collateral encumbered by the Financing Documents, and all expenses incurred by Agent in connection therewith, and (4) any and all other present and future indebtedness, liabilities and obligations of every kind and nature whatsoever of Borrowers to Agent and the Lenders, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, joint or several, both now and hereafter existing, or due or to become due, whether as borrower, guarantor, surety, indemnitor, assignor, pledgor or otherwise. The term “**Loans**” as used herein means the loan transaction or transactions giving rise to the Obligations.

E. In connection with Agent and the Lenders entering into the Credit Agreement and agreeing to make the credit accommodations under the Credit Agreement and as security for all of the Obligations, Agent is requiring that Pledgor shall have executed and delivered this Agreement.

F. Pledgor is a member of, shareholder of, partner in or other equity owner in Company and, as such, will continue to derive substantial benefit by reason of Lenders making the Loans.

AGREEMENT

NOW, THEREFORE, to induce Agent and the Lenders to enter into the Credit Agreement and to make the Loans, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Agent hereby incorporate hereby by this reference the foregoing Recitals and hereby covenant and agree as follows:

1. Grant of Assignment and Security Interest. Pledgor hereby pledges, assigns and grants to Agent, for the benefit of itself and the Lenders, as security for the Obligations a security interest in the following property of Pledgor (collectively, the "**Collateral**"), whether now existing or hereafter created or arising:

(a) all of the stock, shares, membership interests, partnership interests and other equity ownership interests in Company now or hereafter held by Pledgor (collectively, the "**Ownership Interests**") and all of Pledgor's rights to participate in the management of Company, all rights, privileges, authority and powers of Pledgor as owner or holder of its Ownership Interests in Company, including, but not limited to, all contract rights, general intangibles, accounts and payment intangibles related thereto, all rights, privileges, authority and powers relating to the economic interests of Pledgor as owner or holder of its Ownership Interests in Company, including, without limitation, all investment property, contract rights, general intangibles, accounts and payment intangibles related thereto, all options and warrants of Pledgor for the purchase of any Ownership Interest in Company, all documents and certificates representing or evidencing the Pledgor's Ownership Interests in Company, all of Pledgor's right, title and interest to receive payments of principal and interest on any loans and/or other extensions of credit made by Pledgor to Company, and any other right, title, interest, privilege, authority and power of Pledgor in or relating to Company, all whether existing or hereafter arising, and whether arising under any operating agreement, shareholders' agreement, partnership agreement or other agreement, or any bylaws, certificate of formation, articles of organization or other organization or governing documents of Company (as the same may be amended, modified or restated from time to time) or otherwise, or at law or in equity and all books and records of Pledgor pertaining to any of the foregoing and all options, warrants, distributions, investment property, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests, and Pledgor shall promptly thereafter deliver to Agent a certificate duly executed by Pledgor describing such percentage interests, options or warrants and certifying that the same have been duly pledged hereunder; it being understood and agreed that with respect to the stock of ARCA Canada, Inc. held by Pledgor, Pledgor is only assigning and granting a security interest in 65% of such stock to Agent hereunder;

(b) all rights to receive cash distributions, profits, losses and capital distributions (including, but not limited to, distributions in kind and liquidating dividends and distributions) and any other rights and property interests related to the Ownership Interests;

(c) all other securities, instruments or property (including cash) paid or distributed in respect of or in exchange for the Ownership Interests, whether or not as part of or by way of spin-off, merger, consolidation, dissolution, reclassification, combination or exchange of stock (or other Ownership Interests), asset sales, or similar rearrangement or reorganization or otherwise; and

(d) all proceeds (both cash and non-cash) of the foregoing, whether now or hereafter arising with respect to the foregoing.

2. Registration of Pledge in Books of Company; Application of Proceeds. Pledgor hereby authorizes and directs Company to register Pledgor's pledge to Agent, for its benefit and the benefit of the Lenders, of the Collateral on the books of Company and, following written notice to do so by Agent after the occurrence of an Event of Default (as hereinafter defined) under this Agreement, to make direct payment to Agent of any amounts due or to become due to Pledgor with respect to the Collateral. Any moneys received by Agent shall be applied to the Obligations in such order and manner of application as Agent may from time to time determine in its sole discretion.

3. Rights of Pledgor in the Collateral. Until any Event of Default occurs under this Agreement, Pledgor shall be entitled to exercise all voting rights and to receive all dividends and other distributions that may be paid on any Collateral and that are not otherwise prohibited by the Financing Documents. Any cash dividend or distribution payable in respect of the Collateral that is, in whole or in part, a return of capital or that is made in violation of this Agreement or the Financing Documents shall be received by Pledgor in trust for Agent, for its benefit and the benefit of the Lenders, shall be paid immediately to Agent and shall be retained by Agent as part of the Collateral. Upon the occurrence and during the continuation of an Event of Default, Pledgor shall, at the written direction of Agent, immediately send a written notice to Company instructing Company, and shall cause Company, to remit all cash and other distributions payable with respect to the Ownership Interests (until such time as Agent notifies Pledgor that such Event of Default has ceased to exist) directly to Agent. Nothing contained in this paragraph shall be deemed to permit the payment of any sum or the making of any distribution which is prohibited by any of the Financing Documents, if any.

4. Representations and Warranties of Pledgor. Pledgor hereby warrants to Agent as follows:

(a) Schedule I and Schedule II are true, correct and complete in all respects;

(b) All of the pledged Ownership Interests of Pledgor (the "**Pledged Interests**") are in certificated form, and are registered in the name of Pledgor (other than the membership interests of Customer Connexx LLC and ARCA Advanced Processing, LLC);

(c) The Pledged Interests constitute at least the percentage of all the issued and outstanding Ownership Interests of Company as set forth on Schedule I;

(d) The Pledged Interests listed on Schedule I are the only Ownership Interests of Company in which Pledgor has any rights;

(e) All certificates evidencing the Pledged Interests of Pledgor have been delivered to Agent;

(f) Pledgor has good and marketable title to the Collateral. Pledgor is the sole owner of all of the Collateral, free and clear of all security interests, pledges, voting trusts, agreements, liens, claims and encumbrances whatsoever, other than the security interests, assignments and liens granted under this Agreement;

(g) Pledgor has not heretofore transferred, pledged, assigned or otherwise encumbered any of its rights in or to the Collateral;

(h) Other than a requirement of consent of other members contained in the operating agreements governing the Ownership Interests (which such consent has been obtained), Pledgor is not prohibited under any agreement with any other person or entity, or under any judgment or decree, from the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(i) No action has been brought or threatened that might prohibit or interfere with the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(j) Pledgor has full power and authority to execute and deliver this Agreement, and the execution and delivery of this Agreement do not conflict with any agreement to which Pledgor is a party or any law, order, ordinance, rule, or regulation to which Pledgor is subject or by which it is bound and do not constitute a default under any agreement or instrument binding upon Pledgor;

(k) This Agreement has been properly executed and delivered and constitutes the valid and legally binding obligation of Pledgor and is fully enforceable against Pledgor in accordance with its terms; and

(l) As of the date hereof, the operating agreement or limited liability agreement of Customer Connexx LLC has been amended to include the provisions set forth in Schedule V hereto regarding certain rights of Agent in respect of this Agreement.

5. Covenants of Pledgor. Pledgor hereby covenants and agrees as follows:

(a) To do or cause to be done all things necessary to preserve and to keep in full force and effect its interests in the Collateral, and to defend, at its sole expense, the title to the Collateral and any part of the Collateral;

(b) To cooperate fully with Agent's efforts to preserve the Collateral and to take such actions to preserve the Collateral as Agent may in good faith direct;

(c) To cause Company to maintain proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to the Collateral and which reflect the lien of Agent on the Collateral;

(d) To deliver immediately to Agent any certificates that may be issued following the date of this Agreement representing the Ownership Interests or other Collateral, and to execute and deliver to Agent one or more transfer powers, substantially in the form of Schedule III attached hereto or otherwise in form and content satisfactory to Agent, pursuant to which Pledgor assigns, in blank, all Ownership Interests and other Collateral (the "**Transfer Powers**"), which such Transfer Powers shall be held by Agent as part of the Collateral;

(e) To execute and deliver to Agent such financing statements as Agent may request with respect to the Ownership Interests, and to take such other steps as Agent may from time to time reasonably request to perfect Agent's security interest in the Ownership Interests under applicable law;

(f) Not to sell, discount, allow credits or allowances, assign, extend the time for payment on, convey, lease, assign, transfer or otherwise dispose of the Collateral or any part of the Collateral;

(g) After an Event of Default under the Financing Documents (including but not limited to this Agreement), not to receive any dividend or distribution or other benefit with respect to Company, and not to vote, consent, waive or ratify any action taken, that would violate or be inconsistent with any of the terms and provisions of this Agreement, or any of the Financing Documents or that would materially impair the position or interest of Agent in the Collateral or dilute the Ownership Interests pledged to Agent under this Agreement;

(h) Not to sell or otherwise dispose of, or create, incur, assume or suffer to exist any lien upon any of the Collateral, other than liens in favor of Agent, for its benefit and the benefit of the Lenders;

(i) That Pledgor will, upon obtaining ownership of any other Ownership Interests otherwise required to be pledged to Agent, for its benefit and the benefit of the Lenders, pursuant to any of the Financing Documents, which Ownership Interests are not already Pledged Interests, within five (5) Business Days deliver to Agent a Pledge Amendment, duly executed by Pledgor, in substantially the form of Schedule IV hereto (a "**Pledge Amendment**") in respect of any such additional Ownership Interests pursuant to which Pledgor shall pledge to Agent, for its benefit and the benefit of the Lenders, all of such additional Ownership Interests. Prior to the delivery thereof to Agent, all such additional Ownership Interests shall be held by Pledgor separate and apart from its other property and in express trust for Agent, for its benefit and the benefit of the Lenders;

(j) That Pledgor consents to the admission of Agent (and its assigns or designee) as a member, partner or stockholder of Company upon Agent's acquisition of any of the Ownership Interests; and

(k) Pledgor shall not take any action to cause any equity interest held in Customer Connexx LLC to be or become a "security" within the meaning of, or to be governed by, Article 8 (Investment Securities) and shall not cause Customer Connexx LLC to "opt in" or to take any other action seeking to establish any equity interest of Customer Connexx LLC as a "security" or to become certificated.

6. Rights of Agent. Agent may from time to time and at its option (a) require Pledgor to, and Pledgor shall, periodically deliver to Agent records and schedules, which show the status of the Collateral and such other matters which affect the Collateral; (b) verify the Collateral and inspect the books and records of Company and make copies of or extracts from the books and records; and (c) notify any prospective buyers or transferees of the Collateral of Agent's interest in the Collateral. Pledgor agrees that Agent may at any time take such steps as Agent deems reasonably necessary to protect Agent's interest in and to preserve the Collateral. Pledgor hereby consents and agrees that Agent may at any time or from time to time pursuant to the Credit Agreement (a) extend or change the time of payment and/or the manner, place or terms of payment of any and all Obligations, (b) supplement, amend, restate, supersede, or replace the Credit Agreement or any other Financing Documents, (c) renew, extend, modify, increase or decrease loans and extensions of credit under the Credit Agreement, (d) modify the terms and conditions under which loans and extensions of credit may be made under the Credit Agreement, (e) settle, compromise or grant releases for any Obligations and/or any person or persons liable for payment of any Obligations, (f) exchange, release, surrender, sell, subordinate or compromise any collateral of any party now or hereafter securing any of the Obligations and (g) apply any and all payments received from any source by Agent at any time against the Obligations in any order as Agent may determine pursuant to the terms of the Credit Agreement; all of the foregoing in such manner and upon such terms as Agent may determine and without notice to or further consent from Pledgor and without impairing or modifying the terms and conditions of this Agreement which shall remain in full force and effect.

This Agreement shall remain in full force and effect and shall not be limited, impaired or otherwise affected in any way by reason of (i) any delay in making demand on Pledgor for or delay in enforcing or failure to enforce, performance or payment of any Obligations, (ii) any failure, neglect or omission on Agent's part to perfect any lien upon, protect, exercise rights against, or realize on, any property of Pledgor or any other party securing the Obligations, (iii) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any person or persons or in any property, (iv) the invalidity or unenforceability of any Obligations or rights in any Collateral under the Credit Agreement, (v) the existence or nonexistence of any defenses which may be available to Pledgor with respect to the Obligations, or (vi) the commencement of any bankruptcy, reorganization, liquidation, dissolution or receivership proceeding or case filed by or against Pledgor or any Borrower.

7. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default (an "**Event of Default**") under this Agreement:

- (a) the failure of Pledgor to perform, observe, or comply with any of the provisions of this Agreement, where such failure shall remain uncured for a period of ten (10) days after the date of written notice from Agent to Pledgor;
- (b) any representation, warranty or information made or given in this Agreement or in any report, statement, schedule, certificate, opinion (including any opinion of counsel for Pledgor), financial statement or other document furnished by Pledgor in connection with this Agreement shall prove to have been false or misleading when made or given in any material respect;
- (c) the occurrence of an Event of Default (as defined in any of the Financing Documents) or the continuance of any default under the Financing Documents beyond any applicable grace or cure period provided for therein;
- (d) the filing of any petition for relief under the United States Bankruptcy Code or any similar federal or state statute by or against Pledgor; or
- (e) an application for the appointment of a receiver for, the making of a general assignment for the benefit of creditors by, or the insolvency of Pledgor.

8. Rights of Agent Following Event of Default. Upon the occurrence of an Event of Default under this Agreement (and in addition to all of its other rights, powers and remedies under this Agreement), Agent may, at its option, without notice to Pledgor or any other party, do any one or more of the following:

- (a) Declare any unpaid balance of the Obligations to be immediately due and payable (the occurrence or nonoccurrence of an Event of Default shall in no manner impair the ability of Agent to demand payment of any portion of the Obligations that is payable upon demand);
- (b) Proceed to perform or discharge any and all of Pledgor's obligations, duties, responsibilities, or liabilities and exercise any and all of its rights in connection with the Collateral for such period of time as Agent may deem appropriate, with or without the bringing of any legal action in or the appointment of any receiver by any court;
- (c) Do all other acts which Agent may deem necessary or proper to protect Agent's security interest in the Collateral and carry out the terms of this Agreement;

(d) Exercise all voting and management rights of Pledgor as to Company or otherwise pertaining to the Collateral, and Pledgor, forthwith upon the request of Agent, shall use its best efforts to secure, and cooperate with the efforts of Agent to secure (if not already secured by Agent), all the benefits of such voting and management rights.

(e) Sell the Collateral in any manner permitted by the UCC; and upon any such sale of the Collateral, Agent may (i) bid for and purchase the Collateral and apply the expenses of such sale (including, without limitation, attorneys' fees) as a credit against the purchase price, or (ii) apply the proceeds of any sale or sales to other persons or entities, in whatever order Agent in its sole discretion may decide, to the expenses of such sale (including, without limitation, attorneys' fees), to the Obligations, and the remainder, if any, shall be paid to Pledgor or to such other person or entity legally entitled to payment of such remainder; and

(f) Proceed by suit or suits in law or in equity or by any other appropriate proceeding or remedy to enforce the performance of any term, covenant, condition, or agreement contained in this Agreement, and institution of such a suit or suits shall not abrogate the rights of Agent to pursue any other remedies granted in this Agreement or to pursue any other remedy available to Agent either at law or in equity.

Agent shall have all of the rights and remedies of a secured party under the UCC and other applicable laws. All costs and expenses, including reasonable attorneys' fees and expenses, incurred or paid by Agent in exercising or protecting any interest, right, power or remedy conferred by this Agreement, shall bear interest at a per annum rate of interest equal to the then highest rate of interest charged on any of the Obligations from the date of payment until repaid in full and shall, along with the interest thereon, constitute and become a part of the Obligations secured by this Agreement.

Pledgor hereby constitutes Agent as the attorney-in-fact of Pledgor after an Event of Default under the Financing Documents (including but not limited to this Agreement) to take such actions and execute such documents as Agent may deem appropriate in the exercise of the rights and powers granted to Agent in this Agreement, including, but not limited to, filling-in blanks in the Transfer Power to cause a transfer of the Ownership Interests and other Collateral pursuant to a sale of the Collateral. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment in full of the Obligations. Pledgor shall indemnify and hold Agent harmless for all losses, costs, damages, fees, and expenses suffered or incurred in connection with the exercise of this power of attorney and shall release Agent from any and all liability arising in connection with the exercise of this power of attorney.

9. Performance by Agent. If Pledgor shall fail to perform, observe or comply with any of the conditions, terms, or covenants contained in this Agreement or any of the other Financing Documents, Agent, without notice to or demand upon Pledgor and without waiving or releasing any of the Obligations or any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms or covenants for the account and at the expense of Pledgor, and may enter upon the premises of Pledgor for that purpose and take all such action on the premises as Agent may consider necessary or appropriate for such purpose. All sums paid or advanced by Agent in connection with the foregoing and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the foregoing, together with interest thereon at a per annum rate of interest equal to the then highest rate of interest charged on the principal of any of the Obligations, from the date of payment until repaid in full, shall be paid by Pledgor to Agent on demand and shall constitute and become a part of the Obligations secured by this Agreement.

10. Indemnification. Agent shall not in any way be responsible for the performance or discharge of, and Agent does not hereby undertake to perform or discharge of, any obligation, duty, responsibility, or liability of Pledgor in connection with the Collateral or otherwise. Pledgor hereby agrees to indemnify Agent and hold Agent harmless from and against all losses, liabilities, damages, claims, or demands suffered or incurred by reason of this Agreement or by reason of any alleged responsibilities or undertakings on the part of Agent to perform or discharge any obligations, duties, responsibilities, or liabilities of Pledgor in connection with the Collateral or otherwise; *provided, however*, that the foregoing indemnity and agreement to hold harmless shall not apply to losses, liabilities, damages, claims, or demands suffered or incurred by reason of Agent's own gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction. Agent shall have no duty to collect any amounts due or to become due in connection with the Collateral or enforce or preserve Pledgor's rights under this Agreement.

11. Termination. Upon payment in full of the Obligations, and termination of any further obligation of Agent and the Lenders to extend any credit to Borrower under the Financing Documents, this Agreement shall terminate and Agent shall promptly execute appropriate documents to evidence such termination.

12. Release. Without prejudice to any of Agent's rights under this Agreement, Agent may take or release other security for the payment or performance of the Obligations, may release any party primarily or secondarily liable for the Obligations, and may apply any other security held by Agent to the satisfaction of the Obligations.

13. Pledgor's Liability Absolute. The liability of Pledgor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Pledgor or any other person, nor against other securities or liens available to Agent or Agent's respective successors, assigns, or agents. Pledgor waives any right to require that resort be had to any security or to any balance of any deposit account or credit on the books of Agent in favor of any other person.

14. Preservation of Collateral. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral and in preserving rights under this Agreement if Agent takes action for those purposes as Pledgor may reasonably request in writing, *provided, however*, that failure to comply with any such request shall not, in and of itself, be deemed a failure to exercise reasonable care, and no failure by Agent to preserve or protect any rights with respect to the Collateral or to do any act with respect to the preservation of the Collateral not so requested by Pledgor shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

15. Private Sale. Pledgor recognizes that Agent may be unable to effect a public sale of the Collateral by reason of certain provisions contained in the federal Securities Act of 1933, as amended, and applicable state securities laws and, under the circumstances then existing, may reasonably resort to a private sale to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Collateral for their own account for investment and not with a view to the distribution or resale of the Collateral. Pledgor agrees that a private sale so made may be at a price and on other terms less favorable to the seller than if the Collateral were sold at public sale and that Agent has no obligation to delay sale of the Collateral for the period of time necessary to permit Pledgor to register or qualify the Collateral for public sale, even if Pledgor would agree to register or qualify the Collateral for public sale under the Securities Act of 1933, as amended, and applicable state securities laws. Pledgor agrees that a private sale made under the foregoing circumstances and otherwise in a commercially reasonable manner shall be deemed to have been made in a commercially reasonable manner under the UCC.

16. General.

(a) Final Agreement and Amendments. This Agreement, together with the other Financing Documents, constitutes the final and entire agreement and understanding of the parties and any term, condition, covenant or agreement not contained herein or therein is not a part of the agreement and understanding of the parties. Neither this Agreement, nor any term, condition, covenant or agreement hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(b) Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. No single or partial exercise of any power or right shall preclude other or further exercise of the power or right or the exercise of any other power or right. No course of dealing between the parties hereto shall be construed as an amendment to this Agreement or a waiver of any provision of this Agreement. No notice to or demand on Pledgor in any case shall thereby entitle Pledgor to any other or further notice or demand in the same, similar or other circumstances.

(c) Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

(d) Construction. As used herein, all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Agreement. The Recitals are incorporated herein as a substantive part of this Agreement and the parties hereto acknowledge that such Recitals are true and correct.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns hereunder. In the event of any assignment or transfer by Agent of any of the Pledgor's obligations under the Financing Documents or the collateral therefor, Agent thereafter shall be fully discharged from any responsibility with respect to such collateral so assigned or transferred, but Agent shall retain all rights and powers given by this Agreement with respect to any of the Pledgor's obligations under the Financing Documents or collateral not so assigned or transferred. Pledgor shall have no right to assign or delegate its rights or obligations hereunder.

(f) Severability. If any term, provision, covenant or condition of this Agreement or the application of such term, provision, covenant or condition to any party or circumstance shall be found by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such term, provision, covenant, or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

(g) Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 12.3 of the Credit Agreement. All notices to Pledgor shall be addressed in accordance with the information provided on the signature page hereto.

(h) Remedies Cumulative. Each right, power and remedy of Agent as provided for in this Agreement, or in any of the other Financing Documents or now or hereafter existing by law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement, or in any of the other Financing Documents now or hereafter existing by law, and the exercise or beginning of the exercise by Agent of any one or more of such rights, powers or remedies shall not preclude the later exercise by Agent of any other rights, powers or remedies.

(i) Time of the Essence; Survival; Joint and Several Liability. Time is of the essence of this Agreement and each and every term, covenant and condition contained herein. All covenants, agreements, representations and warranties made in this Agreement or in any of the other Financing Documents shall continue in full force and effect so long as any of the obligations of any party under the Financing Documents (other than Agent) remain outstanding. Each person or entity constituting Pledgor shall be jointly and severally liable for all of the obligations of Pledgor under this Agreement.

(j) Further Assurances. Pledgor hereby agrees that at any time and from time to time, at the expense of Pledgor, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Agent or any of its agents to exercise and enforce its rights and remedies under this Agreement with respect to any portion of such collateral.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which shall constitute one in the same instrument. As used in this Agreement, the term "this Agreement" shall include all attachments, exhibits, schedules, riders and addenda. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto.

(l) Costs. Pledgor shall be responsible for the payment of any and all reasonable fees, costs and expenses which Agent may incur by reason of this Agreement, including, but not limited to, the following: (i) any taxes of any kind related to any property or interests assigned or pledged hereunder; (ii) expenses incurred in filing public notices relating to any property or interests assigned or pledged hereunder; and (iii) any and all costs, expenses and fees (including, without limitation, reasonable attorneys' fees and expenses and court costs and fees), whether or not litigation is commenced, incurred by Agent in protecting, insuring, maintaining, preserving, attaching, perfecting, enforcing, collecting or foreclosing upon any lien, security interest, right or privilege granted to Agent or any obligation of Pledgor under this Agreement, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to this Agreement or any property or interests assigned or pledged hereunder.

(m) No Defenses. Pledgor's obligations under this Agreement shall not be subject to any set-off, counterclaim or defense to payment that Pledgor now has or may have in the future.

(n) Cooperation in Discovery and Litigation. In any litigation, trial, arbitration or other dispute resolution proceeding relating to this Agreement, all directors, officers, employees and agents of Pledgor or of its affiliates shall be deemed to be employees or managing agents of Pledgor for purposes of all applicable law or court rules regarding the production of witnesses by notice for testimony (whether in a deposition, at trial or otherwise). Pledgor agrees that Agent's counsel in any such dispute resolution proceeding may examine any of these individuals as if under cross-examination and that any discovery deposition of any of them may be used in that proceeding as if it were an evidence deposition. Pledgor in any event will use all commercially reasonable efforts to produce in any such dispute resolution proceeding, at the time and in the manner requested by Agent, all persons and entities, documents (whether in tangible, electronic or other form) or other things under its control and relating to the dispute in any jurisdiction that recognizes that (or any similar) distinction.

(o) CHOICE OF LAW; CONSENT TO JURISDICTION. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), PLEDGOR HEREBY (A) SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE AGENT FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OR PROCESS IN ANY PROCEEDING IN ANY MARYLAND STATE OR UNITED STATES COURT SITTING IN THE STATE OF MARYLAND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO PLEDGOR AT THE ADDRESS INDICATED HEREIN, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF PLEDGOR SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

17. WAIVER OF JURY TRIAL. PLEDGOR HEREBY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY PLEDGOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF PLEDGOR'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, PLEDGOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF AGENT (INCLUDING THEIR RESPECTIVE COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO PLEDGOR THAT AGENT WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

[SIGNATURE PAGES FOLLOW]

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Ansellem (SEAL)
Name: Maurice Ansellem
Title: Authorized Signatory

SCHEDULE I

PLEDGED INTERESTS

Name of Pledgor: Appliance Recycling Centers of America, Inc.

Company Name: (i) ApplianceSmart, Inc.
(ii) ARCA Recycling, Inc.
(iii) Customer Connexx LLC
(iv) ARCA Canada, Inc.
(v) ARCA Advanced Processing, LLC

Type of Entity of Company: (i) Corporation
(ii) Corporation
(iii) Limited liability company
(iv) Corporation
(v) Limited liability company

Jurisdiction of Organization of Company: (i) Minnesota
(ii) California
(iii) Nevada
(iv) Canada (Ontario)
(v)

Organizational ID No. of Company: (i) 4383092-3
(ii) C1811270
(iii) NV20161606045
(iv) 00215978
(v) 3541635-2

- Tax ID No. of Company:**
- (i) 45-2794102
 - (ii) 36-3893973
 - (iii) 81-4118020
 - (iv) 849019120RC0001
 - (v)
- Class of Interests in Company:**
- (i) Common stock
 - (ii) Common stock
 - (iii) LLC membership interests
 - (iv) Common stock
 - (v) LLC membership interests
- Equity Interest Certificate No.:**
- (i) No. 1
 - (ii) No. 1
 - (iii) N/A –not certificated
 - (iv) No. 1
 - (v) N/A –not certificated
- Number of Units:**
- (i) 10,000 shares
 - (ii) 1,000 shares
 - (iii) N/A – not certificated
 - (iv) 10 shares
 - (v) N/A –not certificated
- Percentage of Outstanding Equity Interest:**
- (i) 100%
 - (ii) 100%
 - (iii) 100%
 - (iv) 100% (65% pledged hereunder)
 - (v) 50%

SCHEDULE II

PLEDGOR INFORMATION

| | |
|---|--|
| Name of Pledgor: | Appliance Recycling Centers of America, Inc. |
| Type of Entity of Pledgor: | Corporation |
| Jurisdiction of Organization of Pledgor: | Minnesota |
| Organizational ID No. of Pledgor: | 4K-30 |
| Tax ID No. of Pledgor: | 41-1454591 |

SCHEDULE III

STOCK POWER

FOR VALUE RECEIVED, the undersigned, _____, a _____ corporation ("**Pledgor**"), does hereby sell, assign and transfer to _____* all of its Equity Interests (as hereinafter defined) represented by Certificate No(s). _____* in _____, a _____ corporation ("**Issuer**"), standing in the name of Pledgor on the books of said Issuer. Pledgor does hereby irrevocably constitute and appoint _____*, as attorney, to transfer the Equity Interest in said Issuer with full power of substitution in the premises. The term "**Equity Interest**" means any security, share, unit, partnership interest, membership interest, ownership interest, equity interest, option, warrant, participation, "equity security" (as such term is defined in Rule 3(a)11 1 of the General Rules and Regulations of the Securities Exchange Act of 1934, as amended, or any similar statute then in effect, promulgated by the Securities and Exchange Commission and any successor thereto) or analogous interest (regardless of how designated) of or in a corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust or other entity, of whatever nature, type, series or class, whether voting or nonvoting, certificated or uncertificated, common or preferred, and all rights and privileges incident thereto.

Dated: _____

PLEDGOR:

[NAME OF PLEDGOR]

By: _____ (SEAL)

Name: _____

Its: _____

*To Remain Blank - Not Completed at Closing

SCHEDULE IV

PLEDGE AMENDMENT

This Pledge Amendment, dated _____, 20__ is delivered pursuant to Section 5(i) of the Pledge Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Pledge Agreement. The undersigned hereby certifies that the representations and warranties in Section 4 of the Pledge Agreement are and continue to be true and correct, both as to the Collateral pledged prior to this Pledge Amendment and as to the Collateral pledged pursuant to this Pledge Amendment. The undersigned further agrees that this Pledge Amendment may be attached to that certain Pledge Agreement, dated _____, 20__, between undersigned, as Pledgor, and MidCap Financial Trust, as Agent (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), and that the Ownership Interests listed on this Pledge Amendment shall be and become a part of the Pledged Interests and Pledged Collateral referred to in said Pledge Agreement and shall secure all Obligations referred to and in accordance with said Pledge Agreement. Schedule I of the Pledge Agreement shall be deemed amended to include the Ownership Interests listed on this Pledge Amendment. The undersigned acknowledge that any Ownership Interests issued by Company owned by Pledgor not included in the Pledged Collateral at the discretion of Agent may not otherwise be pledged by Pledgor to any other Person or otherwise used as security for any obligations other than the Obligations.

PLEDGOR:

[NAME OF PLEDGOR]

By: _____ (SEAL)

Name: _____

Its: _____

[Name of Individual] (SEAL)

SCHEDULE IV- continued

Name and
Address of Pledgor

Company

Class of
Equity Interest

Certificate
Number(s)

Number of
Shares

Initial
Principal Amount

Issue Date

Maturity Date

Interest Rate

NOTICE OF PLEDGE

TO: _____ (“Company”)

Notice is hereby given that, pursuant to that certain Pledge Agreement of even date with this Notice (the “**Agreement**”), from undersigned (collectively in the singular, “**Pledgor**”), to **MidCap Financial Trust**, as agent (in such capacity, together with its successors and assigns, “**Agent**”) in connection with financing arrangements in effect for Company, Agent and certain financial institutions, Pledgor has pledged and assigned to Agent and granted to Agent, for its benefit and the benefit of the Lenders, a continuing first priority security interest in, all of its right, title and interest, whether now existing or hereafter arising our acquired, in, to, and under the following (the “**Collateral**”):

(a) all of the stock, shares, membership interests, partnership interests and other equity ownership interests in Company now or hereafter held by Pledgor (collectively, the “**Ownership Interests**”) and all of Pledgor’s rights to participate in the management of Company, all rights, privileges, authority and powers of Pledgor as owner or holder of its Ownership Interests in Company, including, but not limited to, all investment property, contract rights related thereto, all rights, privileges, authority and powers relating to the economic interests of Pledgor as owner or holder or its Ownership Interests in Company, including, without limitation, all contract rights related thereto, all options and warrants of Pledgor for the purchase of any Ownership Interest in Company, all documents and certificates representing or evidencing Pledgor’s Ownership Interests in Company, all of Pledgor’s right, title and interest to receive payments of principal and interest on any loans and/or other extensions of credit made by Pledgor to Company, and any other right, title, interest, privilege, authority and power of Pledgor in or relating to Company, all whether existing or hereafter arising, and whether arising under any operating agreement, shareholder’s agreement, partnership agreement or any other agreement, or any bylaws of Company (as the same may be amended, modified or restated from time to time), or the certificate of formation or existence of Company (as the same may be amended, modified or restated from time to time) or otherwise, or at law or in equity and all books and records of Pledgor pertaining to any of the foregoing and all options, warrants, distributions, investment property, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests, and Pledgor shall promptly thereafter deliver to Agent a certificate duly executed by Pledgor describing such percentage interests, options or warrants and certifying that the same have been duly pledged hereunder;

(b) all rights to receive cash distributions, profits, losses and capital distributions (including, but not limited to, distributions in kind and liquidating dividends) and any other rights and property interests related to the Ownership Interests;

(c) all other securities, instruments or property (including cash) paid or distributed in respect of or in exchange for the Ownership Interests, whether or not as part of or by way of spin-off, merger, consolidation, dissolution, reclassification, combination or exchange of stock (or other Ownership Interests), asset sales, or similar rearrangement or reorganization or otherwise; and

(d) all proceeds (both cash and non-cash) of the foregoing, whether now or hereafter arising under the foregoing.

Pursuant to the Agreement, Company is hereby authorized and directed, and Company hereby agrees, to:

(i) register on its books Pledgor’s pledge to Agent of the Collateral; and

(ii) upon the occurrence of an Event of Default under the Agreement (or prior thereto, as may be required under the Agreement) make direct payment to Agent of any amounts due or to become due to Pledgor that are attributable, directly or indirectly, to Pledgor's ownership of the Collateral.

Pledgor hereby directs Company to, and Company hereby agrees to, comply with instructions originated by Agent with respect to the Collateral without further consent of the Pledgor. It is the intention of the foregoing to grant "control" to Agent within the meaning of Articles 8 and 9 of the UCC, to the extent the same may be applicable to the Collateral.

[For Customer Connex LLC] Pledgor hereby directs Company, and Company hereby agrees, (i) not to take any action to cause any equity interest of the Collateral to be or become a "security" within the meaning of, or to be governed by, Article 8 (Investment Securities) of the UCC as in effect under the laws of any state having jurisdiction, and (ii) not to "opt in" or to take any other action seeking to establish any equity interest of the Collateral as a "security" and (iii) not to certificate any equity interest of the Collateral.

Company acknowledges and agrees that upon the delivery of any certificates representing the Collateral endorsed to Agent or in blank, Agent's security interest in the Collateral shall be perfected by "control" (as such term is used in Articles 8 and 9 of the UCC).

Pledgor hereby requests Company to indicate its acceptance of this Notice and consent to and confirmation of its terms and provisions by signing a copy of this Notice where indicated below and returning it to Agent.

PLEDGOR:

[NAME OF PLEDGOR]

By: _____ (SEAL)

Name: _____

Its: _____

(SEAL)

[Name of Individual]

ACKNOWLEDGED BY COMPANY as of this ____ day of _____, 201__:

COMPANY:

[NAME OF COMPANY]

By: _____ (SEAL)

Name: _____

Title: _____

SCHEDULE V

LLC OPERATING AGREEMENT AMENDMENTS

Please add a new Article as follows:

ARTICLE []

RIGHTS OF AGENT

Section [] In the event that Midcap Financial Trust (together with any successor and/or assign thereto, "Agent") exercises its rights and remedies (the "Pledge Rights") under and in accordance with that certain Pledge Agreement between Agent and Appliance Recycling Centers of America, Inc. (the "Pledge Agreement"), delivered in connection with that certain Credit and Security Agreement dated as of May ____, 2017 by and among Borrowers, Agent and Lenders, and which may be amended, modified and restated from time to time, the "Credit Agreement"), notwithstanding anything contained in this Agreement to the contrary: (a) Agent shall be entitled to remove any or all of the Managers and appoint any representatives of Agent or any other person or entity, as Agent elects, to be the Manager(s) in order to fill the vacancy created by such removal and the Members shall not have the right to remove the Managers so appointed by Agent or to elect any new or additional Managers, and (b) any limitations contained in this Agreement inconsistent with the provisions of the Pledge Agreement or this Article shall thereupon be deemed waived, void and of no further force and effect until all of the Obligations (as defined in the Credit Agreement) of the Borrowers (as defined in the Credit Agreement) to Agent and Lenders under the Credit Agreement have been fully and finally paid, including, without limitation (i) any provision that requires approval of actions by a "Majority in Interest", and (ii) provisions requiring the approval of the "Board of Managers" for certain actions, it being agreed that the Board of Managers may be replaced by a sole Manager at Agent's option. Following the full and final payment to Agent and Lenders of the Obligations under the Credit Agreement, all such provisions shall be deemed to be reinstated and in full force and effect.

Section [] Notwithstanding anything contained in this Agreement to the contrary, all restrictions on transfer and assignability of any Member's interests in the Company shall be inapplicable, and of no force and effect, as to any transfer of any interests in the Company to Agent (or any nominee affiliate, successor, assignee or transferee thereof) in accordance with the Pledge Agreement.

Section [] Neither the Members nor Managers will amend this Agreement to provide that any limited liability company interests in the Company are securities governed by Article 8 of the Uniform Commercial Code or otherwise "opt in" of Article 8 of the Uniform Commercial Code.

Section [] The provisions of this Article shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and any future Members or Managers and their respective successors and assigns.

Section [] None of the provisions of this Article [] or any other provision of this Agreement may be amended in any way which alters, limits, restricts or adversely affects Agent's ability to exercise its Pledge Rights, other rights under the Pledge Agreement or the intended result thereof, without the prior written consent of Agent.

Exhibit 10.4

August 14, 2017

Appliance Recycling Centers of America, Inc.,
as Borrower Representative
175 Jackson Avenue North, Suite 102
Minneapolis, MN 55343
Attn: Mr. Tony Isaac

Re: Credit and Security Agreement dated as of May 10, 2017 (as amended, modified and restated from time to time, the "**Credit Agreement**") by and among Appliance Recycling Centers of America, Inc., a Minnesota corporation, ApplianceSmart, Inc., a Minnesota corporation, ARCA Recycling, Inc., a California corporation, Customer Connexx LLC, a Nevada limited liability company, and the other borrower parties thereto from time to time (collectively, the "Borrowers"), MidCap Funding X Trust, a Delaware statutory trust (the "**Agent**"), as assignee of MidCap Financial Trust, acting in its capacity as the administrative agent for itself and certain other "Lender" parties to the hereinafter referenced Loan Agreement from time to time (collectively, "**Lenders**")

Ladies and Gentlemen:

Borrowers, Agent and Lenders are parties to the Credit Agreement pursuant to which Lenders extended certain loans and other financial accommodations (collectively, the "**Loans**") to Borrowers. The Loans are secured by, among other things, a lien upon substantially all of each Borrower's assets. Appliance Recycling Centers of America, Inc. ("**ARCA Parent**") desires to sell all of its equity interests held in ARCA Advanced Processing, LLC (the "**AAP Equity Interests**"). In connection with such sale, ARCA Parent has requested that Agent release any security interest it may have in the AAP Equity Interests.

Upon Agent's receipt of (a) fully executed documents related to the sale of the AAP Equity Interests by ARCA Parent pursuant to an asset purchase agreement, equity purchase agreement, and other documents and agreements related thereto, in form and substance reasonably satisfactory to Agent, (b) Eight Hundred Thousand and No/100 Dollars (\$800,000.00) in immediately available funds (representing all of the proceeds payable to ARCA Parent in connection with the sale of the AAP Equity Interests) into Wells Fargo account number 4121762140 from the sale of the AAP Equity Interests (which will be applied to repay the outstanding principal balance of the Loans), (c) evidence of release of the Guarantees (as defined in Schedule 7.4 of the Credit Agreement), and (d) assumption of the indebtedness of ARCA Parent owing to General Electric Company (whether such assumption is made directly or indirectly by indemnification and/or backstopping of accounts receivable and accounts payable), Agent hereby releases any and all security interests it may have in and to the AAP Equity Interests.

[Remainder of Page Intentionally Left Blank]

The foregoing release relates solely and specifically to the AAP Equity Interests, and such release will not in any way effect or release or be deemed to effect or release Agent's or any Lender's lien on any other assets of any Borrower.

Very truly yours,

MIDCAP FUNDING X TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Michael Levin
Name: Michael Levin
Title: Authorized Signatory

EQUITY PURCHASE AGREEMENT

This Equity Purchase Agreement (this "Agreement") is entered into on August 15, 2017, between 4301 Operations, LLC, a Delaware limited liability company ("Buyer") and Appliance Recycling Centers of America, Inc., a Minnesota corporation ("Seller"). Buyer and Seller are each sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

- A. Seller owns 50% of the issued and outstanding membership interests (the "Equity Interests") of ARCA Advanced Processing, LLC, a Minnesota limited liability company (the "Company").
- B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Equity Interests, on the terms set forth herein.
- C. The Parties are entering into this Agreement in order to facilitate (i) the ultimate sale of substantially all of the assets of the Company to Reclim PA, LLC, a Delaware limited liability company, and (ii) the repayment of certain debt obligations of the Company.
- D. Concurrently with the execution of this Agreement, Seller is entering into a Letter Agreement with Reclim LLC, a Delaware corporation ("Reclim"), regarding other obligations and undertakings of Reclim and Seller.

Accordingly, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 -- PURCHASE AND SALE; CLOSING

- 1.1 Purchase and Sale. At the Closing, Seller will sell, transfer and deliver to Buyer, and Buyer will purchase and accept from Seller, the Equity Interests, free and clear of any Liens.
- 1.2 Time and Place of Closing. The consummation of the transactions contemplated hereby (the "Closing") will occur concurrently with the execution of this Agreement on the date hereof (the "Closing Date") at the office of the Company located at 4301 North Delaware Avenue, Philadelphia, PA or remotely by the electronic exchange of documents in .pdf format.
- 1.3 Purchase Price and Payment. In consideration for the transfer of the Equity Interests and Seller's other obligations under this Agreement, at the Closing, Buyer will deliver or cause to be delivered to Seller the Cash Purchase Price of \$800,000, by wire transfer of immediately available funds to an account designated by Seller in writing.
- 1.4 Seller's Closing Deliverables. At the Closing, Seller will deliver, or cause to be delivered, to Buyer:
 - (a) evidence reasonably satisfactory to Buyer that any Lien attaching to or affecting the Equity Interests has been released;

- (b) the certificate or certificates, if any, representing the Equity Interests, duly endorsed for transfer or accompanied by transfer powers duly endorsed in blank;
- (c) resolutions of the board of directors of Seller consenting to, and approving, the transactions contemplated by this Agreement; and
- (d) such other documents and agreements as Buyer may reasonably request which relate to sale and purchase of the Equity Interests.

1.5 Buyer's Closing Deliverables. At the Closing, Buyer will deliver, or cause to be delivered, to Seller a resolution of the board of directors of Buyer consenting to, and approving, the transactions contemplated by this Agreement.

ARTICLE 2 -- REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Closing Date:

(a) Existence. Seller is duly formed, validly existing and in good standing under the Laws of its jurisdiction of incorporation and is duly authorized, qualified or licensed to do business and is in good standing as a foreign entity in each jurisdiction in which it is required to be so qualified, except to the extent that the failure to be so licensed or qualified and in good standing would not adversely affect the ability of Seller to perform its obligations under, and consummate the transactions contemplated by, this Agreement.

(b) Authority, Validity and Enforceability. Seller has all requisite authority and full legal capacity to enter into and perform its obligations under this Agreement and consummate the transactions contemplated hereby. There is no oral or written Contract, understanding or impediment of any kind which limits Seller's ability to sell, transfer and deliver the Equity Interests to Buyer in accordance with this Agreement. This Agreement has been duly executed and delivered by Seller pursuant to all necessary authorizations and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(c) Title to Equity Interests. Seller is in lawful possession of, and has good and marketable title to, the Equity Interests, free and clear of any Liens. There are no agreements, commitments or Contracts relating to the issuance, sale, transfer or voting of the Equity Interests or any other equity securities of the Company, and no third party has any rights of any kind in the Equity Interests.

(d) No Consent. The execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of Seller or the Company; (ii) conflict with or result in a violation or breach of any provision of any Law applicable to Seller or the Company; (iii) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which Seller or the Company is a party or by which Seller or the Company is bound or to which any of their respective properties and assets are subject; or (iv) result in the creation or imposition of any Lien on any properties or assets of the Company. No consent, approval, declaration or filing with, or notice to, any Governmental Body is required by or with respect to Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

2.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the Closing Date as follows:

(a) Existence. Buyer is duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation and is duly authorized, qualified or licensed to do business and is in good standing as a foreign entity in each jurisdiction in which it is required to be so qualified, except to the extent that the failure to be so licensed or qualified and in good standing would not adversely affect the ability of Buyer to carry out its obligations under and consummate the transactions contemplated by this Agreement.

(b) Authority, Validity and Enforceability. Buyer has all requisite authority and full legal capacity to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer pursuant to all necessary authorizations and constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

ARTICLE 3 -- COVENANTS

3.1 Further Assurances. From and after the Closing Date, at the request of Buyer, Seller will execute and deliver to Buyer, or cause to be executed and delivered on behalf of Seller or any of its Affiliates to Buyer, such instruments and other documents as Buyer may reasonably request to implement the transactions contemplated by this Agreement, including any documents and instruments of conveyance, transfer or assignment to effect, record or verify the transfer to, and vesting in Buyer of, Seller's right, title and interest in and to the Equity Interests, in accordance with this Agreement.

3.2 Expenses. Each of the Parties will bear its respective expenses incurred or to be incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

3.3 Tax Matters. For the purposes of this Agreement, items of Company income, gain, loss, deduction or credit attributable to the Equity Interests for any Tax period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period") will be apportioned between the period of the Straddle Period that extends before the Closing Date through and including the Closing Date (the "Pre-Closing Straddle Period") and the period of the Straddle Period that extends from the day after the Closing Date to the end of the Straddle Period (the "Post-Closing Straddle Period"). The portion of such items of income, gain, loss, deduction or credit attributable to the Pre-Closing Straddle Period will be the amount that would be reportable by the Company on its Tax Return for the Straddle Period if the Straddle Period began on the date it would otherwise begin and ended on and included the Closing Date, with such items of income, gain, loss, deduction or credit for the Pre-Closing Straddle Period being allocated amongst Seller and the other Persons owning membership interests in the Company during the Pre-Closing Straddle Period in accordance with the operating agreement of the Company. The portion of such items of income, gain, loss, deduction or credit attributable to the Post-Closing Straddle Period will be the amount that would be reportable by the Company on its Tax Return for the Straddle Period if the Straddle Period began on the day immediately following the Closing Date and ended on and included the date it would otherwise end, with such items of income, gain, loss, deduction or credit for the Post-Closing Straddle Period being allocated to Buyer.

ARTICLE 4 -- INDEMNIFICATION

4.1 Indemnification.

(a) Seller will defend, indemnify and hold harmless Buyer and its Affiliates and their respective officers, directors, trustees, agents, employees, partners, members and controlling persons (each, a "Buyer Indemnified Party") against any and all Losses suffered by a Buyer Indemnified Party arising out of, relating to or in connection with: (i) Seller's ownership of the Equity Interests; (ii) Seller's breach of any representation, warranty, covenant or agreement contained in this Agreement; or (iii) any claim of legal or equitable ownership in the Equity Interests made by any third party.

(b) Buyer will defend, indemnify and hold harmless Seller and its officers, directors, trustees, agents, employees, partners, stockholders and controlling persons (each, a "Seller Indemnified Party") against any and all Losses suffered by a Seller Indemnified Party arising out of, relating to or in connection with Buyer's breach of any representation, warranty, covenant or agreement contained in this Agreement.

ARTICLE 5 -- MISCELLANEOUS

5.1 Survival. The representations, warranties and covenants of Seller and Buyer contained in this Agreement will survive the Closing indefinitely.

5.2 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement among the Parties with regard to the subject matter hereof and supersedes all other prior agreements with regard to the subject matter hereof.

5.3 Binding Provisions; Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and, except as provided herein, their respective successors and assigns. This Agreement may not be assigned by any Party without the prior consent of the other Party. Any attempt to assign this Agreement in a manner prohibited by this Section 5.3 will be void.

5.4 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the city of Wilmington and county of New Castle, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

5.5 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future Laws effective during the term of this Agreement, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement and (d) in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provisions as may be possible and be legal, valid and enforceable.

5.7 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties will be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

5.8 Notices.

(a) Except as otherwise provided in this Agreement, any notice or other communication required or permitted to be delivered to any Party under this Agreement will be in writing and delivered by (i) email or (ii) overnight delivery via a national courier service, in each case to the email address or physical address specified below:

If to Seller:

Appliance Recycling Centers of America, Inc.
Attention: Tony Isaac
Email: tisaac@arcainc.com

If to Buyer:

4301 Operations, LLC
4301 N. Delaware Ave., Bldg. C
Philadelphia, PA 19137

(b) Any notice received by email transmission on a non-Business Day or on any Business Day after 5:00 p.m. addressee's local time or overnight delivery on a non-Business Day will be deemed to have been received at 9:00 a.m. addressee's local time on the next Business Day. Any Party may specify a different address, by written notice to the other Parties. The change of address will be effective upon the other Parties' receipt of the notice of the change of address.

5.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

5.10 No Third-Party Beneficiaries. Except as specifically set forth or referred to herein, nothing herein is intended or will be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Agreement.

5.11 Amendment. No amendment or modification to this Agreement will be valid unless it is in writing and signed by each Party. No course of dealing or course of conduct between or among any Persons having any interest in this Agreement will be deemed to modify, amend or waive any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement.

5.12 Waiver. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any Party will operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

ARTICLE 6 -- DEFINITIONS; CONSTRUCTION

6.1 Definitions. The following words and phrases will have the meanings specified in this Section 6.1:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlled by, Controlling or under common Control with such Person.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of Delaware.

“Cash Purchase Price” means \$800,000.

“Contracts” means all contracts, agreements, leases (whether real or personal property), licenses, commitments, understandings, courses of dealings or performance, instruments, guarantees, bids, orders and proposals, whether oral or written.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, by Contract or otherwise. The terms “Controlled” and “Controlling” have correlative meanings.

“Governmental Body” means any government or political subdivision or regulatory authority, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision or regulatory authority, or any federal state, local or foreign court or arbitrator or mediator.

“Law” means any applicable statute, law, rule (including rules of common law), regulation, ordinance, order (including any injunction, judgment, decree, ruling, writ, consent, agreement, assessment or arbitration award), code, ruling or other official act or legally enforceable requirement of or by any Governmental Body.

“Lien” means any hypothecation, mortgage, assignment, lease, deed of trust, encumbrance, real property title defect, preference, deposit arrangement, infringement, interference, charge, claim, community property interest, easement, right of way, covenant, servitude, condition, equitable interest, lien, option, pledge, security interest, purchase rights, right of first refusal, tag along right or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing.

“Losses” means all losses, liabilities, claims, damages, judgments, fines, penalties, costs or expenses (including reasonable fees, disbursements and other charges of counsel) incurred by a Buyer Indemnified Party or a Seller Indemnified Party, as the case may be.

“Person” means any individual, sole proprietorship, partnership, corporation, limited liability company, unincorporated society or association, trust, Governmental Body or other entity.

“Tax” means (a) all taxes, charges, fees, imposts, levies or other assessments, including all net income, gross income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property, estimated or other taxes, customs duties, fees, assessments or charges of any kind whatsoever, or other tax of any kind whatsoever, including any liability under any state abandonment or unclaimed property, escheat or similar Law, including all interest, fines and penalties thereon, and additions to tax or additional amounts, imposed by any Governmental Body, (b) any liability for the payment of any amounts of any of the foregoing as a result of being a member of an affiliated, consolidated, combined or unitary group or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the liability of any other Person and (c) any liability in respect of any of the items described in clauses (a) or (b) payable by reason of Contract, assumption, transferee liability, operation of law, or otherwise.

“**Tax Return**” means any return, declaration, report, information return or other document (including schedules or any related or supporting information) filed or required to be filed with any Governmental Body, including any return, attachment or schedule of an affiliated, consolidated, combined or unitary group, in connection with the determination, assessment or collection of any Tax or the administration of any Laws relating to any Tax.

6.2 **Terms Defined Elsewhere in this Agreement.** For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

| <u>Term</u> | <u>Section</u> |
|------------------------------|-----------------------|
| Agreement | Preamble |
| Buyer | Preamble |
| Buyer Indemnified Party | 4.1(a) |
| Closing | 1.2 |
| Closing Date | 1.2 |
| Company | Recitals |
| Equity Interests | Recitals |
| Parties | Preamble |
| Post-Closing Straddle Period | 3.5 |
| Pre-Closing Straddle Period | 3.5 |
| Straddle Period | 3.5 |
| Seller | Preamble |
| Seller Indemnified Party | 4.1(b) |

6.3 **Construction.** The Parties intend that each representation, warranty, covenant and agreement contained in this Agreement will have independent significance. The headings are for convenience only and will not be given effect in interpreting this Agreement. References to sections and articles are to the sections and articles contained in, referred to by or attached to this Agreement, unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “include,” “includes” and “including” in this Agreement mean “include/includes/including without limitation.” All references to \$, currency, monetary values and dollars set forth herein means United States dollars. The use of the masculine, feminine or neuter gender or the singular or plural form of words will not limit any provisions of this Agreement. Any reference to a statute refers to the statute, any amendments or successor legislation and all rules and regulations promulgated under or implementing the statute, as in effect at the relevant time. Time is of the essence with respect to this Agreement. Whenever this Agreement refers to a number of days, such number will refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day. Any reference herein to any Law or Contract will be construed as referring to such Law or Contract as amended or modified or, in the case of a Law, codified or reenacted, in each case, in whole or in part, and as in effect from time to time. The Parties acknowledge and agree that (a) each Party and its counsel has reviewed, or has had the opportunity to review, the terms and provisions of this Agreement, (b) any rule of construction to the effect that any ambiguities are resolved against the drafting Party will not be used to interpret this Agreement and (c) the provisions of this Agreement will be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Agreement as of the date first written above.

BUYER

4301 OPERATIONS, LLC

By: /s/ Brian Connors
Name: Brian Connors
Title: President

SELLER

APPLIANCE RECYCLING CENTERS OF
AMERICA, INC.

By: /s/ Tony Isaac
Name: Tony Isaac
Title: CEO

[SIGNATURE PAGE TO EQUITY PURCHASE AGREEMENT]

ASSET PURCHASE AGREEMENT

between

RECLEIM PA, LLC

and

ARCA ADVANCED PROCESSING, LLC

dated as of

August 15, 2017

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of August 15, 2017, is entered into among ARCA Advanced Processing, LLC, a Minnesota limited liability company ("Seller"), 4301 Operations, LLC, a Delaware limited liability company ("4301"), Brian Conners ("Conners"), James Ford ("Ford") and Reclim PA, LLC, a Delaware limited liability company ("Buyer"). Seller, Conners, Ford and 4301 are collectively referred to herein as the "Seller Parties" and each as a "Seller Party."

RECITALS

- A. Immediately prior to the execution of this Agreement, 4301 and Appliance Recycling Centers of America, Inc. a Minnesota corporation, entered into an Equity Purchase Agreement, pursuant to which 4301 became the owner of 100% of the issued and outstanding equity interests of Seller.
- B. Conners and Ford own 100% of the issued and outstanding equity interests of 4301.
- C. Seller is engaged in the business of appliance recycling and bulk appliance and appliance part sales (the "Business").
- D. Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the rights and obligations of Seller to the Purchased Assets and the Assumed Liabilities, subject to the terms and conditions set forth herein.
- E. Concurrently with the execution of this Agreement, Buyer has entered into an employment agreement with each of Brian Conners, Michael Safford and Mary Volpe (the "Key Employee Agreements").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINED TERMS

Section 1.01 Defined Terms. As used herein, the following terms have the meanings set forth below:

"4301" has the meaning set forth in the preamble.

"Action" has the meaning set forth in Section 4.14.

"Affiliate" means, with respect to any Person, any other Person which, at the time of determination, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Person. For purposes of this Agreement, "control", "controlled by", "under common control with" and "controlling" means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Aggregate Payoff Amount” has the meaning set forth in Section 3.01(b).

“Agreement” has the meaning set forth in the preamble.

“Assigned Contracts” has the meaning set forth in Section 4.09.

“Assigned Leases” has the meaning set forth in Section 4.15.

“Assumed Liabilities” has the meaning set forth in Section 2.03(b).

“Bill of Sale and Assumption Agreement” has the meaning set forth in Section 3.04(a)(i).

“Business” has the meaning set forth in the recitals.

“Business Employee” means an employee of Seller.

“Buyer” has the meaning set forth in the preamble.

“Buyer Business” means the Business, as conducted by Buyer following the Closing.

“Closing” has the meaning set forth in Section 3.03.

“Closing Date” has the meaning set forth in Section 3.03.

“Code” means the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

“Competing Business” has the meaning set forth in Section 6.03(a).

“Confidential Information” means any data or information concerning Seller (including trade secrets), without regard to form, regarding (for example and including) (i) business process models, (ii) proprietary software, (iii) research, development, products, services, marketing, selling, business plans, budgets, unpublished financial statements, licenses, prices, costs, contracts, suppliers, customers, and customer lists, (iv) the identity, skills and compensation of employees, contractors, and consultants, (v) specialized training or (vi) discoveries, developments, trade secrets, processes, formulas, data, lists, and all other works of authorship, mask works, ideas, concepts, know-how, designs, and techniques, whether or not any of the foregoing is or are patentable, copyrightable, or registrable under any Intellectual Property laws in the United States or elsewhere. Notwithstanding the foregoing, no data or information constitutes “Confidential Information” if such data or information is publicly known and in the public domain through means that do not involve a breach by Seller of any covenant or obligation set forth in this Agreement.

“Connors” has the meaning set forth in the preamble.

“Disclosure Schedules” has the meaning set forth in Article IV.

“Encumbrance” means any mortgage, pledge, lien, charge, security interest, claim or other encumbrance.

“Environmental Law” means all laws concerning the environment, human health and safety or Hazardous Substances.

“Environmental Permits” means any permits, licenses or authorizations required by or pursuant to any Environmental Laws.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Excluded Liabilities” has the meaning set forth in Section 2.03(a).

“Ford” has the meaning set forth in the preamble.

“GAAP” means United States generally accepted accounting principles as in effect from time to time.

“Governmental Authority” means any (i) government or any governmental, regulatory or administrative body thereof, or political subdivision thereof, whether federal, state, provincial, municipal, local or foreign, (ii) governmental agency, instrumentality, commission, department, board, bureau or any authority thereof, (iii) multinational or supra national entity, body or authority, or (iv) court or tribunal.

“Hazardous Substances” means (i) any petroleum, petroleum by-product or break-down product, radiation or radioactive material, asbestos or asbestos-containing material, mold and polychlorinated biphenyl, and (ii) any material, substance, mixture or solution that is defined, identified or regulated as a pollutant, contaminant or waste, or as hazardous, toxic, radioactive or words of similar effect, by or pursuant to any Environmental Law.

“Indemnified Party” has the meaning set forth in Section 7.04.

“Indemnifying Party” has the meaning set forth in Section 7.04.

“Independent Accountant” has the meaning set forth in Section 3.05(b)(ii).

“Initial Purchase Price” has the meaning set forth in Section 3.01(a).

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present and future infringement and any other rights relating to any of the foregoing).

“Interim Balance Sheet” means the balance sheet of Seller as of the Interim Balance Sheet Date.

“Interim Balance Sheet Date” means June 30, 2017.

“Key Employee Agreements” has the meaning set forth in the recitals.

“Non-Assignable Contract” means any contract included in the Purchased Assets that requires the consent of any third party, which consent has not been obtained by Seller prior to or as of the Closing.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, or Governmental Authority.

“Purchase Price” has the meaning set forth in Section 3.01.

“Purchased Assets” has the meaning set forth in Section 2.01.

“Purchased IP” has the meaning set forth in Section 4.08(a).

“Restricted Period” has the meaning set forth in Section 6.03(a).

“Seller” has the meaning set forth in the preamble.

“Seller Parties” has the meaning set forth in the preamble.

“Seller Plans” means (i) all employee benefit plans (within the meaning of Section 3(3) of ERISA) and all retirement, welfare benefit, bonus, stock option, stock purchase, restricted stock, incentive, equity or equity-based compensation, deferred compensation, retiree health or life insurance, supplemental retirement, severance, change in control, Code Section 125 flexible benefit, vacation or other benefit plans, programs or arrangements, whether written or oral, that are maintained, contributed to or sponsored by Seller or its respective Affiliates for the benefit of any current or former employee, director or individual consultant of the Business, other than governmental plans or arrangements, and (ii) all individual employment, retention, termination, severance, Tax gross up, collective bargaining, consulting, employee non-competition, employee non-solicitation or other similar contracts pursuant to which Seller or its respective Affiliates currently has any obligation with respect to any current or former employee, director or individual consultant of the Business.

“Transferred Permits” has the meaning set forth in Section 4.10.

Section 1.02 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include the other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereunder,” “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (iv) the terms “Article,” “Section,” “paragraph,” “clause” and “Exhibit” refer to the specified Article, Section, paragraph, clause or Exhibit of this Agreement; and (v) the words “include” and “including” and variations thereof mean without limitation.

(b) References to agreements and other documents (including this Agreement) include (i) all subsequent amendments and other modifications thereto and (ii) all addenda, exhibits and schedules thereto.

(c) References to statutes include all regulations promulgated thereunder and references to statutes or regulations will be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

- (d) Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified.
- (e) All accounting terms used herein and not expressly defined herein have the meanings given to them under GAAP.
- (f) References to "\$" or "dollars" means United States dollars.
- (g) A reference to any Person includes such Person's successors and permitted assigns.
- (h) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded, and if the last day of such period is not a Business Day, the period will end on the next succeeding Business Day.
- (i) This Agreement was negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party will not apply to any construction or interpretation hereof.

**ARTICLE II
PURCHASE AND SALE**

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Seller will sell, assign, transfer, convey and deliver to Buyer, and Buyer will purchase from Seller, all of Seller's assets, properties, rights and interests, of any kind and description (whether real or personal, tangible or intangible, fixed, contingent or otherwise), wherever located and by whomever possessed, including the assets set forth on Exhibit 2.01, other than the Excluded Assets (collectively, the "Purchased Assets"), free and clear of any Encumbrance.

Section 2.02 Excluded Assets. Notwithstanding the provisions of Section 2.01, the Purchased Assets will not include the following assets (collectively, the "Excluded Assets"):

- (a) all cash, cash equivalents and bank accounts of Seller;
- (b) all accounts and notes receivable due to Seller from any member or Affiliate of Seller or any of their respective Affiliates;
- (c) all corporate minute books, stock transfer books, the corporate seal, if any, all accounting records, and all books and records of Seller not related to the Purchased Assets;
- (d) all Seller Plans;
- (e) all assets set forth on Exhibit 2.02(e); and
- (f) any rights of Seller created under this Agreement. Section

2.03 Assumption of Liabilities.

(a) Except as provided in Section 2.03(b), Buyer will not assume, in connection with the transactions contemplated hereby, any liability or obligation of Seller whatsoever, whether known or unknown, disclosed or undisclosed, accrued or hereafter arising, absolute or contingent, and Seller will retain responsibility for, and will timely discharge and satisfy, all such liabilities and obligations (collectively, and including the liabilities set forth in Section 2.04, the “Excluded Liabilities”).

(b) Effective as of the Closing, Buyer will assume and be responsible for the following liabilities and obligations of Seller (collectively, the “Assumed Liabilities”):

(i) the obligations of Seller under each Assigned Contract and Assigned Lease, except to the extent such obligations are required to be performed on or prior to the Closing Date, or accrue and relate to the operation of the Business prior to the Closing Date;

(ii) the accounts payable and other current liabilities of Seller of the type reflected or reserved against on the Interim Balance Sheet; and

(iii) the liabilities listed on Exhibit 2.03(b)(iii).

Section 2.04 Specifically Excluded Liabilities. Specifically, and without in any way limiting the generality of Section 2.03, the Assumed Liabilities do not include, and in no event will Buyer assume, agree to pay, discharge or satisfy any liability or obligation of Seller:

(a) for any taxes of Seller for any period;

(b) owed to any member or Affiliate of Seller or any of their respective Affiliates (other than accrued salary, wages, commissions or bonuses for the then-current payroll period);

(c) that is being paid off by Buyer at the Closing pursuant to Article III; or

(d) in respect of any Excluded Asset.

ARTICLE III PURCHASE PRICE; CLOSING

Section 3.01 Purchase Price. The aggregate consideration for the Purchased Assets (the “Purchase Price”) is:

(a) the payment by Buyer at the Closing of an amount equal to \$1.00 (the “Initial Purchase Price”); plus

(b) the payment by Buyer at the Closing of the aggregate amount of the indebtedness listed on Exhibit 3.01(b) (the “Aggregate Payoff Amount”); plus

(c) the assumption by Buyer of the Assumed Liabilities.

Section 3.02 Payment of Initial Purchase Price and Aggregate Payoff Amount. At the Closing, Buyer will pay (i) to Seller, the Initial Purchase Price and (ii) to each lender listed on Exhibit 3.01(b), the portion of the Aggregate Payoff Amount listed opposite such lender’s name on Exhibit 3.01(b).

Section 3.03 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") will take place simultaneously with the execution of this Agreement on the date of this Agreement (the "Closing Date") at the offices of Jones Day, 1420 Peachtree St. N.E., Atlanta, GA 30309, or remotely via electronic exchange of documents. The consummation of the transactions contemplated by this Agreement will be deemed to occur at 12:01 a.m. on the Closing Date.

Section 3.04 Closing Deliverables.

- (a) At or prior to the Closing (or, in those cases where a specified period of time before the Closing is indicated in this Agreement, by no later than such time), Seller will deliver to Buyer the following:
- (i) a bill of sale and assumption agreement in form and substance satisfactory to Buyer and Seller (the "Bill of Sale and Assumption Agreement") and duly executed by Seller, transferring the Purchased Assets to Buyer and effecting the assignment to and assumption by Buyer of the the Assumed Liabilities;
 - (ii) copies of all consents, approvals, waivers and authorizations set forth in Section 4.02 of the Disclosure Schedules;
 - (iii) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code, duly executed by Seller;
 - (iv) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Seller certifying as to the resolutions of the board of directors of Seller, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby;
 - (v) the Key Employee Agreements, duly executed by Brian Conners, Michael Safford and Mary Volpe;
 - (vi) a payoff letter from each lender listed on Exhibit 3.01(b), evidencing the amount of Seller's indebtedness to such lender as of the Closing Date and providing that, if such aggregate amount so identified is paid to such lender on the Closing Date, such indebtedness will be repaid in full and that all Encumbrances affecting any real or personal property of Seller will be released;
 - (vii) a transition services agreement (the "Transition Services Agreement"), in form and substance satisfactory to Buyer and Seller and duly executed by Seller; and
 - (viii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.
- (b) At the Closing, Buyer will deliver the following:
- (i) to Seller, the Initial Purchase Price;
 - (ii) to each lender listed on Exhibit 3.01(b), the portion of the Aggregate Payoff Amount listed opposite such lender's name thereon;

- (iii) to Seller, the Bill of Sale and Assumption Agreement duly executed by Buyer;
- (iv) to Seller, the Transition Services Agreement, duly executed by Buyer;
- (v) to Brian Connors, Michael Safford and Mary Volpe, the Key Employment Agreements, duly executed by Buyer;
- (vi) to Seller, a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying as to the resolutions of the members, managers or board of directors, as applicable, of Buyer, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and
- (vii) to Seller, such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement.

Section 3.05 Allocation of Purchase Price. Seller and Buyer agree to allocate the Purchase Price among the Purchased Assets for all purposes (including tax and financial accounting) in accordance with Exhibit 3.05. Buyer and Seller will file all tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

Section 3.06 Method of Payment. All payments required under this Article III or any other provision of this Agreement will be made in cash by wire transfer of immediately available federal funds to a bank account designated in writing by the party entitled to receive such payment.

Section 3.07 Withholding Tax. Buyer will be entitled to deduct and withhold from the Purchase Price all taxes that Buyer may be required to deduct and withhold under any applicable tax law, which have been identified and agreed to by Seller prior to the Closing. All such withheld amounts will be treated as delivered to Seller hereunder; provided, however, that such amount withheld pursuant to applicable tax laws are actually remitted to the appropriate Governmental Authority as and when required by law.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

For purposes of this Article IV, “Seller Parties’ knowledge,” “knowledge of the Seller Seller Parties” and any similar phrases will mean the actual knowledge of Connors and Ford, after due and careful inquiry. Except as set forth in the disclosure schedules delivered by Seller in connection with this Agreement (the “Disclosure Schedules”), the Seller Parties, jointly and severally, represent and warrant to Buyer as follows:

Section 4.01 Organization and Authority of Seller; Enforceability. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Minnesota. Seller has full limited liability company power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the organizational documents of Seller; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller or the Purchased Assets; (c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Seller is a party or to which any of the Purchased Assets are subject; or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. Except as set forth in Section 4.02 of the Disclosure Schedules, no consent, approval, waiver or authorization is required to be obtained by Seller from any Person (including any Governmental Authority) in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.03 Title to and Sufficiency of Purchased Assets. Seller owns and has good title to the Purchased Assets, free and clear of Encumbrances. The Purchased Assets constitute all of the assets used in the Business and reasonably necessary to operate the Business as currently conducted, and are sufficient for the continued conduct of the Business immediately after the Closing in substantially the manner conducted prior to the Closing. Section 4.03 of the Disclosure Schedules sets forth a description of all material services received by the Business provided by individuals who are not Business Employees or provided using assets that are not included in the Purchased Assets, including any such services provided by a member of Seller or any Affiliate of such member (other than Seller) who is not a Business Employee.

Section 4.04 Financial Statements. Section 4.04(a) of the Disclosure Schedules contains (i) the Interim Balance Sheet and related statements of income and cash flows of Seller as of and for the six-month period ended on the Interim Balance Sheet Date and (ii) the audited balance sheets and related statements of income and cash flows of Seller as of and for the years 2015 and 2016, respectively. All such balance sheets and statements of income and cash flows have been prepared in conformity with GAAP consistently applied and present fairly in all material respects the financial position, results of operations and cash flows of Seller as of their respective dates and for the respective periods covered thereby. Except as set forth in Section 4.04(b) of the Disclosure Schedules, Seller is not, with respect to the Business, subject to any known or asserted liability which is not shown or which is in excess of amounts shown or reserved for in the Interim Balance Sheet, other than liabilities of the same nature as those set forth in the Interim Balance Sheet and incurred in the ordinary course of business after the Interim Balance Sheet Date.

Section 4.05 Operations since Interim Balance Sheet Date. Except as set forth in Section 4.05 of the Disclosure Schedules, and except for the transactions contemplated by this Agreement, since the Interim Balance Sheet Date (a) there has been no material adverse change in the Purchased Assets, the Business or the operations, liabilities, profits or condition (financial or otherwise) of Seller, and, to the knowledge of the Seller Parties, no fact or condition exists or is contemplated or threatened which would reasonably be expected to cause such a change in the future, and (b) Seller has conducted the Business only in the ordinary course and in conformity with past practice.

Section 4.06 Condition of Assets. The tangible personal property included in the Purchased Assets is in good condition (normal wear and tear excepted) and is adequate for the uses to which it is being put, and none of such tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

Section 4.07 Inventory. All inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories included in the Purchased Assets consist of a quality and quantity usable and salable in the ordinary course of business.

Section 4.08 Intellectual Property.

(a) Seller owns or has adequate, valid and enforceable rights to use all Intellectual Property included in the Purchased Assets ("Purchased IP"), free and clear of all Encumbrances. Seller is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Purchased IP, or restricting the licensing thereof to any Person. With respect to the registered Intellectual Property included in the Purchased IP, (i) all such Intellectual Property is valid, subsisting and in full force and effect and (ii) Seller has paid all maintenance fees and made all filings required to maintain Seller's ownership thereof.

(b) Seller's prior and current use of the Purchased IP has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any Person and there are no claims pending or, to the knowledge of the Seller Parties, threatened by any Person with respect to the ownership, validity, enforceability, effectiveness or use of the Purchased IP. No Person is infringing, misappropriating, diluting or otherwise violating any of the Purchased IP, and neither Seller nor any Affiliate of Seller has made or asserted any claim, demand or notice against any Person alleging any such infringement, misappropriation, dilution or other violation.

Section 4.09 Assigned Contracts. Each contract included in the Purchased Assets and being assigned to and assumed by Buyer (the "Assigned Contracts") is valid and binding on Seller in accordance with its terms and is in full force and effect, or is a month-to-month contract under which goods or services are being provided after the expiration of its original term. None of Seller or, to the knowledge of the Seller Parties, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. Complete and correct copies of each Assigned Contract have been made available to Buyer. There are no disputes pending or threatened under any Assigned Contract.

Section 4.10 Permits. All permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained from Governmental Authorities included in the Purchased Assets (the “Transferred Permits”) are valid and in full force and effect. All fees and charges with respect to such Transferred Permits as of the date hereof have been paid in full. To Seller’s knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Transferred Permit.

Section 4.11 Environmental Matters. Except as set forth in Section 4.11 of the Disclosure Schedules: (i) Seller complies, and for the last five years has complied, in all material respects with all applicable Environmental Laws; (ii) Seller has obtained all Environmental Permits necessary for the operation of the Business, all such Environmental Permits are in good standing, and Seller is, and has for the past five years been, in compliance in all material respects with all of the terms and conditions thereof, and the transactions contemplated by this Agreement will not result in or trigger the termination, revocation, or right of termination or cancellation, of any such Environmental Permits; (iii) there are not now, nor in the last five years has there been, any lawsuits, claims, proceedings or investigations concerning Environmental Laws pending or, to the knowledge of the Seller Parties, threatened against or affecting Seller or the Purchased Assets nor, to the knowledge of the Seller Parties, is there currently any reasonable basis for any of the same; and (iv) Seller has not received any notice that it is or may be subject to any liability with respect any actual or alleged presence of, or exposure to, Hazardous Substances or violation of Environmental Law at any location.

Section 4.12 Non-foreign Status. Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

Section 4.13 Compliance With Laws. Seller has complied, and is now complying, with all applicable federal, state and local laws and regulations applicable to ownership and use of the Purchased Assets.

Section 4.14 Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation (“Action”) of any nature pending or, to the knowledge of the Seller Parties, threatened against or by Seller (a) relating to or affecting the Purchased Assets or the Assumed Liabilities; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Seller’s knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 4.15 Real Property. Seller does not now own any real property or hold any option to acquire any real property. Exhibit 4.15 sets forth (i) a list of each lease or similar agreement under which Seller is lessee of, or holds or operates, any real property owned by any third Person and that is being assigned to Buyer in connection with the transactions contemplated by this Agreement (“Assigned Leases”). Each Assigned Lease is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to the knowledge of the Seller Parties, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Lease. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Lease or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. Complete and correct copies of each Assigned Lease have been made available to Buyer. There are no disputes pending or, to Seller’s knowledge, threatened under any Assigned Lease.

Section 4.16 Employees and Employment Matters.

(a) Section 4.16(a)(i) of the Disclosure Schedules sets forth a list of each Business Employee and the name, title, date of birth, and date of hire of each such person. Section 4.16(a)(ii) of the Disclosure Schedules sets forth a list of each material Seller Plan. Seller is, and has been, in compliance in all material respects with all applicable laws in respect of the Business Employees and the Seller Plans, including under ERISA and the Code. Seller is not party to any collective bargaining agreement and is not, and has not previously been, the subject of any collective bargaining or union organizing activity. Except as set forth in Section 4.16(a)(iii) of the Disclosure Schedules, Seller is not a party to any employment agreement, or any other agreement, providing for any payment or consideration payable to any Business Employee upon a change of control or a sale of all or any portion of the Business.

(b) Each Seller Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS that it is so qualified, and each related trust that is intended to be exempt from federal income tax pursuant to Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt, and no fact or event has occurred or is expected to occur since the date of such determination letter that could reasonably be expected to adversely affect such qualification or exemption, as the case may be.

(c) Seller has not incurred any liability, contingent or otherwise, under or arising out of Title IV of ERISA that has not been satisfied in full and no fact or event exists that has or could reasonably be expected to result in such a liability. None of the Purchased Assets is the subject of any Encumbrance arising with respect to any Seller Plan under applicable law (including ERISA and the Code).

(d) Seller is in compliance in all material respects with all laws relating to the employment of the Business Employees, and has paid in full all wages, salaries, commissions, and other compensation and benefits, as well as all contributions due to them or to third parties on their behalf (including taxes, social security taxes, workers compensation contributions and employment insurance payments). No material claim, charge or litigation with respect to such compliance or payment obligations has been asserted, is now pending, or to the knowledge the Seller Parties, has been threatened with respect to current or former Business Employees. There are no outstanding, unsatisfied obligations to comply with any recommendations or declarations of any Governmental Authority in respect of claims by current or former Business Employees.

Section 4.17 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

For purposes of this Article V, “Buyer’s knowledge,” “knowledge of Buyer” and any similar phrases will mean the actual or constructive knowledge of any member, manager, director or officer of Buyer, after due inquiry. Buyer represents and warrants to Seller as follows:

Section 5.01 Organization and Authority of Buyer; Enforceability. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has full limited liability company power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by the Seller Parties) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 5.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. No consent, approval, waiver or authorization is required to be obtained by Buyer from any Person (including any Governmental Authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

Section 5.03 Legal Proceedings. There is no Action of any nature pending or, to Buyer’s knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

**ARTICLE VI
COVENANTS**

Section 6.01 Public Announcements. Unless otherwise required by applicable law, no party will make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other parties (which consent will not be unreasonably withheld or delayed).

Section 6.02 Employee Matters. Buyer may, in its sole and absolute discretion, make an offer of employment to any Business Employee. Seller hereby waives any contractual or other obligation or provision that would restrict any Business Employee from accepting employment with Buyer or would otherwise restrict the activities of any Business Employee hired by Buyer, including any non-competition or non-solicitation covenant contained in an agreement between Seller and any Business Employee. Seller will use commercially reasonable efforts to cause each Business Employee to whom Buyer makes an offer of employment to accept such offer in a timely manner.

Section 6.03 Covenant Not to Compete and Confidentiality.

(a) In furtherance of the sale of the Business and the Purchased Assets and to more effectively protect the value and goodwill thereof, Seller covenants and agrees for a period ending on the five-year anniversary of the Closing Date (the "Restricted Period"), that it will not, directly or indirectly (whether as principal, agent, independent contractor, employee, partner or otherwise), own, manage, operate, control, participate in, perform services for, or otherwise carry on, a business competitive with the Business (a "Competing Business") anywhere in the United States (it being understood by the parties hereto that the Business is not limited to any particular region of the United States and that such Business may be engaged in effectively from any location in the United States).

(b) Seller will hold in confidence at all times following the Closing all Confidential Information and will not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent of Buyer.

(c) It is the intent and understanding of each party hereto that if, in any action before any Governmental Authority legally empowered to enforce this Section 6.03, any term, restriction, covenant or promise in this Section 6.03 is found to be unreasonable and for that reason unenforceable, then such term, restriction, covenant or promise will be deemed modified to the extent necessary to make it enforceable by such Governmental Authority.

(d) In the event that Seller violates any obligation under this Section 6.03, Buyer may proceed against Seller in law or in equity. Seller acknowledges that a violation of this Section 6.3 would cause Buyer irreparable harm which cannot be adequately compensated for by money damages. Seller expressly acknowledges that the remedy at law for any breach of this Section 6.03 will be inadequate, and that upon any such breach or threatened breach Buyer will be entitled as a matter of right to injunctive relief in any court or other tribunal of competent jurisdiction, in equity or otherwise, and to enforce the specific performance of the obligations under these provisions without the necessity of proving actual damages or the inadequacy of a legal remedy or posting a bond or other security. If Buyer prevails in any action commenced under this Section 6.03, it will also be entitled to recover its expenses in connection therewith.

Section 6.04 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 6.05 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the documents to be delivered hereunder will be borne and paid by Seller when due. Seller will timely pay such taxes and fees and timely file and any tax return or other document with respect to such taxes or fees.

Section 6.06 Further Assurances. Following the Closing, each of the parties hereto will execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

Section 6.07 Consents. Until such time as each Non-Assignable Contract can be assigned to Buyer, and then during the remaining term of each Non-Assignable Contract, Seller will make the benefit of such Non-Assignable Contract available to Buyer so long as Buyer fully cooperates with Seller and reimburses Seller for all payments made by Seller in connection therewith. In addition, during the remaining term of each Non-Assignable Contract, Seller will use commercially reasonable efforts to (a) obtain the consent of the third parties required thereunder, and (b) enforce, at the request of Buyer and for the account of Buyer, any right of Seller arising from such Non-Assignable Contract against the other party or parties thereto (including the right to elect or terminate any such Non-Assignable Contract in accordance with the terms thereof). Seller will not take any action or suffer any omission that would reasonably be expected to limit, restrict or terminate in any material respect the benefits to Buyer of such Non-Assignable Contract unless, in good faith and after consultation with and prior written notice to Buyer, Seller is (i) ordered to do so by a Governmental Authority of competent jurisdiction or (ii) otherwise required to do so by law; provided, however, that if any such order is appealable and Buyer so requests, Seller will take such reasonable actions as are requested by Buyer to file and pursue such appeal and to obtain a stay of such order, and the Seller will reimburse Buyer for the costs incurred by Buyer related to the appeal of such an order. Nothing in this Agreement or the Bill of Sale and Assumption Agreement constitutes a sale, assignment, transfer or conveyance to, or assumption by, Buyer of the Non-Assignable Contracts. With respect to any such Non-Assignable Contract as to which the necessary approval or consent for the assignment or transfer to Buyer is obtained following the Closing, Seller will transfer such Non-Assignable Contract to Buyer by execution and delivery of an instrument of conveyance reasonably satisfactory to Buyer within five business days following receipt of such approval or consent.

ARTICLE VII INDEMNIFICATION

Section 7.01 Survival. All representations, warranties, covenants and agreements contained herein and all related rights to indemnification will survive the Closing and continue in full force and effect for four years thereafter, except (i) the representations and warranties set forth in Sections 4.11 and 4.16, which will survive the Closing and continue in full force and effect until the applicable statute of limitations expires (or for 15 years if there is no applicable statute of limitations) and (ii) the representations and warranties set forth in Section 4.01 and 5.01, which will survive the Closing and will continue in full force and effect forever.

Section 7.02 Indemnification By the Seller Parties. Subject to the other terms and conditions of this Article VII, the Seller Parties will, jointly and severally, defend, indemnify and hold harmless Buyer, its Affiliates and their respective members, managers, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including reasonable attorneys' fees and disbursements, but excluding punitive or incidental damages, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of the Seller Parties contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller Party pursuant to this Agreement or any document to be delivered hereunder;
- (c) the operation and ownership of, or conditions first occurring with respect to, the Purchased Assets prior to the Closing (other than the Assumed Liabilities relating thereto); or
- (d) any Excluded Asset or Excluded Liability.

Section 7.03 Indemnification By Buyer. Subject to the other terms and conditions of this Article VII, Buyer will defend, indemnify and hold harmless Seller, its Affiliates and their respective stockholders or other equity holders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including reasonable attorneys' fees and disbursements, but excluding punitive or incidental damages, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any document to be delivered hereunder;
- (c) the operation and ownership of, or conditions first occurring with respect to, the Purchased Assets from and after the Closing (other than the Excluded Liabilities relating thereto); or
- (d) any Assumed Liability.

Section 7.04 Indemnification Procedures. Whenever any claim will arise for indemnification hereunder, the party entitled to indemnification (the "Indemnified Party") will promptly provide written notice of such claim to the other party (the "Indemnifying Party"). In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party will be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but will not be obligated to, defend against such Action in such manner as it may deem appropriate, including, but not limited to, settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement will relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. The Indemnifying Party will not settle any Action without the Indemnified Party's prior written consent (which consent will not be unreasonably withheld or delayed).

Section 7.05 Tax Treatment of Indemnification Payments. All indemnification payments made by Seller under this Agreement will be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.

Section 7.06 Effect of Investigation. Buyer's right to indemnification or other remedy based on the representations, warranties, covenants and agreements of the Seller Parties contained herein will not be affected by any investigation conducted by Buyer with respect to, or any knowledge acquired by Buyer at any time, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement.

Section 7.07 Exclusive Remedy. The rights and remedies provided in this Article VII are the exclusive remedies of Buyer and Seller arising out of or in connection with this Agreement and shall be in lieu of any rights under contract, tort or otherwise (other than claims based on actual fraud of this Agreement, intentional misrepresentation or deliberate or willful breach). Notwithstanding the foregoing, nothing in this Section 7.07 will impair the parties' rights to specific performance pursuant to Section 8.13.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

Section 8.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as specified in a notice given in accordance with this Section 8.02):

If to Seller: ARCA Advanced Processing, LLC
4301 N. Delaware Ave. Bldg. C
Philadelphia, PA 19137

If to 4301, Connors or Ford: 4301 Operations, LLC
4301 N. Delaware Ave. Bldg. C
Philadelphia, PA 19137

If to Buyer:

Recleim PA, LLC
c/o Peachtree Investment Solutions, LLC
34 Old Ivy road, Suite 200
Atlanta, GA 30342
Attention: Pete Davis
E-mail: pete@peachtreeinv.com

with a copy to:

Jones Day
1420 Peachtree St., N.E., Suite 800
Atlanta, GA 30309
Attention: Ken Boehner
E-mail: kboehner@jonesday.com

Section 8.03 Headings. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

Section 8.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 8.05 Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.06 Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other parties, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer may assign this Agreement to an Affiliate of Buyer without the prior consent of Seller. No assignment will relieve the assigning party of any of its obligations hereunder.

Section 8.07 No Third-party Beneficiaries. Except as provided in Article VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.08 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

Section 8.09 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party will operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.10 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

Section 8.11 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the city of Wilmington and county of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 8.12 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 8.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties will be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.14 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

RECLEIM PA, LLC

By: /s/ J. Steve Bush

Name: J. Steve Bush

Title: Manager

SELLER PARTIES

ARCA ADVANCED PROCESSING, LLC

By: /s/ Brian Conners

Name: Brian Conners

Title: COO

4301 OPERATIONS, LLC

By: /s/ Brian Conners

Name: Brian Conners

Title: President

/s/ Brian Conners

Brian Conners

/s/ James Ford

James Ford

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Exhibit 2.01

Tangible Assets

See attached.

Depreciation as of: 12/31/9999
 Ranges:

| | | | |
|-----------------|---------------|--------------|---------------|
| Asset ID: | First to Last | Depr Method: | First to Last |
| Description: | First to Last | Avg Conv: | First to Last |
| Asset Type: | First to Last | Orig Life: | First to Last |
| Structure ID: | First to Last | Sen Life: | First to Last |
| Class ID: | First to Last | Cost Basis: | First to Last |
| Location ID: | First to Last | YTD Depr: | First to Last |
| Property Type: | First to Last | Accum Depr: | First to Last |
| Pl in Svc Date: | First to Last | Net Book: | First to Last |
| Acquire Date: | First to Last | | |
| Fully Depr Dt: | First to Last | | |
| Switchover Dt: | First to Last | | |

Sorted By: Class ID
 Include: Status: Active
 Calculate with Original Amounts: No

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book | |
|----------|--|------------|---------------|--------|------------|-----------|----------|------------|----------|--|
| | | Thru | Convention | Rem | | | | | | |
| | | Asset Code | Asset Amt/Pot | | | | | | | |
| 10-1 | Dell All in One PC | 3/30/2010 | Straight-Line | 03-000 | \$528.09 | \$0.00 | \$0.00 | \$528.09 | \$0.00 | |
| | | 8/31/2013 | Full Month | 00-000 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 125-1 | Dell PC for Scale Room | 8/27/2011 | Straight-Line | 03-000 | \$754.89 | \$0.00 | \$0.00 | \$754.89 | (\$0.01) | |
| | | 7/30/2014 | Full Month | 00-001 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 140-1 | Lenovo All in One PC's | 12/27/2011 | Straight-Line | 03-000 | \$1,615.70 | \$0.00 | \$0.00 | \$1,615.70 | \$0.00 | |
| | | 11/30/2014 | Full Month | 00-000 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 145-1 | Lenovo All in One PC | 3/31/2012 | Straight-Line | 03-000 | \$807.85 | \$0.00 | \$0.00 | \$807.85 | \$0.00 | |
| | | 2/28/2015 | Full Month | 00-001 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 150-1 | Mewegg-Building C Connectivity | 6/30/2012 | Straight-Line | 15-000 | \$67.28 | \$0.37 | \$2.22 | \$22.75 | \$44.53 | |
| | | 7/1/2017 | Full Month | 09-334 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 151-1 | Wireless N Acces Point for Bldg C Conn | 6/30/2012 | Straight-Line | 03-000 | \$480.00 | \$0.00 | \$0.00 | \$480.00 | \$0.00 | |
| | | 5/30/2015 | Full Month | 00-001 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 151-3 | Mewegg - Wireless Connectivity in Bldg | 1/27/2013 | Straight-Line | 03-000 | \$1,685.51 | \$0.00 | \$0.00 | \$1,685.51 | \$0.00 | |
| | | 12/31/2015 | Full Month | 00-000 | | | | | | |
| | | | | | \$0.00 | | | | | |
| 156-1 | New Server - Tim Connors | 1/26/2013 | Straight-Line | 03-000 | \$2,000.00 | \$0.00 | \$0.00 | \$2,000.00 | \$0.00 | |
| | | 12/31/2015 | Full Month | 00-000 | | | | | | |
| | | | | | \$0.00 | | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|----------------------------|---------------------------------|-----------|--------|-------------|------------|-----------|-------------|------------|----------|
| Depr Thru | Convention | Rem | | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 163-1 | Security Camera System (Bldg B) | | | | | | | | |
| 2/5/2014 | Straight-Line Ori | 03-000 | | \$12,380.00 | \$0.00 | \$363.58 | \$12,380.00 | \$0.00 | |
| 1/28/2017 | Full Month | 00-003 | | \$0.00 | | | | | |
| 7-1 | IP Phones | | | | | | | | |
| 7/8/2010 | Straight-Line Rem | 03-000 | | \$535.54 | \$0.00 | \$0.00 | \$535.54 | \$0.00 | |
| 1/31/2013 | Full Month | 00-000 | | \$0.00 | | | | | |
| 8-1 | Projector | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 03-000 | | \$695.49 | \$0.00 | \$0.00 | \$695.49 | \$0.00 | |
| 5/31/2013 | Full Month | 00-000 | | \$0.00 | | | | | |
| 9-1 | Dell All In One PC/Monitor | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 03-000 | | \$1,023.81 | \$0.00 | \$0.00 | \$1,023.81 | \$0.00 | |
| 5/31/2013 | Full Month | 00-000 | | \$0.00 | | | | | |
| Totals for Class ID CE1000 | | | | | | | | | |
| Computer Equipment | | | | | | | | | |
| 12 Assets | | | | \$22,574.16 | \$0.37 | \$365.80 | \$22,529.64 | \$44.52 | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curs Depr | YTD Depr | Accum Depr | Net Book |
|----------------------------|-----------------------|-----------|--------|------|-------------|-----------|----------|-------------|----------|
| Depr Thru | Convention | Rem | | Rem | | | | | |
| Anort Code | Anort Amt/Pct | | | | | | | | |
| 1-1 | From 4301 Operations | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | | \$7,558.97 | \$0.00 | \$0.00 | \$7,558.97 | \$0.00 |
| 1/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 136-1 | Lift N Vac | | | | | | | | |
| 11/30/2011 | Straight-Line Ori | 05-000 | | | \$20,094.48 | \$0.00 | \$0.00 | \$20,094.48 | \$0.00 |
| 10/31/2016 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 2-1 | Recovery Machine R22 | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | | \$7,500.00 | \$0.00 | \$0.00 | \$7,500.00 | \$0.00 |
| 1/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 3-1 | Recovery Machine 134A | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | | \$7,500.00 | \$0.00 | \$0.00 | \$7,500.00 | \$0.00 |
| 1/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 4-1 | Recovery Machine R12 | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | | \$10,000.00 | \$0.00 | \$0.00 | \$10,000.00 | \$0.00 |
| 1/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 5-1 | Sporlan 5/8 | | | | | | | | |
| 4/30/2010 | Straight-Line Rem | 05-000 | | | \$1,032.41 | \$0.00 | \$0.00 | \$1,032.41 | \$0.00 |
| 3/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 6-1 | Cylinders | | | | | | | | |
| 11/27/2010 | Straight-Line Rem | 05-000 | | | \$1,050.00 | \$0.00 | \$0.00 | \$1,050.00 | \$0.00 |
| 10/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| Totals for Class ID EE1000 | | | | | | | | | |
| Evacuation Equipment | | | | | | | | | |
| 7 Assets | | | | | \$54,735.86 | \$0.00 | \$0.00 | \$54,735.86 | \$0.00 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|------------------------------------|-----------|--------|------|-------------|-----------|----------|------------|------------|
| Depr Thru | Convention | Rem | | Rem | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 100-1 | Electrical Room Doors | | | | | | | | |
| 10/30/2010 | Straight-Line Rem | 15-000 | | | \$122.66 | \$0.68 | \$4.08 | \$54.63 | \$68.03 |
| 7/1/2017 | Full Month | 08-091 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 101-1 | Electrical Room Doors | | | | | | | | |
| 10/30/2010 | Straight-Line Rem | 15-000 | | | \$1,826.28 | \$10.19 | \$61.14 | \$813.72 | \$1,012.56 |
| 7/1/2017 | Full Month | 08-091 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 102-1 | Electrical Room Doors | | | | | | | | |
| 10/30/2010 | Straight-Line Rem | 15-000 | | | \$1,826.28 | \$10.19 | \$61.14 | \$813.72 | \$1,012.56 |
| 7/1/2017 | Full Month | 08-091 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 103-1 | Breakroom Duct Work | | | | | | | | |
| 12/31/2010 | Straight-Line Rem | 15-000 | | | \$5,056.98 | \$28.22 | \$169.32 | \$2,197.18 | \$2,859.80 |
| 7/1/2017 | Full Month | 08-152 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 104-1 | Dock Lighting | | | | | | | | |
| 12/31/2010 | Straight-Line Rem | 15-000 | | | \$748.41 | \$4.18 | \$25.08 | \$325.20 | \$423.21 |
| 7/1/2017 | Full Month | 08-152 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 105-1 | Dock Lighting | | | | | | | | |
| 12/31/2010 | Straight-Line Rem | 15-000 | | | \$993.60 | \$5.54 | \$33.24 | \$431.77 | \$561.83 |
| 7/1/2017 | Full Month | 08-152 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 106-1 | Front Dock | | | | | | | | |
| 1/29/2011 | Straight-Line Rem | 15-000 | | | \$1,004.40 | \$5.60 | \$33.60 | \$430.86 | \$573.54 |
| 7/1/2017 | Full Month | 08-183 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 107-1 | Lighting for Front Dock | | | | | | | | |
| 1/29/2011 | Straight-Line Rem | 15-000 | | | \$3,754.49 | \$20.94 | \$125.64 | \$1,610.61 | \$2,143.88 |
| 7/1/2017 | Full Month | 08-183 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 108-1 | Wiring for Offices & Locker Rooms | | | | | | | | |
| 2/26/2011 | Straight-Line Rem | 15-000 | | | \$4,590.30 | \$25.60 | \$153.60 | \$1,943.31 | \$2,646.99 |
| 7/1/2017 | Full Month | 08-214 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 109-1 | Heat Tape and Insulate Water Lines | | | | | | | | |
| 2/26/2011 | Straight-Line Rem | 15-000 | | | \$9,008.65 | \$50.25 | \$301.50 | \$3,813.72 | \$5,194.93 |
| 7/1/2017 | Full Month | 08-214 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 110-1 | Office Alarm | | | | | | | | |
| 4/29/2011 | Straight-Line Rem | 15-000 | | | \$1,400.00 | \$7.81 | \$46.86 | \$577.65 | \$822.35 |
| 7/1/2017 | Full Month | 08-273 | | | | | | | |
| | \$0.00 | | | | | | | | |
| 111-1 | Sprinkler System-URT | | | | | | | | |
| 5/13/2011 | Straight-Line Rem | 15-000 | | | \$10,359.40 | \$57.77 | \$346.62 | \$4,217.61 | \$6,141.79 |
| 7/1/2017 | Full Month | 08-303 | | | | | | | |
| | \$0.00 | | | | | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|--|-----------|--------|------|-------------|-----------|----------|------------|------------|
| Depr Thru | Convention | | | Rem | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 120-1 | 35" Fiberglass Exhaust Fan | | | | | | | | |
| 7/30/2011 | Straight-Line Ori | 15-000 | | | \$3,266.50 | \$18.15 | \$108.90 | \$1,302.88 | \$1,963.52 |
| 7/1/2017 | Full Month | 08-364 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 121-1 | Guardrail | | | | | | | | |
| 7/30/2011 | Straight-Line Ori | 15-000 | | | \$1,750.00 | \$9.72 | \$58.32 | \$698.14 | \$1,051.86 |
| 7/1/2017 | Full Month | 08-364 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 122-1 | 2x2x8 Standard Paved Concrete Blocks | | | | | | | | |
| 7/30/2011 | Straight-Line Ori | 15-000 | | | \$1,560.00 | \$8.67 | \$52.02 | \$622.35 | \$837.65 |
| 7/1/2017 | Full Month | 08-364 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 130-1 | Guard Rail Post from EMT | | | | | | | | |
| 9/30/2011 | Straight-Line Ori | 15-000 | | | \$1,885.00 | \$10.47 | \$62.82 | \$730.92 | \$1,154.08 |
| 7/1/2017 | Full Month | 09-061 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 133-1 | RB Lighting-Warehouse Lights | | | | | | | | |
| 9/30/2011 | Straight-Line Ori | 15-000 | | | \$699.84 | \$3.89 | \$23.34 | \$271.44 | \$428.40 |
| 7/1/2017 | Full Month | 09-061 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 139-1 | Rear Dock Fence | | | | | | | | |
| 11/27/2011 | Straight-Line Ori | 15-000 | | | \$1,500.00 | \$8.33 | \$49.98 | \$565.10 | \$834.90 |
| 7/1/2017 | Full Month | 09-122 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 144-1 | Building A Alarm Upgrade-motion sensor | | | | | | | | |
| 3/31/2012 | Straight-Line Ori | 15-000 | | | \$2,800.00 | \$15.56 | \$93.36 | \$990.48 | \$1,807.52 |
| 7/1/2017 | Full Month | 09-243 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 147-1 | Install 12In PVC center roof drain | | | | | | | | |
| 5/26/2012 | Straight-Line Ori | 15-000 | | | \$11,188.36 | \$63.16 | \$373.96 | \$3,841.43 | \$7,346.93 |
| 7/1/2017 | Full Month | 09-303 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 148-1 | Connect Admin Trailer to Bldg A Electr | | | | | | | | |
| 5/26/2012 | Straight-Line Ori | 15-000 | | | \$3,785.26 | \$21.03 | \$126.18 | \$1,299.65 | \$2,485.63 |
| 7/1/2017 | Full Month | 09-303 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 152-1 | Air Motion Fan | | | | | | | | |
| 6/30/2012 | Straight-Line Ori | 15-000 | | | \$5,509.94 | \$30.61 | \$183.66 | \$1,861.13 | \$3,648.81 |
| 7/1/2017 | Full Month | 09-334 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 159-1 | Viking Model #D-2 Accelerators | | | | | | | | |
| 5/24/2013 | Straight-Line Ori | 15-000 | | | \$4,724.00 | \$26.24 | \$157.44 | \$1,308.35 | \$3,415.65 |
| 7/1/2017 | Full Month | 10-304 | | | | | | | |
| | | | | | \$0.00 | | | | |
| 166-1 | Overhead Doors | | | | | | | | |
| 5/5/2014 | Straight-Line Ori | 15-000 | | | \$8,775.00 | \$48.75 | \$292.50 | \$1,849.71 | \$6,925.29 |
| 7/1/2017 | Full Month | 11-303 | | | | | | | |
| | | | | | \$0.00 | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl In Svc | Method | Crig Rem | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|----------------------------|-----------------------------------|------------|---------------|-------------|--------------|-----------|------------|-------------|-------------|
| Depr Thru | Convention | Amort Code | Amort Amt/Pct | | | | | | |
| 169-1 | Cement canopied holding container | | | | | | | | |
| 10/24/2014 | Straight-Line Cri | | 15-000 | \$29,202.31 | \$162.24 | \$973.44 | \$5,344.53 | \$23,857.78 | |
| 7/1/2017 | Full Month | | 12-091 | \$0.00 | | | | | |
| 91-1 | Heating & Plumbing | | | | | | | | |
| 4/30/2010 | Straight-Line Rem | | 15-000 | \$1,500.00 | \$8.38 | \$50.28 | \$718.27 | \$781.73 | |
| 7/1/2017 | Full Month | | 07-273 | \$0.00 | | | | | |
| 92-1 | Racking | | | | | | | | |
| 4/30/2010 | Straight-Line Rem | | 15-000 | \$1,629.00 | \$9.10 | \$54.60 | \$780.08 | \$848.92 | |
| 7/1/2017 | Full Month | | 07-273 | \$0.00 | | | | | |
| 93-1 | Fencing & Gates | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | | 15-000 | \$4,000.00 | \$22.24 | \$134.04 | \$1,893.34 | \$2,106.66 | |
| 7/1/2017 | Full Month | | 07-303 | \$0.00 | | | | | |
| 94-1 | Electrical Room Roof | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | | 15-000 | \$2,328.95 | \$13.01 | \$78.06 | \$1,102.45 | \$1,226.50 | |
| 7/1/2017 | Full Month | | 07-303 | \$0.00 | | | | | |
| 95-1 | Fencing & Gates | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | | 15-000 | \$2,300.00 | \$12.85 | \$77.10 | \$1,088.76 | \$1,211.24 | |
| 7/1/2017 | Full Month | | 07-303 | \$0.00 | | | | | |
| 96-1 | Sprinkler System | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | | 15-000 | \$4,875.00 | \$27.23 | \$163.38 | \$2,307.69 | \$2,567.31 | |
| 7/1/2017 | Full Month | | 07-303 | \$0.00 | | | | | |
| 97-1 | Fencing & Gates | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | | 15-000 | \$2,000.00 | \$11.17 | \$67.02 | \$935.57 | \$1,064.43 | |
| 7/1/2017 | Full Month | | 07-334 | \$0.00 | | | | | |
| 98-1 | Fencing & Gates | | | | | | | | |
| 7/31/2010 | Straight-Line Rem | | 15-000 | \$4,500.00 | \$25.13 | \$150.78 | \$2,080.15 | \$2,419.85 | |
| 7/1/2017 | Full Month | | 07-364 | \$0.00 | | | | | |
| 99-1 | Fencing & Gates | | | | | | | | |
| 7/31/2010 | Straight-Line Rem | | 15-000 | \$3,300.00 | \$18.43 | \$110.58 | \$1,525.48 | \$1,774.52 | |
| 7/1/2017 | Full Month | | 07-364 | \$0.00 | | | | | |
| Totals for Class ID L11000 | | | | | | | | | |
| Leasehold Improvements | | | | | | | | | |
| 34 Assets | | | | | \$143,770.63 | \$800.43 | \$4,802.58 | \$50,349.98 | \$93,420.65 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | P1 | In Svc | Method | Convention | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|----------|--------------------------------------|---------------|--------|------------|---------------|------|-------------|-----------|------------|-------------|-------------|
| | | Depr Thru | | Amort Code | Amort Amt/Pct | Rem | | | | | |
| 113-1 | 2001 Snorkel 42' Boom 4WD JA01058 | | | | | | | | | | |
| | 6/30/2011 | Straight-Line | 15-000 | | | | \$13,932.00 | \$77.40 | \$464.40 | \$5,634.71 | \$8,297.29 |
| | 7/1/2017 | Full Month | 08-334 | | | | \$0.00 | | | | |
| 113-2 | Sales Tax on Snorkel Boom | | | | | | | | | | |
| | 6/30/2011 | Straight-Line | 15-000 | | | | \$1,202.90 | \$6.68 | \$40.08 | \$486.53 | \$716.37 |
| | 7/1/2017 | Full Month | 08-334 | | | | \$0.00 | | | | |
| 114-1 | Downstroke Baler 5000USD-65 | | | | | | | | | | |
| | 6/30/2011 | Straight-Line | 15-000 | | | | \$20,350.00 | \$113.06 | \$478.36 | \$8,230.50 | \$12,119.50 |
| | 7/1/2017 | Full Month | 08-334 | | | | \$0.00 | | | | |
| 115-1 | Easy Empty Hopper | | | | | | | | | | |
| | 7/30/2011 | Straight-Line | 15-000 | | | | \$807.02 | \$4.48 | \$26.88 | \$321.82 | \$485.20 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 116-1 | 2006 Linde H500 Forklift 90/1275 | | | | | | | | | | |
| | 7/30/2011 | Straight-Line | 15-000 | | | | \$29,250.00 | \$162.50 | \$975.00 | \$11,667.37 | \$17,582.63 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 116-2 | Sales Tax on Linde Forklift | | | | | | | | | | |
| | 7/30/2011 | Straight-Line | 15-000 | | | | \$2,702.96 | \$15.02 | \$80.12 | \$1,078.17 | \$1,624.79 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 117-1 | 2007 Linde Forklift H300 85/1232 | | | | | | | | | | |
| | 7/30/2011 | Straight-Line | 15-000 | | | | \$29,250.00 | \$162.50 | \$975.00 | \$11,667.37 | \$17,582.63 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 117-2 | Sales Tax on Linde Forklift | | | | | | | | | | |
| | 7/30/2011 | Straight-Line | 15-000 | | | | \$2,705.96 | \$15.03 | \$90.18 | \$1,079.38 | \$1,626.58 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 123-1 | Volvo L20F Compact Wheel Loader | | | | | | | | | | |
| | 7/29/2011 | Straight-Line | 15-000 | | | | \$69,900.00 | \$388.33 | \$2,329.98 | \$27,882.07 | \$42,017.93 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 123-2 | Addl Purchase Amount on Volvo Loader | | | | | | | | | | |
| | 10/28/2011 | Straight-Line | 15-000 | | | | \$395.00 | \$2.19 | \$13.14 | \$151.06 | \$243.94 |
| | 7/1/2017 | Full Month | 09-091 | | | | \$0.00 | | | | |
| 124-1 | Engineering of URI Installation | | | | | | | | | | |
| | 7/1/2011 | Straight-Line | 15-000 | | | | \$52,425.00 | \$291.25 | \$1,747.50 | \$20,911.61 | \$31,513.39 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |
| 124-2 | Roof for URIBuilding | | | | | | | | | | |
| | 7/1/2011 | Straight-Line | 15-000 | | | | \$15,000.00 | \$83.33 | \$499.98 | \$5,983.26 | \$9,016.74 |
| | 7/1/2017 | Full Month | 08-364 | | | | \$0.00 | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | | | | | | |
|------------|---------------------------------------|--------|----------------|-------------|--------------|----------------|----------------|
| Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
| Depr Thru | Convention | Rem | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | |
| 124-3 | URT Recycling Machine | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$4,782,358.98 | \$26,568.66 | \$159,411.96 | \$1,907,617.26 | \$2,874,741.72 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-4 | URT Buffer Silo | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$16,925.00 | \$94.03 | \$564.18 | \$6,751.20 | \$10,173.80 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-5 | Shipping of URT Machine | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$145,168.15 | \$806.49 | \$4,838.94 | \$57,905.56 | \$87,362.59 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-6 | URT-Rent, elect, supplies, misc other | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$1,032,848.31 | \$5,738.05 | \$34,428.30 | \$411,989.08 | \$620,859.23 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-7 | Precast Building for Herco | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$151,377.40 | \$840.99 | \$5,045.94 | \$60,382.31 | \$90,995.09 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-8 | Permitting for URT Installation | | | | | | |
| 7/1/2011 | Straight-Line Ori | 15-000 | \$11,963.60 | \$66.46 | \$398.76 | \$4,772.14 | \$7,191.46 |
| 7/1/2017 | Full Month | 08-364 | | | | | |
| | | | \$0.00 | | | | |
| 124-9 | Addl Electrical for URT Installation | | | | | | |
| 8/27/2011 | Straight-Line Ori | 15-000 | \$5,110.73 | \$28.39 | \$170.34 | \$2,010.17 | \$3,100.56 |
| 7/1/2017 | Full Month | 09-030 | | | | | |
| | | | \$0.00 | | | | |
| 124-10 | URT Cutting Knives | | | | | | |
| 9/21/2013 | Straight-Line Ori | 12-310 | \$238,261.85 | \$1,545.23 | \$9,271.38 | \$70,822.90 | \$167,438.99 |
| 7/1/2017 | Full Month | 09-006 | | | | | |
| | | | \$0.00 | | | | |
| 126-1 | Gray Storage Bins | | | | | | |
| 8/27/2011 | Straight-Line Ori | 15-000 | \$2,351.98 | \$13.07 | \$78.42 | \$925.14 | \$1,426.84 |
| 7/1/2017 | Full Month | 09-030 | | | | | |
| | | | \$0.00 | | | | |
| 127-1 | Sanyo Condenser and Evaporator | | | | | | |
| 8/27/2011 | Straight-Line Ori | 15-000 | \$3,661.31 | \$20.34 | \$122.04 | \$1,440.09 | \$2,221.22 |
| 7/1/2017 | Full Month | 09-030 | | | | | |
| | | | \$0.00 | | | | |
| 128-1 | Tenant 28" Speedscrub Floor Scrubber | | | | | | |
| 9/30/2011 | Straight-Line Ori | 15-000 | \$5,209.06 | \$28.94 | \$173.64 | \$2,019.98 | \$3,189.08 |
| 7/1/2017 | Full Month | 09-061 | | | | | |
| | | | \$0.00 | | | | |
| 129-1 | 5000 lb. Platform Scale 48x48 | | | | | | |
| 9/30/2011 | Straight-Line Ori | 15-000 | \$1,730.00 | \$9.61 | \$57.66 | \$670.84 | \$1,059.16 |
| 7/1/2017 | Full Month | 09-061 | | | | | |
| | | | \$0.00 | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|--|-----------|--------|--------------|------------|------------|-------------|-------------|----------|
| Depr Thru | Convention | Rem | | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 131-1 | Sprinkler Installation URT Area | | | | | | | | |
| 9/30/2011 | Straight-Line Cri | 15-000 | | 65,729.04 | \$31.83 | \$190.98 | \$2,221.56 | \$3,507.48 | |
| 7/1/2017 | Full Month | 09-061 | | \$0.00 | | | | | |
| 132-1 | 3" 8 HP Honda Trash Pump 3TH-19319 | | | | | | | | |
| 9/30/2011 | Straight-Line Cri | 15-000 | | \$1,414.80 | \$7.86 | \$47.16 | \$548.70 | \$866.10 | |
| 7/1/2017 | Full Month | 09-061 | | \$0.00 | | | | | |
| 134-1 | Offset Stairs for Hammer Mill Platform | | | | | | | | |
| 10/31/2011 | Straight-Line Cri | 15-000 | | \$2,368.24 | \$13.16 | \$78.96 | \$905.24 | \$1,463.00 | |
| 7/1/2017 | Full Month | 09-091 | | \$0.00 | | | | | |
| 138-1 | 95 Ottawa Jockey Tractor | | | | | | | | |
| 11/27/2011 | Straight-Line Cri | 15-000 | | \$2,915.00 | \$16.19 | \$97.14 | \$1,098.06 | \$1,816.94 | |
| 7/1/2017 | Full Month | 09-122 | | \$0.00 | | | | | |
| 141-1 | Gray Storage Bins | | | | | | | | |
| 11/27/2011 | Straight-Line Cri | 15-000 | | \$2,236.00 | \$12.42 | \$74.52 | \$842.17 | \$1,393.83 | |
| 7/1/2017 | Full Month | 09-122 | | \$0.00 | | | | | |
| 142-1 | Hopper 2-1/2 cu yd self dumping | | | | | | | | |
| 1/28/2012 | Straight-Line Cri | 15-000 | | \$4,596.34 | \$25.54 | \$153.24 | \$1,680.17 | \$2,916.17 | |
| 7/1/2017 | Full Month | 09-183 | | \$0.00 | | | | | |
| 143-1 | Stanley/Vidmar Storage Cabinets with T | | | | | | | | |
| 2/25/2012 | Straight-Line Cri | 15-000 | | \$6,400.00 | \$35.56 | \$213.36 | \$2,303.98 | \$4,096.02 | |
| 7/1/2017 | Full Month | 09-214 | | \$0.00 | | | | | |
| 146-1 | Used 13HP Cold Water Pressure Washer | | | | | | | | |
| 4/23/2012 | Straight-Line Cri | 15-000 | | \$1,116.72 | \$6.20 | \$37.20 | \$389.55 | \$727.17 | |
| 7/1/2017 | Full Month | 09-273 | | \$0.00 | | | | | |
| 149-1 | 4GPM 4000 PSI Pressure Washer | | | | | | | | |
| 5/26/2012 | Straight-Line Cri | 15-000 | | \$1,296.00 | \$7.20 | \$43.20 | \$444.97 | \$851.03 | |
| 7/1/2017 | Full Month | 09-303 | | \$0.00 | | | | | |
| 153-1 | Komatsu WA200-6 Loader 71490 | | | | | | | | |
| 6/18/2012 | Straight-Line Cri | 15-000 | | \$146,600.00 | \$814.44 | \$4,886.64 | \$49,517.19 | \$97,082.81 | |
| 7/1/2017 | Full Month | 09-334 | | \$0.00 | | | | | |
| 154-1 | Turn-A-Fork | | | | | | | | |
| 9/18/2012 | Straight-Line Cri | 15-000 | | \$6,135.00 | \$34.08 | \$204.48 | \$1,969.96 | \$4,165.04 | |
| 7/1/2017 | Full Month | 10-061 | | \$0.00 | | | | | |
| 155-1 | Lift & Vac | | | | | | | | |
| 11/26/2012 | Straight-Line Cri | 15-000 | | \$57,519.70 | \$319.55 | \$1,917.30 | \$17,830.26 | \$39,689.44 | |
| 7/1/2017 | Full Month | 10-122 | | \$0.00 | | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|--|-----------|--------|--------------|------------|-------------|-------------|--------------|----------|
| Depr Thru | Convention | Rem | | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 158-1 | 10'X30" Used Conveyor 1.9" Rollers | | | | | | | | |
| 3/14/2013 | Straight-Line Ori | 15-000 | | \$3,200.00 | \$17.78 | \$106.68 | \$921.92 | \$2,278.08 | |
| 7/1/2017 | Full Month | 10-242 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 160-1 | Quincy Model 255 SN 0311013 Basic Pump | | | | | | | | |
| 4/8/2013 | Straight-Line Ori | 10-000 | | \$1,539.00 | \$12.83 | \$76.98 | \$652.29 | \$886.71 | |
| 7/1/2017 | Full Month | 05-273 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 161-1 | 2.5 cu yd, Self Dumping Hopper | | | | | | | | |
| 8/31/2013 | Straight-Line Ori | 15-000 | | \$5,107.83 | \$28.38 | \$170.28 | \$1,329.69 | \$3,778.14 | |
| 7/1/2017 | Full Month | 11-030 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 162-1 | American Baler | | | | | | | | |
| 10/12/2013 | Straight-Line Ori | 00-182 | | \$50,000.00 | \$0.00 | \$0.00 | \$20,000.00 | \$30,000.00 | |
| 3/29/2014 | Full Month | 00-002 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 167-1 | Sennebogen Model 821M C Material Handl | | | | | | | | |
| 6/19/2014 | Straight-Line Ori | 15-000 | | \$330,400.00 | \$1,835.56 | \$11,013.36 | \$67,810.66 | \$262,589.34 | |
| 7/1/2017 | Full Month | 11-334 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 168-1 | American Baler Two Ram Series N620-T50 | | | | | | | | |
| 8/22/2014 | Straight-Line Ori | 15-000 | | \$378,447.67 | \$2,102.49 | \$12,614.94 | \$73,466.95 | \$304,980.72 | |
| 7/1/2017 | Full Month | 12-030 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 170-1 | Air Compressor | | | | | | | | |
| 10/24/2014 | Straight-Line Ori | 15-000 | | \$18,148.69 | \$100.83 | \$604.98 | \$3,321.46 | \$14,827.23 | |
| 7/1/2017 | Full Month | 12-091 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 171-1 | Control Room Air conditioner | | | | | | | | |
| 5/29/2015 | Straight-Line Ori | 15-000 | | \$30,662.59 | \$170.35 | \$1,022.10 | \$4,589.65 | \$26,072.94 | |
| 7/1/2017 | Full Month | 12-303 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 172-1 | Freight-control room air conditioner | | | | | | | | |
| 5/29/2015 | Straight-Line Ori | 15-000 | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| 4/30/2015 | Full Month | 15-000 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 173-1 | Freight Control Room AC | | | | | | | | |
| 5/29/2015 | Straight-Line Ori | 15-000 | | \$1,907.00 | \$10.59 | \$63.54 | \$285.47 | \$1,621.53 | |
| 7/1/2017 | Full Month | 12-303 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 18-1 | Eddy Current Assembly | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$94,891.92 | \$541.01 | \$3,246.06 | \$45,469.86 | \$49,422.06 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | | |
| | | | | \$0.00 | | | | | |
| 19-1 | Truck Scale | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$40,097.50 | \$228.59 | \$1,371.54 | \$19,214.99 | \$20,882.51 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | | |
| | | | | \$0.00 | | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | | | | | | | |
|------------|----------------------------------|--------|-------------|-----------|----------|-------------|-------------|--------|
| Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book | |
| Depr Thru | Convention | Ren | | | | | | |
| Asset Code | Asset Amt/Pct | | | | | | | |
| 20-1 | HD30 Forklift w/Clamp Attachment | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$20,650.00 | \$117.72 | \$706.32 | \$9,896.25 | \$10,753.75 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 21-1 | Forklift | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$14,000.00 | \$79.81 | \$478.86 | \$6,709.49 | \$7,290.51 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 22-1 | Forklift w/Scale | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$14,000.00 | \$79.81 | \$478.86 | \$6,709.49 | \$7,290.51 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 23-1 | Forklift | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$23,000.00 | \$125.44 | \$752.64 | \$10,541.18 | \$11,458.82 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 24-1 | Skid Steer | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$25,000.00 | \$142.53 | \$855.38 | \$11,980.08 | \$13,019.92 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 25-1 | Skid Steer | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$25,000.00 | \$142.53 | \$855.38 | \$11,980.08 | \$13,019.92 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 26-1 | 2 Platform Scales | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$2,500.00 | \$14.25 | \$85.50 | \$1,198.39 | \$1,301.61 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 27-1 | 74 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,000.00 | \$17.09 | \$102.54 | \$1,438.98 | \$1,561.02 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 28-1 | 74 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$4,600.00 | \$26.21 | \$157.26 | \$2,206.09 | \$2,393.91 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 29-1 | Waste Oil Burner | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,500.00 | \$19.97 | \$119.82 | \$1,675.27 | \$1,824.73 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 30-1 | Scissor Lift | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$4,500.00 | \$25.66 | \$153.96 | \$2,156.33 | \$2,343.67 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |
| 31-1 | Metal Detector Model 8600 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$6,700.00 | \$38.21 | \$229.26 | \$3,209.61 | \$3,490.39 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | \$0.00 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | | | | | | | |
|------------|----------------------------|--------|----------------|------------|-------------|--------------|--------------|--------|
| P1 in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book | |
| Depr Thru | Convention | Ren | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | |
| 32-1 | 480V Transformer | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$15,000.00 | \$85.53 | \$513.18 | \$7,186.39 | \$7,813.61 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 33-1 | 26 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$18,000.00 | \$102.62 | \$615.72 | \$8,625.32 | \$9,374.68 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 34-1 | 26 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$18,000.00 | \$102.62 | \$615.72 | \$8,625.32 | \$9,374.68 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 35-1 | 30 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,240.00 | \$18.47 | \$110.82 | \$1,552.53 | \$1,687.47 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 36-1 | 2 20 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,950.00 | \$22.52 | \$135.12 | \$1,893.02 | \$2,056.98 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 37-1 | 22 Conveyor Gravity - Used | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,003.00 | \$17.11 | \$102.66 | \$1,440.26 | \$1,562.74 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 38-1 | 36 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,000.00 | \$17.09 | \$102.54 | \$1,438.98 | \$1,561.02 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 39-1 | 42 | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$25,000.00 | \$142.53 | \$855.18 | \$11,980.08 | \$13,019.92 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 40-1 | Miscellaneous Items | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$3,000.00 | \$17.09 | \$102.54 | \$1,438.98 | \$1,561.02 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 41-1 | Destoner | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$68,000.00 | \$387.67 | \$2,326.02 | \$32,585.30 | \$35,414.70 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 43-1 | Welding Tools | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$25,000.00 | \$142.53 | \$855.18 | \$11,980.08 | \$13,019.92 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |
| 44-1 | Shredding System | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$1,310,032.42 | \$7,468.79 | \$44,812.74 | \$627,745.78 | \$682,286.64 | |
| 7/1/2017 | Full Month | 07-214 | | | | | | |
| | | | | | | | | \$0.00 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|----------------------------------|-----------|--------|--------------|------------|-------------|--------------|--------------|----------|
| Depr Thru | Convention | Rem | | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 45-1 | Construction Costs | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$544,558.17 | \$3,104.67 | \$18,628.02 | \$260,941.85 | \$283,616.32 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 46-1 | Installation Costs | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$423,502.37 | \$2,414.47 | \$14,486.82 | \$202,936.08 | \$220,566.29 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 47-1 | Engineering & Professional Costs | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$132,584.05 | \$755.87 | \$4,535.22 | \$63,533.77 | \$69,050.28 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 48-1 | Shipping Costs | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | | \$21,805.59 | \$124.33 | \$745.98 | \$10,448.30 | \$11,357.29 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 49-1 | Electrical Exit Signs | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 15-000 | | \$650.00 | \$3.69 | \$22.34 | \$313.00 | \$337.00 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 50-1 | Lift for Installation | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 15-000 | | \$476.90 | \$2.70 | \$16.20 | \$229.88 | \$247.02 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 51-1 | Installation Costs | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 15-000 | | \$1,500.00 | \$8.57 | \$51.42 | \$717.44 | \$782.56 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 52-1 | 580 Ft 30 | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 15-000 | | \$6,960.00 | \$39.67 | \$238.02 | \$3,336.51 | \$3,623.49 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 53-1 | Electrical Exit Signs | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 15-000 | | \$715.00 | \$4.08 | \$24.48 | \$382.72 | \$332.28 | |
| 7/1/2017 | Full Month | 07-214 | | \$0.00 | | | | | |
| 54-1 | Grate Bar | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$2,325.00 | \$13.20 | \$79.20 | \$1,107.23 | \$1,217.77 | |
| 7/1/2017 | Full Month | 07-242 | | \$0.00 | | | | | |
| 55-1 | Installation Costs | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$2,135.00 | \$12.12 | \$72.72 | \$1,017.06 | \$1,117.94 | |
| 7/1/2017 | Full Month | 07-242 | | \$0.00 | | | | | |
| 56-1 | Installation Costs | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$5,583.00 | \$31.70 | \$190.20 | \$2,657.97 | \$2,925.03 | |
| 7/1/2017 | Full Month | 07-242 | | \$0.00 | | | | | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Corr Depr | YTD Depr | Accum Depr | Net Book | |
|----------------------------|-----------------------|-----------|--------|------------|-----------------|-------------|--------------|----------------|----------------|--|
| Depr Thru | Convention | Ren | | | | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | | |
| 57-1 | Lift for Installation | | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$655.14 | \$3.70 | \$22.20 | \$313.33 | \$341.81 | | |
| 7/1/2017 | Full Month | 07-242 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 58-1 | Green Panel | | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$6,859.47 | \$38.95 | \$233.70 | \$3,265.42 | \$3,594.05 | | |
| 7/1/2017 | Full Month | 07-242 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 59-1 | Threaded Rods | | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 15-000 | | \$1,096.00 | \$6.23 | \$37.38 | \$521.46 | \$574.54 | | |
| 7/1/2017 | Full Month | 07-242 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 60-1 | Installation Costs | | | | | | | | | |
| 7/31/2010 | Straight-Line Rem | 15-000 | | \$639.94 | \$3.58 | \$21.48 | \$295.16 | \$344.78 | | |
| 7/1/2017 | Full Month | 07-364 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 61-1 | Installation Costs | | | | | | | | | |
| 7/31/2010 | Straight-Line Rem | 15-000 | | \$1,135.00 | \$6.38 | \$38.28 | \$520.43 | \$614.59 | | |
| 7/1/2017 | Full Month | 07-364 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 62-1 | Crane | | | | | | | | | |
| 8/27/2010 | Straight-Line Rem | 15-000 | | \$5,000.00 | \$27.99 | \$167.94 | \$2,276.16 | \$2,723.84 | | |
| 7/1/2017 | Full Month | 08-030 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 63-1 | Crane | | | | | | | | | |
| 9/30/2010 | Straight-Line Rem | 15-000 | | \$1,500.00 | \$8.39 | \$50.34 | \$675.32 | \$824.68 | | |
| 7/1/2017 | Full Month | 08-061 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 64-1 | IBC Containment Kit | | | | | | | | | |
| 10/30/2010 | Straight-Line Rem | 15-000 | | \$600.00 | \$3.35 | \$20.10 | \$266.76 | \$333.24 | | |
| 7/1/2017 | Full Month | 08-091 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 66-1 | Ultrasonic Scanner | | | | | | | | | |
| 11/26/2010 | Straight-Line Rem | 15-000 | | \$981.66 | \$5.48 | \$37.88 | \$431.39 | \$550.27 | | |
| 7/1/2017 | Full Month | 08-122 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| 68-1 | 6 Dump Hoppers | | | | | | | | | |
| 3/31/2011 | Straight-Line Rem | 15-000 | | \$7,492.50 | \$41.79 | \$250.74 | \$3,133.66 | \$4,358.84 | | |
| 7/1/2017 | Full Month | 08-242 | | | | | | | | |
| | | | | \$0.00 | | | | | | |
| Totals for Class ID HE1000 | | | | | | | | | | |
| Machinery & Equipment | | | | | | | | | | |
| 94 Assets | | | | | \$10,637,046.50 | \$59,469.18 | \$356,815.08 | \$4,284,689.43 | \$6,352,357.07 | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | PI in Svc | Method | Orig Rem | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book | |
|----------------------------|--------------------------------|------------|---------------|-------------|-------------|-----------|-------------|-------------|------------|--|
| Depr Thru | Convention | Amort Code | Amort Amt/Pct | | | | | | | |
| 11-1 | From 4301 Operations | | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | \$22,986.90 | \$0.00 | \$0.00 | \$22,986.90 | \$0.00 | | |
| 1/31/2015 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 12-1 | 2007 912 Sq Ft Modular Offices | | | | | | | | | |
| 2/8/2010 | Straight-Line Rem | 05-000 | | \$31,486.90 | \$0.00 | \$0.00 | \$31,486.90 | \$0.00 | | |
| 1/31/2015 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 13-1 | Desk - Controller Office | | | | | | | | | |
| 2/27/2010 | Straight-Line Rem | 05-000 | | \$1,200.00 | \$0.00 | \$0.00 | \$1,200.00 | \$0.00 | | |
| 1/31/2015 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 135-1 | Desks from Ferracool | | | | | | | | | |
| 11/26/2011 | Straight-Line Cri | 05-000 | | \$2,000.00 | \$0.00 | \$0.00 | \$2,000.00 | \$0.00 | | |
| 10/31/2016 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 14-1 | Lockers | | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 05-000 | | \$630.00 | \$0.00 | \$0.00 | \$630.00 | \$0.00 | | |
| 5/30/2015 | Full Month | 00-001 | | \$0.00 | | | | | | |
| 15-1 | Conference Chairs | | | | | | | | | |
| 1/29/2011 | Straight-Line Rem | 05-000 | | \$419.44 | \$0.00 | \$0.00 | \$419.44 | \$0.00 | | |
| 12/31/2015 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 16-1 | Label Printer | | | | | | | | | |
| 2/26/2011 | Straight-Line Rem | 05-000 | | \$1,511.85 | \$0.00 | \$0.00 | \$1,511.85 | \$0.00 | | |
| 1/31/2016 | Full Month | 00-000 | | \$0.00 | | | | | | |
| 164-1 | Office Furniture (Bldg B) | | | | | | | | | |
| 1/24/2014 | Straight-Line Cri | 05-000 | | \$4,100.00 | \$68.33 | \$409.98 | \$2,866.05 | \$1,233.95 | | |
| 7/1/2017 | Full Month | 01-183 | | \$0.00 | | | | | | |
| 17-1 | Label Printer Fit | | | | | | | | | |
| 2/26/2011 | Straight-Line Rem | 05-000 | | \$1,428.22 | \$0.00 | \$0.00 | \$1,428.22 | \$0.00 | | |
| 1/31/2016 | Full Month | 00-000 | | \$0.00 | | | | | | |
| Totals for Class ID 0E1000 | | | | | | | | | | |
| Office Equipment | | | | | | | | | | |
| 9 Assets | | | | | \$65,763.31 | \$68.33 | \$409.98 | \$64,529.36 | \$1,233.95 | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | | | | | | |
|----------------------------|------------------------|--------|-------------|-----------|------------|-------------|-------------|
| Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
| Depr Thru | Convention | Rem | | | | | |
| Asset Code | Asset Amt/Pct | | | | | | |
| 85-1 | Admin Office Trailer | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$21,550.00 | \$120.36 | \$722.16 | \$10,555.40 | \$10,994.60 |
| 7/1/2017 | Full Month | 07-214 | | | | | |
| | | \$0.00 | | | | | |
| 86-1 | Scale Office Trailer | | | | | | |
| 2/8/2010 | Straight-Line Rem | 15-000 | \$16,000.00 | \$89.36 | \$536.16 | \$7,836.96 | \$8,163.04 |
| 7/1/2017 | Full Month | 07-214 | | | | | |
| | | \$0.00 | | | | | |
| 87-1 | Admin Office Trailer | | | | | | |
| 5/28/2010 | Straight-Line Rem | 15-000 | \$1,689.57 | \$9.44 | \$56.64 | \$799.77 | \$889.80 |
| 7/1/2017 | Full Month | 07-303 | | | | | |
| | | \$0.00 | | | | | |
| 88-1 | Trailer Skirt | | | | | | |
| 5/28/2010 | Straight-Line Rem | 15-000 | \$325.00 | \$1.82 | \$10.92 | \$153.85 | \$171.15 |
| 7/1/2017 | Full Month | 07-303 | | | | | |
| | | \$0.00 | | | | | |
| 89-1 | Trailer Skirt | | | | | | |
| 6/30/2010 | Straight-Line Rem | 15-000 | \$225.00 | \$1.26 | \$7.56 | \$105.18 | \$119.82 |
| 7/1/2017 | Full Month | 07-334 | | | | | |
| | | \$0.00 | | | | | |
| 90-1 | Window and Door Guards | | | | | | |
| 5/28/2011 | Straight-Line Rem | 15-000 | \$2,008.80 | \$11.20 | \$67.20 | \$817.80 | \$1,191.00 |
| 7/1/2017 | Full Month | 08-303 | | | | | |
| | | \$0.00 | | | | | |
| Totals for Class ID 071000 | | | | | | | |
| Office Trailers | | | | | | | |
| 6 Assets: | | | | | | | |
| | | | \$41,798.37 | \$233.44 | \$1,400.64 | \$20,268.96 | \$21,529.41 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|-----------------------------|-----------|--------|------|------------|-----------|----------|------------|----------|
| Depr Thru | Convention | | | Rem | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | | | |
| 118-1 | Scale Integration to GP | | | | | | | | |
| 7/30/2011 | Straight-Line Ori | 03-000 | | | 5544.50 | \$0.00 | \$0.00 | 5544.50 | \$0.00 |
| 6/30/2014 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 119-1 | Scale Integration to GP | | | | | | | | |
| 7/30/2011 | Straight-Line Ori | 03-000 | | | 5481.50 | \$0.00 | \$0.00 | 5481.50 | \$0.00 |
| 6/30/2014 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 157-1 | Modify GP for GE DPR | | | | | | | | |
| 1/1/2013 | Straight-Line Ori | 03-000 | | | 1,732.50 | \$0.00 | \$0.00 | 1,732.50 | \$0.00 |
| 12/31/2015 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 69-1 | Great Plains Implementation | | | | | | | | |
| 3/31/2010 | Straight-Line Rem | 03-000 | | | 6,303.00 | \$0.00 | \$0.00 | 6,303.00 | \$0.00 |
| 2/28/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 70-1 | Great Plains Implementation | | | | | | | | |
| 4/30/2010 | Straight-Line Rem | 03-000 | | | 2,641.50 | \$0.00 | \$0.00 | 2,641.50 | \$0.00 |
| 3/31/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 71-1 | User Defined Fields | | | | | | | | |
| 4/30/2010 | Straight-Line Rem | 03-000 | | | 900.00 | \$0.00 | \$0.00 | 900.00 | \$0.00 |
| 3/31/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 72-1 | Great Plains Implementation | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | 03-000 | | | 4,155.50 | \$0.00 | \$0.00 | 4,155.50 | \$0.00 |
| 4/30/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 73-1 | Great Plains User Licenses | | | | | | | | |
| 5/28/2010 | Straight-Line Rem | 03-000 | | | 8,733.73 | \$0.00 | \$0.00 | 8,733.73 | \$0.00 |
| 4/30/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 74-1 | SMS Turbo Licenses | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 03-000 | | | 2,000.00 | \$0.00 | \$0.00 | 2,000.00 | \$0.00 |
| 5/31/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 75-1 | Scale Integration to GP | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 03-000 | | | 2,000.00 | \$0.00 | \$0.00 | 2,000.00 | \$0.00 |
| 5/31/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 76-1 | Scale Integration to GP | | | | | | | | |
| 6/30/2010 | Straight-Line Rem | 03-000 | | | 2,260.50 | \$0.00 | \$0.00 | 2,260.50 | \$0.00 |
| 5/31/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |
| 77-1 | Scale Integration to GP | | | | | | | | |
| 7/31/2010 | Straight-Line Rem | 03-000 | | | 1,596.00 | \$0.00 | \$0.00 | 1,596.00 | \$0.00 |
| 6/30/2013 | Full Month | 00-000 | | | | | | | |
| | | | | | | | | \$0.00 | |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | FI in Svc | Method | Orig Rem | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|----------------------------|-------------------------|------------|---------------|----------|-------------|-----------|----------|-------------|----------|
| Dep'r Thru | Convention | Amort Code | Amort Amt/Pct | | | | | | |
| 78-1 | Scale Integration to GP | | | | | | | | |
| 8/28/2010 | Straight-Line Rem | | | | \$429.00 | \$0.00 | \$0.00 | \$429.00 | \$0.00 |
| 7/31/2013 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| 79-1 | GenPro Time Keeping | | | | | | | | |
| 9/30/2010 | Straight-Line Rem | | | | \$5,116.12 | \$0.00 | \$0.00 | \$5,116.12 | \$0.00 |
| 8/31/2013 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| 80-1 | Scale Integration to GP | | | | | | | | |
| 10/30/2010 | Straight-Line Rem | | | | \$1,237.50 | \$0.00 | \$0.00 | \$1,237.50 | \$0.00 |
| 9/30/2013 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| 81-1 | Scale Integration to GP | | | | | | | | |
| 12/31/2010 | Straight-Line Rem | | | | \$198.00 | \$0.00 | \$0.00 | \$198.00 | \$0.00 |
| 11/30/2013 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| 82-1 | Scale Integration to GP | | | | | | | | |
| 3/31/2011 | Straight-Line Rem | | | | \$1,501.50 | \$0.00 | \$0.00 | \$1,501.50 | \$0.00 |
| 2/26/2014 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| 83-1 | Scale Integration to GP | | | | | | | | |
| 4/30/2011 | Straight-Line Rem | | | | \$808.50 | \$0.00 | \$0.00 | \$808.50 | \$0.00 |
| 3/31/2014 | Full Month | | | | | | | | |
| | | | | | | | | \$0.00 | |
| Totals for Class ID SW1000 | | | | | | | | | |
| Software | | | | | | | | | |
| 18 Assets | | | | | \$42,639.35 | \$0.00 | \$0.00 | \$42,639.35 | \$0.00 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | | | | | | |
|----------------------------|------------------------|--------|--------------|------------|-------------|-------------|-------------|
| Pl in Svc | Method | Orig | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
| Depr Thru | Convention | Rem | | | | | |
| Amort Code | Amort Amt/Pct | | | | | | |
| 165-1 | 2013 Ottawa Yard Truck | | | | | | |
| 1/21/2014 | Straight-Line Cri | 05-000 | \$100,245.00 | \$1,670.75 | \$10,024.50 | \$70,076.03 | \$30,168.97 |
| 7/1/2017 | Full Month | 01-183 | | | | | |
| | | \$0.00 | | | | | |
| 84-1 | 99 Ottawa Yard Truck | | | | | | |
| 10/30/2010 | Straight-Line Rem | 05-000 | \$4,030.00 | \$0.00 | \$0.00 | \$4,030.00 | \$0.00 |
| 9/30/2015 | Full Month | 03-000 | | | | | |
| | | \$0.00 | | | | | |
| Totals for Class ID 7E1000 | | | | | | | |
| Transportation Equipment | | | | | | | |
| 2 Assets | | | \$104,275.00 | \$1,670.75 | \$10,024.50 | \$74,106.03 | \$30,168.97 |

Depreciation Ledger by Class
For GAAP

| Asset ID | Description | Pl in Svc | Method | Depr Thru | Convention | Orig Rem | Cost Basis | Curr Depr | YTD Depr | Accum Depr | Net Book |
|------------|-------------|------------|---------------|-----------|------------|----------|-----------------|-------------|--------------|----------------|----------------|
| | | Amort Code | Amort Amt/Pct | | | | | | | | |
| 182 Assets | | | | | | | \$11,112,603.18 | \$62,242.50 | \$373,818.58 | \$4,613,848.61 | \$6,498,754.57 |

Exhibit 2.02(e)

Excluded Assets

None.

Exhibit 2.03(b)(iii)

Assumed Liabilities

See attached.

| | | |
|---------------------------------|----|------------|
| ABCA Recycling | \$ | 1,950.00 |
| AERC.COM | \$ | 6,237.40 |
| Aeroteck | \$ | 209,573.70 |
| AirGas | | |
| All Staffing Warehouse | | |
| American Pulverizer | | |
| American Metal Markets | | |
| AMSCO | | |
| Anthem Propane | \$ | 1,049.46 |
| Appliance Warehouse | \$ | 751.54 |
| Atomic Extinguishers | | |
| Belgrade | \$ | 58.64 |
| Beverly Brown-Petty cash | \$ | 524.54 |
| Bermuda International Shipping | | |
| Beverage & Diamond | \$ | 3,068.83 |
| Bowman | \$ | 10,673.40 |
| Brian Finn Scale | \$ | 1,801.00 |
| BSE Holdings | \$ | 19,840.00 |
| Celayix | \$ | 1,600.00 |
| CJB Packaging | 4 | 875.83 |
| Cleaning MDs | | 1,180.98 |
| Commonwealth Computer Recycling | | 1,822.80 |
| Concentra | \$ | 156.50 |
| Corestaff | \$ | 12,268.03 |
| The Ministry of Public Works | \$ | 29,532.96 |
| DB Schenker | \$ | 369.90 |
| Delaware Ave LLC | \$ | 21,222.88 |
| de lage landen | \$ | 4,318.66 |
| Delware Valley Remediation | \$ | 1,252.30 |
| ECOVanta | \$ | 8,912.40 |
| Eforce | \$ | 3,006.57 |
| Elemental | | |
| Environmed | | |
| Equipment Depot | \$ | 12,212.60 |
| E-Waste Experts | | |
| Fidelity Alarm | \$ | 810.00 |
| First Star Logistics | \$ | 2,781.00 |
| Frank Callahan | \$ | 1,846.31 |
| Franc Environmental | \$ | 2,095.00 |
| George Leck | | |
| Grainger | \$ | 29.59 |
| Guardian Life | | |
| Harleysville Ins | | |
| Hustler Conveyor | \$ | 7,097.14 |
| Incorp | \$ | 99.00 |
| IBX | \$ | 10,046.85 |

| | | |
|--|----|-----------|
| Industrial Tire | | |
| JJ Keller | | |
| Jag Expansion | \$ | 11,630.00 |
| Jim Fesmire | \$ | 4,175.00 |
| Joseph Fazzio | \$ | 256.29 |
| JQ Staffing | \$ | 36,260.88 |
| Komatsu | \$ | 4,985.95 |
| Law Offices of Dimitri Karapelou | | |
| Leshkowitz & Co | \$ | 201.35 |
| Linde | | 23818.94 |
| Lorco | | |
| Martin's Appliance | | 3981.05 |
| Masterman's | | |
| Mazzucco & Co | \$ | 2,630.00 |
| McMaster Carr | \$ | 2,173.50 |
| Metal Stock | | |
| Midatlantic Machinery | \$ | 2,173.80 |
| MidAtlantic Fire | \$ | 2,350.00 |
| Nationwide Insurance | | |
| Mobile Mini Inc | \$ | 1,194.91 |
| Nova | \$ | 4,281.00 |
| Payroll, taxes, 401k and support payments | | |
| Parade Wire | | |
| PBP Fasteners | \$ | 2,177.50 |
| Peco | | |
| Penn Jersey | \$ | 795.75 |
| Perry Johnson Registrars | \$ | 2,000.00 |
| Petro Choice | \$ | 971.84 |
| PIDC | \$ | 16,965.55 |
| Port packaging | | |
| Praxair | \$ | 4,251.39 |
| Premium Assignment | \$ | 7,661.86 |
| Recycling Equipment | \$ | 10,277.84 |
| Revolution Recovery | \$ | 771.30 |
| Wells Fargo | \$ | 15,798.45 |
| River Drive | | |
| Royal | \$ | 919.83 |
| Ryder | \$ | 5,463.84 |
| Safe Disposal | | 8485.97 |
| Safety Kleen | | 91.56 |
| SDS Service | \$ | 1,142.68 |
| Separator Disc | | |
| Shingle & Gibb | \$ | 3,347.89 |
| Spichers | \$ | 9,529.70 |
| Stauffer Glove | | |

| | | |
|------------------------------------|-----------|-------------------|
| Sullivan Scrap | | 765.9 |
| Susquehanna Credit card | \$ | 22,991.33 |
| Trailer Tech Parts | \$ | 718.99 |
| Unum insurance | | |
| Van Hydraulics | | |
| Vintage Tech | \$ | 6,555.92 |
| Waste Management | \$ | 9,822.60 |
| Water Revenue Bureau | | 524.42 |
| William C. Miller, Trustee | \$ | 4,322.50 |
| Wright Express | | |
| Yard Specialists | | |
| Zwicky | \$ | 1,849.47 |
| <hr/> | | |
| River Drive | | |
| Safety Kleen | | |
| Service Caster Corp | \$ | 309.20 |
| SLC Nationwide | | |
| Stauffer Glove | | |
| STS Trucking | | |
| Volvo | | |
| Vintage Tech | | |
| Water Revenue Bureau | | |
| Wells Fargo debit from BBT account | | |
| Delaware Avenue, LLC (April-July) | \$ | 150,208.40 |
| Total | \$ | 767,900.16 |

Exhibit 3.01(b)

Indebtedness to be Paid off at the Closing

BB&T - \$3,454,068.37

Exhibit 3.05

Purchase Price Allocation

The Purchase Price (as adjusted under federal income tax principles) will be allocated among the Purchased Assets for federal income tax purposes based on the Purchase Price Allocation Methodology set forth below, which follows the principles of Section 1060 of the Code and the regulations under Section 338 of the Code. Capitalized terms have the meanings set forth in the Agreement.

| | |
|---|---|
| Cash (Class I assets) | The net tax basis at Closing. |
| Marketable securities and certificates of deposit (Class II assets) | The net tax basis at Closing. |
| Accounts receivable and other like rights to payments (Class III assets) | The net tax basis at Closing. |
| Inventory (Class IV assets) | The net tax basis at Closing. |
| All other assets (i.e., other than those included in Classes I, II, III, IV, VI, and VII) (Class V assets) | The net tax basis at Closing. |
| Intangibles other than goodwill and going concern value (Class VI assets) | The fair market value at Closing. |
| Goodwill and going concern value (Class VII assets) | Any residual amount of the Purchase Price (as adjusted under federal income tax principles) |

Exhibit 4.15

Assigned Leases

1. 4301 N. Delaware Avenue, Philadelphia, PA, Bldg. A, Parking Yard C : Industrial Lease, dated November 26, 2008, between Delaware Avenue, LLC and Safe Disposal Systems, Inc., as amended by the Addendum to Industrial Lease, dated February 9, 2010, as assigned to ARCA Advanced Processing, LLC pursuant to the Assignment of Lease, dated June 15, 2010, as further amended by the Amendment to Lease Agreement, dated November 24, 2010, as further amended by the Addendum to Industrial Lease, dated November 30, 2013, as further amended by the Fourth Amendment to Lease, dated January 1, 2015
2. 4301 N. Delaware Avenue, Philadelphia, PA, Bldg. B: Industrial Lease, dated October 1, 2013, between Delaware Avenue, LLC and ARCA Advanced Processing, LLC

Exhibit 10.7

August 14, 2017

Appliance Recycling Centers of America, Inc.
Minneapolis, MN

Attn: Mr. Tony Isaac

Re: Certain Closing Agreements

This letter agreement (this "Agreement") is being entered into in connection with the closing (the "Closing") of the transactions contemplated by (i) the Equity Purchase Agreement, dated as of the date hereof, between 4301 Operations, LLC, a Delaware limited liability company, and Appliance Recycling Centers of America, Inc., a Minnesota corporation ("ARCA"), and (ii) the Asset Purchase Agreement (the "APA"), dated as of the date hereof, between ARCA Advanced Processing, LLC, a Minnesota limited liability company ("AAP"), and Reclim LLC, a Delaware limited liability company ("Reclim").

This letter agreement (*this* "Agreement") sets forth certain agreements between ARCA and Reclim LLC, a Delaware corporation and the parent company of Reclim PA ("Reclim"), in connection with the Closing. Capitalized terms used but not otherwise defined herein have the meanings set forth in the APA.

In connection with the Closing, the parties hereto hereby agree as follows:

1. Certain AAP liabilities. Upon Closing, Reclim PA is assuming certain liabilities of AAP in order to acquire the Purchased Assets free and clear of all Encumbrances, and (ii) a list of such liabilities is attached hereto as Exhibit A.
2. Accounting Systems Transition. For a period of 90 days following the Closing, ARCA will provide Reclim PA with use of and access to ARCA's accounting systems for the purpose of transitioning the data regarding AAP to a new system. ARCA will provide such service in substantially the manner that ARCA provided such service to AAP prior to the Closing and, in any case, in a commercially reasonable manner.
3. Licensing of Patent. Simultaneously with the execution of this Agreement, Reclim PA and ARCA have entered into the Patent License attached hereto as Exhibit B.
4. GE Note and Other Payables. Upon Closing, Reclim agrees to undertake, pay or assume ARCA's GE obligations consisting of a Note and other payables which were incurred after the Note. Reclim will also indemnify, and hold ARCA harmless from any action to be taken by GE relating to such obligations.
5. BB&T. As a condition precedent to this Agreement, at Closing, Reclim agrees to pay off all indebtedness owed to BB&T (the secured lender of AAP), by AAP and guaranteed by ARCA. Reclim also agrees to indemnify and hold ARCA harmless of all indebtedness owed to BB&T by AAP and guaranteed by ARCA.

6. Non-Solicitation Agreement. Reclim and Reclim PA, jointly and severally, covenant and agree that, for three years following the Closing Date, they will not individually or collectively solicit customers of ARCA for the purpose of providing or selling refrigerator recycling services.
7. Miscellaneous.
- a. Counterparts. This Agreement may be executed in multiple original, PDF or facsimile counterparts, each of which will be deemed an original, and all of which taken together will be considered one and the same agreement.
 - b. Governing Law. The interpretation and construction of this Agreement, and all matters relating to this Agreement, will be governed by the laws of the State of Delaware applicable to Contracts made and to be performed entirely within the State of Delaware, without giving effect to any conflict of law provisions thereof.
 - c. Consent to Exclusive Jurisdiction. Each of the parties hereto agrees that any legal action or proceeding with respect to this Agreement may be brought in the federal and state courts located in the State of Delaware, and, by execution and delivery of this Agreement, each party hereto irrevocably submits itself in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid courts in any legal action or proceeding arising out of this Agreement. Each of the parties hereto irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to in the preceding sentence. Each party hereto consents to process being served in any such action or proceeding by the mailing of a copy thereof to such party at its registered address and agrees that such service upon receipt will constitute good and sufficient service of process or notice thereof. Nothing in this paragraph will affect or eliminate any right to serve process in any other manner permitted by Law.
 - d. WAIVER OF JURY TRIAL. THE PARTIES HERETO IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY OR PARTIES WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH OR RELATED TO THIS AGREEMENT OR ANY PORTION OF THIS AGREEMENT, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTUOUS OR OTHER THEORIES OF LIABILITY. EACH PARTY HERETO REPRESENTS THAT IT HAS CONSULTED WITH COUNSEL REGARDING THE MEANING AND EFFECT OF THE FOREGOING WAIVER OF ITS RIGHT TO A JURY TRIAL.

By executing this Agreement in the space provided below, the parties hereto hereby acknowledge and agree to the foregoing.

[Signatures appear on following pages.]

Sincerely,

RECLEIM LLC

By: /s/ J. Steve Bush

Name: J. Steve Bush

Title: CEO

ACKNOWLEDGED AND AGREED
to this 14th day of August, 2017:

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: /s/ Tony Isaac

Name: Tony Isaac

Title: CEO

[Signature Page to Side Letter]

Exhibit A

Assumed Liabilities

See attached.

| | | |
|---------------------------------|----|------------|
| ABCA Recycling | \$ | 1,950.00 |
| AERC.COM | \$ | 6,237.40 |
| Aeroteck | \$ | 209,573.70 |
| AirGas | | |
| All Staffing Warehouse | | |
| American Pulverizer | | |
| American Metal Markets | | |
| AMSCO | | |
| Anthem Propane | \$ | 1,049.46 |
| Appliance Warehouse | \$ | 751.54 |
| Atomic Extinguishers | | |
| Belgrade | \$ | 58.64 |
| Beverly Brown-Petty cash | \$ | 524.54 |
| Bermuda International Shipping | | |
| Beverage & Diamond | \$ | 3,068.83 |
| Bowman | \$ | 10,673.40 |
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| Commonwealth Computer Recycling | | 1,822.80 |
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| Corestaff | \$ | 12,268.03 |
| The Ministry of Public Works | \$ | 29,532.96 |
| DB Schenker | \$ | 369.90 |
| Delaware Ave LLC | \$ | 21,222.88 |
| de lage landen | \$ | 4,318.66 |
| Delware Valley Remediation | \$ | 1,252.30 |
| ECOVanta | \$ | 8,912.40 |
| Eforce | \$ | 3,006.57 |
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| Environmed | | |
| Equipment Depot | \$ | 12,212.60 |
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| Fidelity Alarm | \$ | 810.00 |
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| Frank Callahan | \$ | 1,846.31 |
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| George Leck | | |
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| Harleysville Ins | | |
| Hustler Conveyor | \$ | 7,097.14 |
| Incorp | \$ | 99.00 |
| IBX | \$ | 10,046.85 |

| | | |
|--|----|-----------|
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| JJ Keller | | |
| Jag Expansion | \$ | 11,630.00 |
| Jim Fesmire | \$ | 4,175.00 |
| Joseph Fazzio | \$ | 256.29 |
| JQ Staffing | \$ | 36,260.88 |
| Komatsu | \$ | 4,985.95 |
| Law Offices of Dimitri Karapelou | | |
| Leshkowitz & Co | \$ | 201.35 |
| Linde | | 23818.94 |
| Lorco | | |
| Martin's Appliance | | 3981.05 |
| Masterman's | | |
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| Metal Stock | | |
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| MidAtlantic Fire | \$ | 2,350.00 |
| Nationwide Insurance | | |
| Mobile Mini Inc | \$ | 1,194.91 |
| Nova | \$ | 4,281.00 |
| Payroll, taxes, 401k and support payments | | |
| Parade Wire | | |
| PBP Fasteners | \$ | 2,177.50 |
| Peco | | |
| Penn Jersey | \$ | 795.75 |
| Perry Johnson Registrars | \$ | 2,000.00 |
| Petro Choice | \$ | 971.84 |
| PIDC | \$ | 16,965.55 |
| Port packaging | | |
| Praxair | \$ | 4,251.39 |
| Premium Assignment | \$ | 7,661.86 |
| Recycling Equipment | \$ | 10,277.84 |
| Revolution Recovery | \$ | 771.30 |
| Wells Fargo | \$ | 15,798.45 |
| River Drive | | |
| Royal | \$ | 919.83 |
| Ryder | \$ | 5,463.84 |
| Safe Disposal | | 8485.97 |
| Safety Kleen | | 91.56 |
| SDS Service | \$ | 1,142.68 |
| Separator Disc | | |
| Shingle & Gibb | \$ | 3,347.89 |
| Spichers | \$ | 9,529.70 |
| Stauffer Glove | | |

| | | |
|------------------------------------|-----------|-------------------|
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| Susquehanna Credit card | \$ | 22,991.33 |
| Trailer Tech Parts | \$ | 718.99 |
| Unum insurance | | |
| Van Hydraulics | | |
| Vintage Tech | \$ | 6,555.92 |
| Waste Management | \$ | 9,822.60 |
| Water Revenue Bureau | | 524.42 |
| William C. Miller, Trustee | \$ | 4,322.50 |
| Wright Express | | |
| Yard Specialists | | |
| Zwicky | \$ | 1,849.47 |
| <hr/> | | |
| River Drive | | |
| Safety Kleen | | |
| Service Caster Corp | \$ | 309.20 |
| SLC Nationwide | | |
| Stauffer Glove | | |
| STS Trucking | | |
| Volvo | | |
| Vintage Tech | | |
| Water Revenue Bureau | | |
| Wells Fargo debit from BBT account | | |
| Delaware Avenue, LLC (April-July) | \$ | 150,208.40 |
| Total | \$ | 767,900.16 |

Exhibit B

Patent License

See attached.

PATENT LICENSE AGREEMENT

THIS PATENT LICENSE AGREEMENT (this "PLA") is made and entered into as of August 1, 2017 (the "Effective Date") by and between Appliance Recycling Centers of America, Inc. ("Licensor"), a Minnesota corporation with a principal place of business in Minneapolis, Minnesota, and Reclaim PA, LLC ("Licensee"), a Delaware limited liability company with a principal place of business in Atlanta, Georgia. Licensor and Licensee are referred to herein collectively as the "Parties" and each individually as a "Party".

RECITALS

WHEREAS, Licensor owns U.S. Patent No. 8,931,289, entitled "Refrigerant Recycling System," which is related to systems and methods of recovering or evacuating refrigerants or other fluids from an appliance.

WHEREAS, Licensee and ARCA Advanced Processing, LLC, a Minnesota limited liability company ("AAP"), are parties to that certain Asset Purchase Agreement, dated as of the date hereof (the "APA"), pursuant to which Licensee purchased certain assets from AAP.

WHEREAS, Licensor was previously a 50% joint venture partner in AAP and relied upon AAP to conduct certain recycling operations on its behalf.

WHEREAS, to assist Licensee with continued recycling operations associated with the purchased assets, Licensee desires to obtain, and Licensor is willing to grant, a license under the above-referenced patent upon the terms and conditions of this PLA.

TERMS AND CONDITIONS

NOW THEREFORE, for and in consideration of the premises, representations, warranties, covenants, and the mutual agreements set forth herein and for other good and valuable consideration, the Parties hereby agree as follows:

1. Definitions. In addition to other terms defined elsewhere in this PLA, the following terms shall have the following meanings:

1.1 "Affiliate(s)" means, with respect to any person or entity, any other person or entity which, at the time of determination, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such person or entity. For purposes of this Agreement, "control", "controlled by", "under common control with" and "controlling" means, as to any person or entity, the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 "Licensed Patent" means U.S. Patent No. 8,931,289, entitled "Refrigerant Recycling System," issued January 13, 2015 and any and all continuations, divisionals, continuation-in-parts, re-examinations, and reissues related to U.S. Patent No. 8,931,289.

1.3 "Territory" means the facility located at 4301 North Delaware Avenue, Philadelphia, PA or any successor facility within 15 miles where Licensee conducts the business, but in any case, only one facility of recovering or extracting refrigerants or fluids from appliances using the assets acquired pursuant to the APA.

2. License Grant. Subject to the terms and conditions of this PLA and limited to the Territory, Licensor hereby grants to Licensee a non-exclusive, irrevocable, fully paid-up license to the Licensed Patent. The foregoing license granted to Licensee does not include the right to grant sublicenses to its Affiliates without written authorization from ARCA which will not be unreasonably withheld.

3. Miscellaneous and General.

3.1 Representations and Warranties. Licensor represents and warrants that it owns all rights, title, and interest in and to the Licensed Patent and that the individual signing on its behalf has complete authority to enter into this PLA and grant the rights granted herein.

3.2 Interpretation. The Parties are equally responsible for the negotiation and preparation of this PLA, and in any judicial proceeding the terms hereof shall not be more strictly construed against one party than the other. The Parties have each had full and fair opportunity to consult with outside legal counsel regarding the terms herein before entering into this PLA.

3.3 Governing Law. This PLA and all amendments, modifications, alterations, or supplements hereto, and the rights of the Parties hereunder, shall be construed under and governed by the laws of the State of Delaware.

3.4 Entire Agreement. This PLA constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified, amended, or terminated except as herein provided or except by another agreement in writing executed by the parties hereto.

3.5 Severability. In the event any provision of this PLA, or the application of such provision, is found to be contrary to law, the remaining provisions shall remain in full force and effect.

3.6 Counterparts. This PLA may be executed in one or more counterparts, each of which shall constitute one and the same document. This PLA may be executed by facsimile or scanned PDF signatures and such signatures shall be deemed to bind each Party as if they were original signatures.

3.7 Assignment. This PLA will be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. Licensor expressly acknowledges and agrees that any assignment or license of the Licensed Patent shall be subject to the terms and conditions of this PLA. The PLA is assignable by Licensee to an Affiliate of Licensee or an acquirer of Licensee or any portion of Licensee's business to which this PLA is relevant with the written authorization from ARCA which will not be unreasonably withheld.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this PLA to be executed in duplicate originals by these duly authorized representatives.

**Appliance Recycling Centers
of America, Inc.**

By: _____
Title: CEO
Date: 8/14/17

Recelim PA, LLC

By: _____
Title: Manager
Date: 8/14/2017

PATENT LICENSE AGREEMENT

THIS PATENT LICENSE AGREEMENT (this "PLA") is made and entered into as of August 14, 2017 (the "Effective Date") by and between Appliance Recycling Centers of America, Inc. ("Licensor"), a Minnesota corporation with a principal place of business in Minneapolis, Minnesota, and Reclim PA, LLC ("Licensee"), a Delaware limited liability company with a principal place of business in Atlanta, Georgia. Licensor and Licensee are referred to herein collectively as the "Parties" and each individually as a "Party".

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WHEREAS, to assist Licensee with continued recycling operations associated with the purchased assets, Licensee desires to obtain, and Licensor is willing to grant, a license under the above-referenced patent upon the terms and conditions of this PLA.

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1.2 "Licensed Patent" means U.S. Patent No. 8,931,289, entitled "Refrigerant Recycling System," issued January 13, 2015 and any and all continuations, divisionals, continuation-in-parts, re-examinations, and reissues related to U.S. Patent No. 8,931,289.

1.3 "Territory" means the facility located at 4301 North Delaware Avenue, Philadelphia, PA or any successor facility within 15 miles where Licensee conducts the business, but in any case, only one facility of recovering or extracting refrigerants or fluids from appliances using the assets acquired pursuant to the APA.

2. License Grant. Subject to the terms and conditions of this PLA and limited to the Territory, Licensor hereby grants to Licensee a non-exclusive, irrevocable, fully paid-up license to the Licensed Patent. The foregoing license granted to Licensee does not include the right to grant sublicenses to its Affiliates without written authorization from ARCA which will not be unreasonably withheld.

3. Miscellaneous and General.

3.1 Representations and Warranties. Licensor represents and warrants that it owns all rights, title, and interest in and to the Licensed Patent and that the individual signing on its behalf has complete authority to enter into this PLA and grant the rights granted herein.

3.2 Interpretation. The Parties are equally responsible for the negotiation and preparation of this PLA, and in any judicial proceeding the terms hereof shall not be more strictly construed against one party than the other. The Parties have each had full and fair opportunity to consult with outside legal counsel regarding the terms herein before entering into this PLA.

3.3 Governing Law. This PLA and all amendments, modifications, alterations, or supplements hereto, and the rights of the Parties hereunder, shall be construed under and governed by the laws of the State of Delaware.

3.4 Entire Agreement. This PLA constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified, amended, or terminated except as herein provided or except by another agreement in writing executed by the parties hereto.

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3.6 Counterparts. This PLA may be executed in one or more counterparts, each of which shall constitute one and the same document. This PLA may be executed by facsimile or scanned PDF signatures and such signatures shall be deemed to bind each Party as if they were original signatures.

3.7 Assignment. This PLA will be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. Licensor expressly acknowledges and agrees that any assignment or license of the Licensed Patent shall be subject to the terms and conditions of this PLA. The PLA is assignable by Licensee to an Affiliate of Licensee or an acquirer of Licensee or any portion of Licensee's business to which this PLA is relevant with the written authorization from ARCA which will not be unreasonably withheld.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this PLA to be executed in duplicate originals by these duly authorized representatives.

**Appliance Recycling Centers
of America, Inc.**

By: /s/ Tony Isaac
Title: CEO
Date: 8/14/17

Recelim PA, LLC

By: /s/ J. Steve Bush
Title: Manager
Date: 8/14/2017

AGREEMENT AND PLAN OF MERGER

among

APPLIANCE RECYCLING CENTERS OF AMERICA, INC., as the PARENT

APPLIANCE RECYCLING ACQUISITION CORP., as the MERGER SUB,

GEOTRAQ INC., as the COMPANY,

the STOCKHOLDERS of GEOTRAQ INC.,

and

the STOCKHOLDERS' REPRESENTATIVE

August 18, 2017

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- Exhibit B – Form of Closing Payment Certificate
- Exhibit C – Form of Employment Agreement
- Exhibit D – Form of Promissory Note
- Exhibit E – Directors and Officers of the Surviving Corporation

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of August 18, 2017, is entered into by and among Appliance Recycling Centers of America, Inc., a Minnesota corporation (the "Parent"), Appliance Recycling Acquisition Corp., a Nevada corporation and a wholly-owned subsidiary of the Parent (the "Merger Sub"), GeoTraq Inc., a Nevada corporation (the "Company"), the undersigned stockholders of the Company (each, a "Stockholder," and, collectively, the "Stockholders"), and the Stockholders' Representative (as defined below).

RECITALS

WHEREAS, (i) the respective Boards of Directors of the Parent (including a special committee of its Board of Directors that was formed specifically to review and evaluate the Merger (as defined below)), the Merger Sub, and the Company have deemed it advisable and in the best interests of their respective stockholders that the Company be acquired by the Parent, which acquisition is to be effected by the merger of the Merger Sub with and into the Company, with the Company surviving the merger as a wholly-owned subsidiary of the Parent (the "Merger"), on the terms and subject to the conditions set forth herein, (ii) such Boards of Directors have approved this Agreement and the Merger, (iii) the Board of Directors of the Company (the "Company Board") has recommended the approval of this Agreement and the Merger by the Stockholders, and (iv) the Board of Directors of the Parent (the "Parent Board") will recommend the approval of the Series A Preferred Convertible Terms (as defined below) by the shareholders of the Parent;

WHEREAS, the Stockholders own all of the issued and outstanding Company Shares (as defined below) and, by their execution of this Agreement, hereby approve this Agreement, the Merger, and the transactions contemplated hereby by written consent in accordance with the applicable provisions of the NRS (as defined below);

WHEREAS, the parties hereto intend that the Merger shall qualify as a reorganization under the provisions of Section 368(a)(1)(A) of the Code (as defined below) and for this Agreement to constitute a "plan of reorganization" within the meaning of Treasury Regulations Section 1.368-2(g).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I:

"Acquisition Proposal" has the meaning set forth in Section 5.03(a).

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Affiliate Agreement” has the meaning set forth in Section 3.20.

“Aggregate Note Amount” means \$800,000, constituting the sum of the initial principal amounts of the Promissory Notes.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Annual Financial Statements” has the meaning set forth in Section 3.06.

“Articles of Merger” has the meaning set forth in Section 2.04.

“Audited Financials” has the meaning set forth in Section 5.13.

“Balance Sheet” has the meaning set forth in Section 3.06.

“Balance Sheet Date” has the meaning set forth in Section 3.06.

“Basket” has the meaning set forth in Section 8.04(a).

“Benefit Plan” means any pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity or other equity, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit, or other similar agreement, plan, policy, program, or arrangement, in each case whether or not reduced to writing and whether funded or unfunded, including any “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA.

“Business Day” means any day except Saturday, Sunday, or any other day on which commercial banks located in the State of Minnesota or the State of Nevada are authorized or required by Law to be closed for business.

“Cap” has the meaning set forth in Section 8.04(a).

“Cash Consideration” means an amount in cash equal to \$1,000,000.

“Certificate of Designation” means the Certificate of Designation for Series A Preferred Stock in the form attached hereto as Exhibit A.

“Closing” has the meaning set forth in Section 2.02.

“Closing Date” has the meaning set forth in Section 2.02.

“Closing Indebtedness Amount” means, as of immediately prior to the Effective Time, the aggregate amount of Indebtedness of the Company, including all accrued and unpaid interest, prepayment penalties or fees, and other unpaid fees and expenses payable in respect of such Indebtedness through the Effective Time.

“Closing Payment Certificate” means a certificate, in the form attached hereto as Exhibit B, signed by the Company and the Stockholders, dated the Closing Date, that sets forth (a) an itemized list of the Closing Indebtedness Amount or, if none, a statement to that effect, (b) the amount of Company Transaction Expenses remaining unpaid as of immediately prior to the Effective Time or, if none, a statement to that effect, and (c) the number of issued and outstanding Company Shares held by each Stockholder, together with each Stockholder’s Pro Rata Share of the Merger Consideration (as a percentage interest) and the Parent Preferred Shares, the respective amounts of the Earnest Money Deposit Amount paid the Stockholders prior to the date hereof, and the respective initial principal amounts payable to the Stockholders under the Promissory Notes, which initial principal amounts in the aggregate will not exceed the Aggregate Note Amount. The Parent will be entitled to rely conclusively on the amounts and other information set forth in the Closing Payment Certificate.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor law, and regulations issued by the Internal Revenue Service pursuant thereto.

“Commission” means the United States Securities and Exchange Commission.

“Company” has the meaning set forth in the preamble to this Agreement.

“Company Board” has the meaning set forth in the recitals to this Agreement.

“Company Business Plan” has the meaning set forth in Section 5.14.

“Company Common Stock” means the common stock, par value \$0.0001 per share, of the Company.

“Company Intellectual Property” means all Intellectual Property that is owned or held for use by the Company.

“Company IP Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions, and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary, or otherwise bound.

“Company IP Registrations” means all Company Intellectual Property that is subject to any issuance registration, application, or other filing by, to, or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents, and pending applications for any of the foregoing.

“Company Material Adverse Effect” means any event, occurrence, fact, condition, or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), or assets of the Company or (b) the ability of the Company or any Stockholder to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Company Material Adverse Effect” shall not include any event, occurrence, fact, condition, or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities, or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 3.05 and Section 5.08; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency, or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition, or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Company Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition, or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

“Company Shares” means shares of Company Common Stock.

“Company Transaction Expenses” means all (a) costs, fees, and expenses incurred (whether or not invoiced or accrued) by the Company in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of advisors and consultants (including investment bankers, brokers, lawyers, and accountants) arising out of, relating to, or incidental to the discussion, evaluation, negotiation, and documentation of the transactions contemplated hereby; (b) transactional bonuses that become due as a result of the Merger and are actually paid or accrued by virtue of obligations created by the Company prior to the Closing Date; and (c) severance payments that become due as a result of the Merger and are actually paid or accrued by virtue of obligations created by the Company prior to the Closing Date.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures, and all other agreements, commitments, and legally binding arrangements, whether written or oral.

“D&O Indemnified Party” has the meaning set forth in Section 5.09(a).

“D&O Indemnifying Parties” has the meaning set forth in Section 5.09(b).

“D&O Tail Policy” has the meaning set forth in Section 5.09(c).

“Direct Claim” has the meaning set forth in Section 8.05(c).

“Disclosure Schedules” means the Disclosure Schedules delivered by the Company concurrently with the execution and delivery of this Agreement.

“Dollars” or “\$” means the lawful currency of the United States of America.

“Earnest Money Deposit Amount” has the meaning set forth in Section 2.08(d).

“Effective Time” has the meaning set forth in Section 2.04.

“Employment Agreement” means the Employment Agreement between the Company and Gregg Sullivan, in the form attached hereto as Exhibit C.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“Financial Statements” has the meaning set forth in Section 3.06.

“GAAP” means United States generally accepted accounting principles in effect from time to time, consistently applied.

“Government Contracts” has the meaning set forth in Section 3.09(a)(viii).

“Governmental Authority” means any federal, state, local, or foreign government or political subdivision thereof, any agency or instrumentality of such government or political subdivision, any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“Indebtedness” means, without duplication and with respect to the Company, (a) all indebtedness for borrowed money, (b) all obligations for the deferred purchase price of property or services, (c) all obligations evidenced by notes, bonds, debentures, or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, under acceptance, letter of credit, or similar facilities, (g) all obligations under any interest rate, currency swap, or other hedging agreement or arrangement, (h) all obligations in the nature of guarantees made by the Company on behalf of any third party in respect of the obligations described in clauses (a) through (g), above, and (i) any unpaid interest or prepayment, exit, or rescheduling or other penalties, premiums, costs, and/or fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (h).

“Indemnified Party” has the meaning set forth in Section 8.05.

“Indemnifying Party” has the meaning set forth in Section 8.05.

“Independent Accountant” has the meaning set forth in Section 6.04(b).

“Insurance Policies” has the meaning set forth in Section 3.13.

“Intellectual Property” means all intellectual property and industrial property rights and assets, and all rights, interests, and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights, and other similar designations of source, sponsorship, association, or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications, and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights, author, performer, moral, and neighboring rights, and all registrations, applications for registration, and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models); (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases, and other related specifications and documentation; and (g) semiconductor chips and mask works.

“Interim Balance Sheet” has the meaning set forth in Section 3.06.

“Interim Balance Sheet Date” has the meaning set forth in Section 3.06.

“Interim Financial Statements” has the meaning set forth in Section 3.06.

“Knowledge” means, when used with respect to the Company, the actual or constructive knowledge of any Stockholder or any director, officer, or manager of any Stockholder or the Company, after due inquiry.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any Governmental Authority.

“Liabilities” has the meaning set forth in Section 3.07.

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“Material Contracts” has the meaning set forth in Section 3.09(a).

“Merger” has the meaning set forth in the recitals to this Agreement.

“Merger Consideration” has the meaning set forth in Section 2.08(a).

“Merger Sub” has the meaning set forth in the preamble to this Agreement.

“NRS” shall mean the Nevada Revised Statutes, as amended.

“Organizational Documents” means (a) in the case of a Person that is a corporation, its articles or certificate of incorporation and its by-laws, regulations, or similar governing instruments required by the laws of its jurisdiction of formation or organization; (b) in the case of a Person that is a partnership, its articles or certificate of partnership, formation, or association and its partnership agreement (in each case, limited, limited liability, general, or otherwise); (c) in the case of a Person that is a limited liability company, its articles or certificate of formation or organization and its limited liability company agreement or operating agreement; and (d) in the case of a Person that is none of a corporation, partnership (limited, limited liability, general, or otherwise), limited liability company, or natural person, its governing instruments as required or contemplated by the laws of its jurisdiction of organization.

“Parent” has the meaning set forth in the preamble to this Agreement.

“Parent Adverse Recommendation Change” has the meaning set forth in Section 5.17(a).

“Parent Board” has the meaning set forth in the recitals to this Agreement.

“Parent Board Recommendation” has the meaning set forth in Section 5.17(a).

“Parent Common Stock” means the common stock, no par value, of the Parent.

“Parent Material Adverse Effect” means any event, occurrence, fact, condition, or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), or assets of the Parent or (b) the ability of the Parent to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Parent Material Adverse Effect” shall not include any event, occurrence, fact, condition, or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Parent operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities, or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 4.02 and Section 5.08; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency, or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition, or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Parent Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition, or change has a disproportionate effect on the Parent compared to other participants in the industries in which the Parent conducts its businesses.

“Parent Indemnitees” has the meaning set forth in Section 8.02.

“Parent Preferred Shares” has the meaning set forth in Section 2.08(a).

“Parent Preferred Stock” means the preferred stock of the Parent.

“Parent Proxy Statement” means, collectively, the letter to the shareholders, notice of meeting, proxy statement, and forms of proxy, to be filed with the SEC and transmitted to the shareholders of the Parent in connection with the Parent Shareholders Meeting.

“Parent SEC Reports” has the meaning set forth in Section 4.07(b).

“Parent Shareholders Meeting” means an annual meeting of the shareholders of the Parent, one of which items thereat will be to consider the approval of the Series A Preferred Convertible Terms.

“Permits” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” has the meaning set forth in Section 3.10(a).

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Post-Closing Taxes” means Taxes of the Company for any Post-Closing Tax Period.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Pre-Closing Taxes” means Taxes of the Company for any Pre-Closing Tax Period.

“Promissory Notes” means, collectively, the Promissory Notes, substantially in the form of the Promissory Note attached hereto as Exhibit D, each to be executed by the Parent at Closing and delivered to the Stockholders.

“Pro Rata Share” means, with respect to any Stockholder, such Stockholder’s ownership interest in the Company as of immediately prior to the Effective Time, determined by dividing (a) the number of Company Shares owned of record by such Stockholder as of immediately prior to the Effective time, by (b) the aggregate number of Company Shares issued and outstanding immediately prior to the Effective Time.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate into or through the environment (including ambient air, surface water, groundwater, land surface, or subsurface strata or within any building, structure, facility, or fixture).

“Representative” means, with respect to any Person, any and all directors, managing members, managers, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of such Person.

“Required Parent Shareholder Approval” means the approval of the shareholders of the Parent required by applicable Law or stock exchange requirements of the Series A Preferred Convertible Terms.

“Restricted Business” means any business that would be directly or indirectly competitive with the Company as of the Closing Date.

“Restricted Period” has the meaning set forth in Section 5.07(a).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“Series A Preferred Convertible Terms” means the terms set forth in the Certificate of Designation, pursuant to which, subject to the approval by the shareholders of the Parent of the Series A Preferred Convertible Terms, the shares of Series A Preferred Stock are convertible into shares of Parent Common Stock.

“Series A Preferred Stock” means the Parent Preferred Stock designated as “Series A Convertible Preferred Stock” and having the rights, preferences, and privileges set forth in the Certificate of Designation.

“Stockholder” and “Stockholders” have the respective meanings set forth in the preamble to this Agreement.

“Stockholder Indemnitees” has the meaning set forth in Section 8.03.

“Stockholders’ Representative” means Gregg Sullivan.

“Straddle Period” has the meaning set forth in Section 6.05.

“Surviving Corporation” has the meaning set forth in Section 2.01.

“Taxes” means all national or multinational, federal, state, local, foreign, and other income, corporation, capital gains, excise, gross receipts, ad valorem, sales and use, goods and services, harmonized sales, use, employment, franchise, profits, gains, property (real or personal), transfer, payroll, social security contributions, Medicare, Medicaid, license, severance, occupation, premium, windfall profits, environmental, capital stock, withholding, unemployment, disability, registration, value added, estimated, alternative or add on minimum, intangibles, and other taxes, fees, tariffs, stamp taxes, duties (including any customs duties, tariffs, fees and processing charges), charges, levies, or assessments of any kind whatsoever (whether payable directly or by withholding), whether disputed or not, together with any interest and any penalties, fines, additions to tax, or additional amounts imposed by any Governmental Authority with respect thereto, whether disputed or not, and any liability for the payment of any amounts of the type described above as a result of being a member of an affiliated, consolidated, combined, or unitary group for any period, as a result of a tax sharing, tax allocation, or tax indemnification contract, or as a result of being liable for another Person’s taxes, as a transferee or successor, by contract or otherwise.

“Taxing Authority” means the United States Internal Revenue Service and any other Governmental Authority responsible for the administration of any Tax.

“Tax Return” means any return, declaration, report, claim for refund, declaration of estimated Tax, information return or statement, or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, and including, where permitted or required, combined, consolidated, or unitary returns for any group of entities that includes the Company or any of its Affiliates.

“Territory” means each state and territory of the United States of America.

“Third-party Claim” has the meaning set forth in Section 8.05(a).

ARTICLE II THE MERGER

Section 2.01 The Merger. On the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the NRS, at the Effective Time, (a) the Merger Sub shall merge with and into the Company and (b) the separate corporate existence of the Merger Sub shall cease and the Company shall continue its corporate existence under Nevada law as the surviving corporation in the Merger (sometimes referred to herein as the “Surviving Corporation”) and as a wholly-owned subsidiary of the Parent. The Merger shall have the effects set forth in the applicable provisions of the NRS.

Section 2.02 Closing. Subject to the conditions of this Agreement, the closing of the Merger (the “Closing”) shall occur by electronic exchange of documents on the date hereof (the “Closing Date”) and shall be effective after the last of the conditions to Closing set forth in ARTICLE VII have been satisfied or waived.

Section 2.03 Closing Deliverables.

- (a) At or prior to the Closing, the Company shall deliver to the Parent the following:
 - (i) the Employment Agreement duly executed by the Company and Gregg Sullivan;

- (ii) [intentionally omitted];
 - (iii) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in Section 7.01(a) and Section 7.01(b) has been satisfied;
 - (iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that (A) attached thereto are true and complete copies of all resolutions adopted by the Company Board authorizing the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby;
 - (v) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder;
 - (vi) a good standing certificate (or its equivalent) for the Company from the Secretary of State of the State of Nevada;
 - (vii) at least one Business Day prior to the Closing Date, the Closing Payment Certificate;
 - (viii) a certificate from the Company, dated as of the Closing Date, certifying to the effect that no interest in the Company is a U.S. real property interest (such certificate in the form required by Treasury Regulation Section 1.897-2(h) and 1.1445-3(c)); and
 - (ix) such other documents or instruments as the Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.
- (b) At the Closing, the Parent shall deliver:
- (i) to each Stockholder (and subject to Section 2.09(b)):
 - (A) his or it respective Promissory Note; and
 - (B) stock certificates representing such Stockholder's Pro Rata Share of Parent Preferred Shares issuable pursuant Section 2.08(a) and in accordance with the Closing Payment Certificate.
 - (ii) [intentionally omitted].
 - (iii) to the Company:

(A) a certificate, dated the Closing Date and signed by a duly authorized officer of the Parent, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) has been satisfied;

(B) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Parent and the Merger Sub certifying that attached thereto are true and complete copies of all resolutions adopted by the Parent Board and the Board of Directors of the Merger Sub authorizing the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby;

(C) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Parent and the Merger Sub certifying the names and signatures of the officers of the Parent and the Merger Sub authorized to sign this Agreement and the other documents to be delivered hereunder; and

(D) such other documents or instruments as the Company reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 2.04 Effective Time. Subject to the provisions of this Agreement, on the Closing Date, the Company, the Parent, and the Merger Sub shall cause Articles of Merger (the "Articles of Merger") to be executed and filed with the Secretary of State of the State of Nevada in accordance with Section 92A.200 of the NRS and shall make all other filings or recordings required by the NRS in connection with the Merger. The Merger shall become effective at such time as the Articles of Merger have been duly filed with the Secretary of State of the State of Nevada in accordance with the NRS or at such later date or time as may be agreed by the Company and the Parent in writing and specified in the Articles of Merger in accordance with the NRS (the effective time of the Merger being hereinafter referred to as the "Effective Time").

Section 2.05 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the NRS. Without limiting the generality of the foregoing, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses, and authority of the Company and the Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, and duties of each of the Company and the Merger Sub shall become the debts, liabilities, obligations, restrictions, and duties of the Surviving Corporation.

Section 2.06 Articles of Incorporation; Bylaws. At the Effective Time, (a) the Articles of Incorporation of the Merger Sub as in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by applicable Law and (b) the Bylaws of the Merger Sub as in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with the terms thereof, the Articles of Incorporation of the Surviving Corporation, or as provided by applicable Law; *provided, however*, in each case, that the name of the corporation set forth therein shall be changed to the name of the Company.

Section 2.07 Directors and Officers. From and after the Effective Time, the directors and officers of the Surviving Corporation shall be as set forth on Exhibit E hereto until their respective successors have been duly elected or appointed and qualified or until their respective earlier death, resignation, or removal in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation.

Section 2.08 Effect of the Merger on Capital Stock of the Company and the Merger Sub; Earnest Money Deposit. At the Effective Time, as a result of the Merger and without any action on the part of the Parent, the Merger Sub, the Company, or any Stockholder:

(a) *Conversion of Company Shares.* Each Company Share issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive a proportionate share of the Merger Consideration. For purposes of this Agreement, “Merger Consideration” means the sum of the following: (i) the Earnest Money Deposit Amount, *plus* (ii) the Aggregate Note Amount, *plus* (iii) 288,588 shares of the Series A Preferred Stock (the “Parent Preferred Shares”). No fractional Series A Preferred Stock shall be issued as a result of the Merger. If any fractional Series A Preferred Stock would otherwise result from the Merger, the number of securities required to be issued to the applicable Stockholder shall be rounded to the nearest whole number of Parent Preferred Shares.

(b) *Conversion of Merger Sub Capital Stock.* Each share of common stock, par value \$0.001 per share, of the Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid, and non-assessable share of common stock of the Surviving Corporation.

(c) *Treasury Stock.* Any Company Shares held by the Company as treasury shares or by the Parent immediately prior to the Effective Time shall automatically be canceled and cease to exist as of the Effective Time and no consideration shall be delivered or deliverable therefor.

(d) *Earnest Money Deposit.* The parties hereto acknowledge and agree that, prior to the execution of this Agreement, the Parent delivered to the Stockholders the aggregate amount of \$200,000 in cash (the “Earnest Money Deposit Amount”) by wire transfer of immediately available funds or by certified check. At the Closing, the Earnest Money Deposit Amount shall be retained by the Stockholders as a portion of their Merger Consideration.

Section 2.09 Surrender and Payment.

(a) At the Effective Time, all Company Shares outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist and each Stockholder (and any other holder of a certificate formerly representing any Company Shares) shall cease to have any rights as a stockholder of the Company.

(b) The Parent shall, no later than the later of (i) the Closing Date or (ii) three Business Days after receipt from a Stockholder of a stock certificate or certificates representing such Stockholder’s Company Shares, together with any other customary documents that the Parent may reasonably require in connection therewith, pay to such Stockholder such Stockholder’s Pro Rata Share of the Merger Consideration not previously paid to such stockholder and such stock certificate(s) shall forthwith be cancelled. No interest shall be paid or shall accrue on any Merger Consideration payable upon surrender of any stock certificate representing Company Shares. Until so surrendered, each outstanding stock certificate that prior to the Effective Time represented Company Shares shall be deemed from and after the Effective Time, for all purposes, to evidence the right to receive the portion of the Merger Consideration as provided in Section 2.08(a).

Section 2.10 No Further Ownership Rights in Company Shares. All Merger Consideration paid or payable upon the surrender of stock certificates formerly representing Company Shares in accordance with the terms hereof shall be deemed to have been paid or payable in full satisfaction of all rights pertaining to the Company Shares formerly represented by such stock certificates, and from and after the Effective Time, there shall be no further registration of transfers of Company Shares on the stock transfer books of the Surviving Corporation.

Section 2.11 Adjustments. Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur, including by reason of any reclassification, recapitalization, stock split (including reverse stock split), or combination, exchange, or readjustment of shares, or any stock dividend or distribution paid in stock, the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to reflect such change.

Section 2.12 Withholding Rights. The Parent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this [Article II](#) such amounts as may be required to be deducted and withheld with respect to the making of such payment under any provision of Tax Law. To the extent that amounts are so deducted and withheld by the Parent, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom the Parent made such deduction and withholding.

Section 2.13 Tax-Free Merger. The parties hereto intend that the Merger will be treated as a tax-free reorganization under Section 368 of the Code.

Section 2.14 Waiver of Dissenters' Rights. Each Stockholder hereby waives any rights of dissent or other similar rights that such Stockholder may have as a result of, or otherwise in connection with, the Merger or any of the other transactions contemplated by this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE STOCKHOLDERS

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules that relates to such Section or in another Section of the Disclosure Schedules to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such Section, the Company and the Stockholders, jointly and severally (except in respect of [Section 3.01](#) and [Section 3.22](#), which representations and warranties are made by each of the Stockholders, severally and not jointly, as to itself or himself and not by the Company), represent and warrant to the Parent and the Merger Sub that the statements contained in this [ARTICLE III](#) are true and correct as of the date hereof.

Section 3.01 Authority of the Stockholders; No Conflicts or Consents in Respect of the Stockholders.

(a) Each Stockholder has full capacity, power, and authority to enter into this Agreement and to carry out his or its obligations hereunder. This Agreement has been duly executed and delivered by each Stockholder and (assuming due authorization, execution, and delivery by each other party hereto) this Agreement constitutes a legal, valid, and binding obligation of each Stockholder enforceable against such Stockholder in accordance with its terms.

(b) The execution, delivery, and performance by each Stockholder of this Agreement and the consummation of the transactions contemplated hereby, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of any Seller; (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Stockholder; or (iii) require the consent of, notice to, or other action by, any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, any Contract to which any Stockholder is a party or by which any Stockholder is bound or to which any of its or his properties and assets are subject. No consent, approval, Permit, Governmental Order, declaration, or filing with, or notice to, any Governmental Authority is required by or with respect to any Stockholder in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 3.02 Organization and Qualification of the Company; Authority of the Stockholders.

(a) The Company is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Nevada and has full corporate power and authority to own, operate, or lease the properties and assets now owned, operated, or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02(a) of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified, or in good standing would not have a Company Material Adverse Effect.

(b) The Company has full corporate power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery, and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby. The affirmative vote or consent of the Stockholders representing a majority of the outstanding Company Shares is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve this Agreement and the Merger. This Agreement has been duly executed and delivered by the Company and (assuming due authorization, execution, and delivery by each other party hereto) this Agreement constitutes a legal, valid, and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, and other similar laws affecting creditors' rights generally and by general principles of equity.

(c) The Company Board, by resolutions duly adopted by unanimous written consent, has (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, in accordance with the applicable provisions of the NRS, (iii) directed that this Agreement and the Merger be submitted to the Stockholders for their approval, and (iv) recommended that the Stockholders approve this Agreement and the Merger.

Section 3.03 Capitalization.

(a) The authorized capital stock of the Company consists of 75,000 Company Shares, of which 100 Company Shares are issued and outstanding. All of the issued and outstanding Company Shares are (i) duly authorized, are validly issued, fully paid, and non-assessable; (ii) not subject to any preemptive rights created by statute, the Organizational Documents of the Company, or any agreement to which the Company or any Stockholder is a party; (iii) free and clear of any Encumbrances; and (iv) owned of record and beneficially by the Stockholders in the respective amounts set forth in Section 3.03(a) of the Disclosure Schedules.

(b) All of the issued and outstanding Company Shares were issued in compliance with applicable Laws. The issued and outstanding Company Shares were not issued in violation of the Organizational Documents of the Company or any other agreement, arrangement, or commitment to which any Stockholder or the Company is a party.

(c) No subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding. There is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company, or to grant, any warrant, option, convertible or exchangeable security, or other such right. There are no declared or accrued unpaid dividends with respect to any Company Shares. There are no voting trusts, stockholder agreements, proxies, or other agreements or understandings in effect with respect to the voting or transfer of any of the Company Shares. No outstanding Company Shares are subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation, or other similar rights with respect to the Company or any of its securities.

(d) All distributions, dividends, repurchases, and redemptions of the capital stock (or other equity interests) of the Company were undertaken in compliance with the Organizational Documents of the Company then in effect, any agreement to which the Company then was a party, and in compliance with applicable Law.

(e) There are no shares of treasury stock held by the Company.

Section 3.04 No Subsidiaries. The Company does not own, have any interest in any shares of, or have an ownership interest in, any other Person.

Section 3.05 No Conflicts or Consents in Respect of the Company. The execution, delivery, and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company; (c) require the consent of, notice to, or other action by, any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, any Contract to which the Company is a party or by which the Company is bound or to which any its properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company in connection with the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, except for the filing of the Articles of Merger with the Secretary of State of the State of Nevada.

Section 3.06 Financial Statements.

(a) Complete copies of the Company's unaudited financial statements consisting of the balance sheet of the Company as at December 31, 2016 and the related statements of income and retained earnings, stockholders' equity, and cash flow for the year then ended (the "Annual Financial Statements"), and unaudited financial statements consisting of the balance sheet of the Company as at June 30, 2017 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three- and six-month periods then ended (the "Interim Financial Statements," and, together with the Annual Financial Statements, the "Financial Statements") have been delivered to the Parent. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and, in the case of all of the Financial Statements, the absence of notes. The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2016 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date" and the balance sheet of the Company as of June 30, 2017 is referred to herein as the "Interim Balance Sheet" and the date thereof as the "Interim Balance Sheet Date." The Company maintains a standard system of accounting established and administered in accordance with GAAP. There are no off balance sheet transactions, arrangements, or obligations of or involving the Company.

(b) The Company makes and keeps accurate financial books and records reflecting its assets and maintains commercially reasonable internal accounting controls that provide reasonable assurance that (a) transactions are executed with management's authorization; (b) transactions are recorded as necessary to permit preparation of the financial statements of the Company and to maintain accountability for the Company's assets; (c) access to the assets of the Company is permitted only in accordance with management's authorization; (d) the reported accountability of the assets of the Company is compared with existing assets at reasonable intervals; and (e) accounts are recorded accurately in all material respects and commercially reasonable procedures are implemented to effect the collection thereof on a current and timely basis. There are no significant deficiencies or material weaknesses in either the design or operation of internal controls of the Company that are reasonably likely to adversely affect the ability of the Company to record, process, summarize, and report financial information in a materially accurate manner.

(c) The financial books and records of the Company are sufficient such that the Financial Statements can be audited without a scope limitation, by an independent certified public accounting firm that is registered under the Public Company Accounting Oversight Board, which audited Financial Statements can be included in the Current Report on Form 8-K of the Parent to be filed after the Closing that describes the transactions herein and thereafter can be consolidated into the Parent's periodic reports to be filed under the Exchange Act.

Section 3.07 Undisclosed Liabilities. The Company has no liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise ("Liabilities"), except (a) those that are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date and (b) those that have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date and that are not, individually or in the aggregate, material in amount.

Section 3.08 Absence of Certain Changes, Events, and Conditions. Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any:

(a) event, occurrence, or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

- (b) amendment of the Organizational Documents of the Company;
- (c) split, combination, or reclassification of any shares of its capital stock;
- (d) issuance, sale, or other disposition of, or creation of any Encumbrance on, any shares of its capital stock, or grant of any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any shares of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any shares of its capital stock or redemption, purchase, or acquisition of any shares of its capital stock;
- (f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) entry into any Contract that would constitute a Material Contract;
- (h) incurrence, assumption, or guarantee of any Indebtedness except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (i) transfer, assignment, sale, or other disposition of any of the assets shown or reflected in the Interim Balance Sheet or cancellation of any debts or entitlements;
- (j) transfer, assignment, or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;
- (k) material damage, destruction, or loss (whether or not covered by insurance) to its property;
- (l) any capital investment in, or any loan to, any other Person;
- (m) acceleration, termination, or cancellation of, or material modification to, any material Contract (including any Material Contract) to which the Company is a party or by which it is bound;
- (n) any material capital expenditures;
- (o) imposition of any Encumbrance upon any of the Company's properties, capital stock, or assets, tangible or intangible;
- (p) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension, or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors, or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$10,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor, or consultant;

- (q) hiring or promoting any person as or to an officer or any key employee below officer except to fill a vacancy in the ordinary course of business;
- (r) adoption, modification, or termination of any: (i) employment, severance, retention, or other agreement with any current or former employee, officer, director, independent contractor, or consultant, (ii) Benefit Plan, or (iii) collective bargaining agreement, in each case whether written or oral;
- (s) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers, and employees;
- (t) entry into a new line of business or abandonment or discontinuance of existing lines of business;
- (u) except for the Merger, adoption of any plan of merger, consolidation, reorganization, liquidation, or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (v) purchase, lease, or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$10,000, individually (in the case of a lease, per annum) or \$25,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term);
- (w) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets, stock, or other equity of, or by any other manner, any business or any Person or any division thereof;
- (x) action by the Company to make, change, or rescind any Tax election, amend any Tax Return, or take any position on any Tax Return, take any action, omit to take any action, or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of the Parent in respect of any Post-Closing Tax Period; or
- (y) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.09 Material Contracts.

- (a) Section 3.09(a) of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with all Company IP Agreements required to be set forth in Section 3.12(b) of the Disclosure Schedules, being “Material Contracts”):

- (i) each Contract of the Company involving aggregate consideration in excess of \$10,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than 90 days' notice;
- (ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;
- (iii) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax, environmental, or other Liability of any Person;
- (iv) all Contracts that relate to the acquisition or disposition of any business, equity, or assets of any other Person (whether by merger, sale of stock, or other equity interests, sale of assets, or otherwise);
- (v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing, consulting, and advertising Contracts to which the Company is a party;
- (vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and that are not cancellable without material penalty or without more than 90 days' notice;
- (vii) all Contracts relating to Indebtedness of the Company;
- (viii) all Contracts with any Governmental Authority to which the Company is a party ("Government Contracts");
- (ix) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (x) any Contract to which the Company is a party that provides for any joint venture, partnership, or similar arrangement by the Company;
- (xi) all Contracts between or among the Company, on the one hand, and any Stockholder or any Affiliate of any Stockholder, on the other hand;
- (xii) all collective bargaining agreements to which the Company is a party; and
- (xiii) any other Contract that is material to the Company and not previously required to be disclosed pursuant to this Section 3.09(a).

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments, and supplements thereto and waivers thereunder) have been made available to the Parent.

Section 3.10 Title to Assets; No Real Property.

(a) The Company has good and valid title to all personal property and other assets reflected in the Interim Financial Statements or acquired after the Interim Balance Sheet Date. All such properties and assets are free and clear of Encumbrances except for liens for Taxes not yet due and payable and for which adequate reserves have been set aside by the Company ("Permitted Encumbrances");

(b) The Company does not own or lease any real property.

Section 3.11 Condition and Sufficiency of Assets. The items of tangible personal property of the Company are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The items of tangible personal property currently owned or leased by the Company, together with all other properties and assets of the Company, are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, properties, and assets necessary to conduct the business of the Company as currently conducted.

Section 3.12 Intellectual Property.

(a) Section 3.12(a) of the Disclosure Schedules lists all (i) Company IP Registrations and (ii) Company Intellectual Property (including software) that is not registered but that is material to the Company's business or operations. All required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. The Company has provided the Parent with true and complete copies of file histories, documents, certificates, office actions, correspondence, and other materials related to all Company IP Registrations.

(b) Section 3.12(b) of the Disclosure Schedules lists all Company IP Agreements. The Company has provided the Parent with true and complete copies of all such Company IP Agreements, including all modifications, amendments, and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Company IP Agreement.

(c) The Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Company's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances. Without limiting the generality of the foregoing, the Company has entered into binding, written agreements with every current and former employee of the Company, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to the Company any ownership interest and right they may have in the Company Intellectual Property and (ii) acknowledge the Company's exclusive ownership of all Company Intellectual Property. The Company has provided the Parent with true and complete copies of all such agreements.

(d) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of, or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's right to own, use, or hold for use any Intellectual Property as owned, used, or held for use in the conduct of the Company's business or operations as currently conducted.

(e) The Company's rights in the Company Intellectual Property are valid, subsisting, and enforceable. The Company has taken all reasonable steps to maintain the Company Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) The conduct of the Company's business as currently and formerly conducted, and the products, processes, and services of the Company, have not infringed, misappropriated, diluted, or otherwise violated, and do not and will not infringe, dilute, misappropriate, or otherwise violate, the Intellectual Property or other rights of any Person. To the Company's Knowledge, no Person has infringed, misappropriated, diluted, or otherwise violated, or is currently infringing, misappropriating, diluting, or otherwise violating, any Company Intellectual Property.

(g) There are no Actions (including any oppositions, interferences, or re-examinations) settled, pending, or, to the Company's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution, or violation of the Intellectual Property of any Person by the Company; (ii) challenging the validity, enforceability, registrability, or ownership of any Company Intellectual Property or the Company's rights with respect to any Company Intellectual Property; or (iii) by the Company or any other Person alleging any infringement, misappropriation, dilution, or violation by any Person of the Company Intellectual Property. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

Section 3.13 Insurance. Section 3.13 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability, and other casualty and property insurance maintained by the Company (collectively, the "Insurance Policies") and true and complete copies of such Insurance Policies have been made available to the Parent. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. The Company has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied, or disputed or in respect of which there is an outstanding reservation of rights. The Company is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

Section 3.14 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to the Company's Knowledge, threatened (a) against or by the Company affecting any of its properties or assets or (b) against or by the Company that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties, or awards against or affecting the Company or any of its properties or assets.

Section 3.15 Compliance With Laws; Permits.

(a) The Company has complied, and is now complying, with all Laws applicable to it or its business, properties, or assets.

(b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.15(b) of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any Permit set forth in Section 3.15(b) of the Disclosure Schedules.

Section 3.16 Employee Matters.

(a) All compensation, including wages, commissions, and bonuses, payable to all employees, independent contractors, or consultants of the Company for services performed have been paid in full and there are no outstanding agreements, understandings, or commitments of the Company with respect to any compensation, commissions, or bonuses. The employment of each employee of the Company is terminable at the will of the Company. Upon termination of the employment of any such employees, no severance or other payments will become due. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. The Company is not, and has not been, a party to, bound by, or negotiating, any collective bargaining agreement or other Contract with a union, works council, or labor organization.

(b) No Benefit Plan is or has been maintained or sponsored by, contributed to, or required to be contributed to, by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor, or consultant of the Company or any spouse or dependent of such individual, or under which the Company has or may have any Liability, or with respect to which the Parent or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise.

(c) Neither the execution of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor, or consultant of the Company to severance pay or any other payment or (ii) accelerate the time of payment, funding, or vesting, or increase the amount of compensation due to any such individual.

Section 3.17 Taxes.

(a) All Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete, and correct in all material respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been, or will be, timely paid or, in the case of Taxes that are not yet due and payable as of the Closing Date, accrued.

(b) The Company has withheld and paid each Tax required to have been withheld and paid (or, in circumstances where such Taxes have not yet become due and payable, have been set aside in segregated accounts to be paid to the proper Taxing Authority) in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, stockholder, or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made by any Taxing Authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(e) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before the Interim Balance Sheet Date does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) Section 3.17(f) of the Disclosure Schedules sets forth:

(i) the taxable years of the Company as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired;

(ii) those years for which examinations by the Taxing Authorities have been completed; and

(iii) those taxable years for which examinations by Taxing Authorities are presently being conducted.

(g) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any Taxing Authority have been fully paid.

(h) The Company is not a party to any Action by any Taxing Authority. There are no pending or threatened Actions by any Taxing Authority.

(i) The Company has delivered to the Parent copies of all federal, state, local, and foreign income, franchise, and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2014.

(j) There are no Encumbrances for Taxes upon the assets of the Company (other than for current Taxes not yet due and payable and for which adequate reserves have been set aside by the Company).

(k) The Company is not a party to, or bound by, any Tax indemnity, Tax-sharing, or Tax allocation agreement or any similar agreement.

(l) No private letter rulings, technical advice memoranda, or similar agreements or rulings have been requested, entered into, or issued by any Taxing Authority with respect to the Company.

(m) The Company has not been a member of an affiliated, combined, consolidated, or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local, or foreign Law), as transferee or successor, by contract or otherwise.

(n) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local, or foreign Law; or

(v) any election under Section 108(i) of the Code.

(o) No Stockholder is a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(p) The Company has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(q) The Company is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(r) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits, or similar items of the Company under Sections 269, 382, 383, 384, or 1502 of the Code and the Treasury Regulations thereunder (and comparable provisions of state, local, or foreign Law).

(s) All individuals classified by the Company as independent contractors are properly classified as such for applicable Tax purposes.

(t) The Company is not subject to, or required to register for, any value added Taxes.

(u) The Company does not have and has not had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(v) All FinCEN Forms 114, Report of Foreign Bank Accounts, and IRS Forms TD F 90-22.1, Report of Foreign Bank and Financial Accounts, required to be filed by, or on behalf of, the Company have been timely filed and all such forms were true, correct, and complete when filed.

(w) The Company has (i) filed or caused to be filed with the appropriate Governmental Authority all reports required to be filed with respect to any material unclaimed property and has remitted to the appropriate Governmental Authority all material unclaimed property required to be remitted or (ii) delivered or paid all material unclaimed property to its original or proper recipient. No material asset or property, or material amount of assets or properties, of the Company is escheatable to any Governmental Authority under any applicable Law, including uncashed checks to vendors or employees, nonrefunded over payments, credits, unused gift certificates, or unused prepaid accounts.

(x) The Company has not participated in or cooperated with an international boycott within the meaning of Section 999 of the Code and has not been requested to do so.

Section 3.18 Books and Records. The minute books and stock record books of the Company have been made available to the Parent, are complete and correct, and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the Company Board, and any committees of the Company Board, and no meeting, or action taken by written consent, of any such stockholders, Company Board, or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

Section 3.19 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any Stockholder.

Section 3.20 Affiliate Agreements. None of the Stockholders or any of their respective Affiliates or any officer, director, or equivalent of the Company or any of his or her Affiliates or any individual in such officer's, director's, or equivalent person's immediate family: (a) owns any interest in any property or assets owned, leased, or used by the Company, (b) has a material interest in any customer or supplier of the Company or any provider of products or services to the Company, or (c) is a party to any Contract or other arrangement with the Company (each, an "Affiliate Agreement"), other than salaries, expense reimbursement, and employee benefits in respect of employment in the ordinary course of business.

Section 3.21 Indebtedness. Section 3.21 of the Disclosure Schedules sets forth a true and complete list of all Indebtedness of the Company and provides (a) the name(s) of the current lender(s) and (b) the outstanding principal balance(s) and all accrued and unpaid interest as of the date hereof. As of the Closing, there will be no outstanding Indebtedness (including any pre-payment fees, exit fees, rescheduling fees, or penalties) of the Company arising from obligations created by or on behalf of the Company or any Seller prior to the Closing.

Section 3.22 Investment Representations.

(a) Each Stockholder is acquiring the Parent Preferred Shares for his or its own account for the purpose of investment only, without any view toward sale or distribution.

(b) Each Stockholder is an “accredited investor” within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

(c) Each Stockholder has such knowledge and experience in financial and business matters so as to be able to evaluate the risks and merits of its investment in the Parent and it is able financially to bear the risks thereof.

(d) Each Stockholder understands that (i) the Parent Preferred Shares have not been registered under the Securities Act or qualified under any state securities or blue sky laws by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act and the qualification requirements of the various state securities or blue sky laws and, therefore, cannot be resold unless they are registered under the Securities Act and qualified under applicable state securities laws or unless exemptions from such registration and qualification requirements are available, (ii) even if the Parent Preferred Shares are subsequently registered under the Securities Act and qualified under state securities or blue sky laws, or exemptions from such registration and qualification requirements are available, the amount or percentage of the Parent Preferred Shares that may be sold or transferred may be limited by applicable federal and state laws, rules, and regulations, and (iii) no public agency has reviewed the accuracy or adequacy of any information furnished to the Stockholders and their respective Representatives in connection with the Stockholders’ respective acquisitions of the Parent Preferred Shares. The Stockholders agree that all stock certificates representing the Parent Preferred Shares shall bear the following legend (or substantially equivalent language):

“THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THAT ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION THEREUNDER IS AVAILABLE.”

(e) Each Stockholder acknowledges that such Stockholder has had access to such financial and other information relating to the Parent, including the Parent SEC Reports and the Parent’s other annual, quarterly, and current reports, registration statements, prospectuses, proxy statements, information statements, and other documents (including exhibits and amendments) filed by the Parent with the Commission and other publicly available information regarding the Parent, required for such Stockholder to make an informed decision with respect to such Stockholder’s acquisition of the Parent Preferred Shares hereby and that such Stockholder has had an opportunity to discuss the Parent’s business, management, and financial affairs with the Parent’s management, and has had all of such Stockholder’s questions regarding the Parent or the Parent Preferred Shares answered to such Stockholder’s satisfaction. Each Stockholder acknowledges that he or it should carefully review the risk factors set forth in the Parent SEC Reports.

Section 3.23 Full Disclosure. No representation or warranty by the Company and/or the Stockholders in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to the Parent pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE PARENT AND MERGER SUB**

Except as disclosed in the Parent SEC Reports, the Parent and the Merger Sub represent and warrant to the Company and the Stockholders that the statements contained in this [ARTICLE IV](#) are true and correct as of the date hereof.

Section 4.01 Organization and Authority. Each of the Parent and the Merger Sub is a corporation duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation. Each of the Parent and the Merger Sub has full corporate power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by the Parent and the Merger Sub of this Agreement and the consummation by the Parent and the Merger Sub of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Parent and the Merger Sub and no other corporate proceedings on the part of the Parent and the Merger Sub are necessary to authorize the execution, delivery, and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby except for the Required Parent Shareholder Approval. This Agreement has been duly executed and delivered by the Parent and the Merger Sub, and (assuming due authorization, execution, and delivery by each other party hereto) this Agreement constitutes a legal, valid, and binding obligation of the Parent and the Merger Sub enforceable against the Parent and the Merger Sub in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, and other similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.02 No Conflicts; Consents. The execution, delivery, and performance by the Parent and the Merger Sub of this Agreement and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of the Parent or the Merger Sub; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Parent or the Merger Sub; or (c) except for the consent of the Parent's lender, require the consent, notice, or other action by any Person under any Contract to which the Parent or the Merger Sub is a party. No consent, approval, Permit, Governmental Order, or declaration of, filing with, or notice to, any Governmental Authority is required by or with respect to the Parent or the Merger Sub in connection with the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, except for (i) the filing of the Articles of Merger with the Secretary of State of the State of Nevada, (ii) the filing of the Certificate of Designation with the Secretary of State of the State of Minnesota, and (iii) such other consents, approvals, authorizations, orders, registrations, filings, or qualifications that shall have been obtained or made on or prior to the Closing Date as may be required by the securities or blue sky laws of the various states and the Securities Act in connection with the issuance of the Parent Preferred Shares.

Section 4.03 No Prior Merger Sub Operations. The Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

Section 4.04 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Parent or the Merger Sub.

Section 4.05 Sufficiency of Funds. At the Closing, the Parent will have sufficient cash on hand or other sources of immediately available funds to enable it to consummate the transactions contemplated by this Agreement.

Section 4.06 Legal Proceedings. There are no Actions pending or, to the Parent's knowledge, threatened against or by the Parent or any Affiliate of the Parent that (a) has had or would reasonably be expected to have a Parent Material Adverse Effect or (b) challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. To the Parent's knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 4.07 SEC Reports.

(a) The Parent (i) has timely filed or furnished all reports, registration statements, proxy statements, prospectuses, and other materials, together with any amendments required to be made with respect thereto, that it was required to file with or furnish to the Commission pursuant to the Securities Act or the Exchange Act since January 3, 2015, and all such reports, registration statements, proxy statements, prospectuses, other materials, and amendments have complied in all material respects with all legal requirements relating thereto, and (ii) has paid all fees and assessments due and payable in connection therewith, except where the failure to make such timely filing, be in such compliance, or make such payment would not reasonably be expected, individually or in the aggregate, to have a Parent Material Adverse Effect.

(b) An accurate and complete copy of each final registration statement, prospectus, report, schedule, and definitive proxy statement filed with or furnished to the SEC by the Parent pursuant to the Securities Act or the Exchange Act since January 3, 2015 and prior to the date of this Agreement (the "Parent SEC Reports") is publicly available. No Parent SEC Report, at the time filed, furnished, or communicated (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), and considering all amendments to any Parent SEC Report filed prior to the date hereof, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) shall be deemed to modify information as of an earlier date. As of their respective dates, all of the Parent SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. No executive officer of the Parent has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act.

Section 4.08 Capitalization. The Parent has the authorized capitalization as set forth in the Parent SEC Reports, and all of the issued and outstanding shares of capital stock of the Parent have been duly authorized and validly issued and are fully paid and non-assessable. Upon issuance pursuant to the terms hereof, the Parent Preferred Shares shall be validly issued, fully paid, non-assessable, and outstanding and will not have been issued in violation of or subject to any preemptive or similar rights. Upon conversion of the Parent Preferred Shares in accordance with the Certificate of Designation into Parent Common Stock and subject to obtaining the Required Parent Shareholder Approval, the shares of Parent Common Stock issued upon such conversion will be duly authorized and validly issued, fully paid, non-assessable, and outstanding and will not have been issued in violation of or subject to any preemptive or similar rights. No approval from the holders of outstanding shares of Parent Common Stock is required in connection with the Parent's issuance of the Parent Preferred Shares to the Sellers or the consummation of the transactions contemplated pursuant to this Agreement except for the Required Parent Shareholder Approval.

Section 4.09 Financial Statements.

(a) The financial statements of the Parent and its subsidiaries included (or incorporated by reference) in the Parent SEC Reports (including the related notes, where applicable) (i) have been prepared from, and are in accordance with, the books and records of the Parent and its subsidiaries; (ii) fairly present in all material respects the consolidated results of operations, cash flows, changes in shareholders' equity, and consolidated financial position of the Parent and its subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject, in the case of unaudited statements, to recurring year-end audit adjustments normal in nature and amount); (iii) complied as to form, as of their respective dates of filing with the Commission, in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto; and (iv) have been prepared in accordance with GAAP consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. As of the date hereof, the books and records of the Parent and its subsidiaries have been maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions. As of the date hereof, Anton & Chia, LLP has not resigned (or informed the Parent that indicated it intends to resign) or been dismissed as independent public accountants of the Parent as a result of or in connection with any disagreements with the Parent on a matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure.

(b) Neither the Parent nor any of its subsidiaries has incurred any material liability or obligation of any nature whatsoever (whether absolute, accrued, contingent, determined, determinable, or otherwise and whether due or to become due) that would be required to be reflected on, or reserved against in, a consolidated balance sheet of the Parent and its subsidiaries or in the notes thereto prepared in accordance with GAAP consistently applied, except for (i) those liabilities that are reflected or reserved against on the consolidated balance sheet of the Parent and its subsidiaries included in its Quarterly Report on Form 10-Q for the fiscal quarter ended April 1, 2017 (including any notes thereto), (ii) liabilities incurred in the ordinary course of business consistent with past practice since April 1, 2017, or otherwise disclosed in any Parent SEC Report filed since such Quarterly Report on Form 10-Q, or (iii) in connection with this Agreement and the transactions contemplated hereby.

Section 4.10 Permits; Compliance with Applicable Laws. The Parent and each of its subsidiaries hold all Permits that are necessary for the lawful conduct of their respective businesses and ownership of their respective properties, rights, and assets under and pursuant to applicable Law (and have paid all fees and assessments due and payable in connection therewith), except where the failure to hold such Permit or to pay such fees or assessments has not had and would not reasonably be expected, individually or in the aggregate, a Parent Material Adverse Effect and, to the knowledge of the Parent, no suspension or cancellation of any such necessary Permit has, prior to the date hereof, been threatened in writing. The Parent and each of its subsidiaries are in compliance in all material respects with all applicable Laws relating to the Parent or any of its subsidiaries, except where the failure to be in such compliance would not reasonably be expected, individually or in the aggregate, to have a Parent Material Adverse Effect.

Section 4.11 Absence of Material Adverse Effect. Since January 1, 2017, no event or events have occurred that have had or would reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

ARTICLE V COVENANTS

Section 5.01 Conduct of Business Prior to the Closing.

(a) *Conduct of Business of the Company.* From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by the Parent (which consent shall not be unreasonably withheld, delayed, denied, or conditioned), the Company shall (x) conduct the business of the Company in the ordinary course of business consistent with past practice and (y) use reasonable best efforts to maintain and preserve intact the current organization, business, and franchise of the Company and to preserve the rights, franchises, goodwill, and relationships of its employees, customers, lenders, suppliers, regulators, and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company shall:

- (i) preserve and maintain all of its Permits;
- (ii) pay all of its debts, Taxes, and other obligations when due;
- (iii) maintain the properties and assets owned, operated, or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (iv) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

- (v) defend and protect its properties and assets from infringement or usurpation;
- (vi) perform all of its obligations under all Contracts relating to or affecting its properties, assets, or business;
- (vii) maintain its books and records in accordance with past practice;
- (viii) comply in all material respects with all applicable Laws; and
- (ix) not take or permit any action that would cause any of the changes, events, or conditions described in Section 3.08 to occur.

(b) *Conduct of Business of the Parent* From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by the Stockholders' Representative (which consent shall not be unreasonably withheld, delayed, denied, or conditioned), the Parent shall not amend the Parent's articles of incorporation or bylaws in a manner that would materially and adversely affect the holders of the Parent Preferred Shares relative to the holders of Parent Common Stock.

Section 5.02 Access to Information. From the date hereof until the Closing, the Company shall (a) afford the Parent and its Representatives full and free access to and the right to inspect all of the properties, assets, premises, books and records, business plans, Contracts, and other documents and data related to the Company; (b) furnish the Parent and its Representatives with such financial, operating, intellectual property, and other data and information related to the Company as the Parent or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company to cooperate with the Parent in its investigation of the Company. Any investigation pursuant to this Section 5.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company. No investigation by the Parent or other information received by the Parent shall operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by the Seller in this Agreement.

Section 5.03 No Solicitation of Other Bids.

(a) The Company and the Stockholders shall not, and shall not authorize or permit any of their respective Affiliates or Representatives, directly or indirectly, to (i) encourage, solicit, initiate, facilitate, or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company and the Stockholders shall immediately cease and cause to be terminated, and shall cause their respective Affiliates and Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "Acquisition Proposal" shall mean any inquiry, proposal, or offer from any Person (other than the Parent or any of its Affiliates) concerning (A) a merger, consolidation, liquidation, recapitalization, share exchange, or other business combination transaction involving the Company; (B) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (B) the sale, lease, exchange, or other disposition of any portion of the Company's properties or assets.

(b) In addition to the other obligations under this [Section 5.03](#), the Company and the Stockholders shall promptly (and in any event within three Business Days after receipt thereof by the Company, any Seller, or any of their respective Representatives) advise the Parent orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) The Company and the Stockholders agree that the rights and remedies for noncompliance with this [Section 5.03](#) shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Parent and that money damages would not provide an adequate remedy to Parent.

Section 5.04 Notice of Certain Events.

(a) From the date hereof until the Closing, the Company shall promptly notify the Parent in writing of:

(i) any fact, circumstance, event, or action the existence, occurrence, or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company and/or the Stockholders hereunder not being true and correct, or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in [Section 7.01](#) to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;
and

(iv) any Actions commenced or, to the Company's Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to [Section 3.14](#) or that relates to the consummation of the transactions contemplated by this Agreement.

(b) The Parent's receipt of information pursuant to this [Section 5.04](#) shall not operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by the Company and/or the Stockholders in this Agreement (including [Section 8.02](#) and [Section 9.01\(b\)](#)) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 5.05 [Intentionally Omitted].

Section 5.06 Confidentiality. From and after the Closing, the Stockholders shall, and shall cause their respective Affiliates to, hold, and shall use their respective reasonable best efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that the Stockholders can show that such information (a) is generally available to and known by the public through no fault of any Stockholder, any of his or its Affiliates, or their respective Representatives or (b) is lawfully acquired by any Stockholder, any of his or its Affiliates, or their respective Representatives from and after the Closing from sources that are not prohibited from disclosing such information by a legal, contractual, or fiduciary obligation. If any Stockholder or any of his or its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, the applicable Stockholder shall promptly notify the Parent in writing and shall disclose only that portion of such information that the applicable Stockholder is advised by his or its counsel in writing is legally required to be disclosed; *provided*, that such Stockholder shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 5.07 Non-competition; Non-solicitation.

(a) For a period of five years commencing on the Closing Date (the "Restricted Period"), the Stockholders shall not, and shall not permit any of their respective Affiliates, directly or indirectly, to (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person (other than the Company) that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee, or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company. Notwithstanding the foregoing, any Stockholder may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Stockholder is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own five percent or more of any class of securities of such Person.

(b) During the Restricted Period, the Stockholders shall not, and shall not permit any of their respective Affiliates, directly or indirectly, to hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation that is not directed specifically to any such employees; *provided*, that nothing in this Section 5.07(b) shall prevent any Stockholder or any of his or its Affiliates from hiring (i) any employee whose employment has been terminated by the Company or the Parent or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) During the Restricted Period, the Stockholders shall not, and shall not permit any of their respective Affiliates, directly or indirectly, to solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company.

(d) The Stockholders acknowledge that a breach or threatened breach of this [Section 5.07](#) would give rise to irreparable harm to the Parent, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by any Stockholder of any such obligations, the Parent shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) The Stockholders acknowledge that the restrictions contained in this [Section 5.07](#) are reasonable and necessary to protect the legitimate interests of the Parent and constitute a material inducement to the Parent to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this [Section 5.07](#) should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this [Section 5.07](#) and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 5.08 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its or his Affiliates and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders, and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its or his obligations pursuant to this Agreement. Each party shall cooperate fully with the other party and its or his Affiliates in promptly seeking to obtain all such consents, authorizations, orders, and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing, or impeding the receipt of any required consents, authorizations, orders, and approvals.

(b) The Company, the Stockholders, and the Parent shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in [Section 3.05 of the Disclosure Schedules](#).

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter, or enjoin the transactions contemplated by this Agreement; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval, or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, the Stockholders shall, subsequent to the Closing, cooperate with the Parent and the Company in attempting to obtain such consent, approval, or authorization as promptly thereafter as practicable. If such consent, approval, or authorization cannot be obtained, the Stockholders shall use their reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if the Stockholders provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any party hereto before any Governmental Authority or the staff or regulators of any Governmental Authority in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Company with Governmental Authorities in the ordinary course of business consistent with past practice, any disclosure which is not permitted by Law, or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission, or attendance, it being the intent that the parties will consult and cooperate with one another and consider in good faith the views of one another in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance, or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance, or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.08 shall require, or be construed to require, the Parent or any of its Affiliates to agree to (i) sell, hold, divest, discontinue, or limit, before or after the Closing Date, any assets, businesses, or interests of the Parent, the Company, or any of their respective Affiliates; (ii) pay any amounts (other than the payment of filing fees and expenses and fees of counsel); (iii) commence or defend any litigation; (iv) any limitation on, or changes or restrictions in, the operations of any assets, businesses, or interests of the Parent's or any of its Affiliate's businesses; or (v) any material modification or waiver of the terms and conditions of this Agreement, including any waiver any of the conditions set forth in Article VII.

Section 5.09 Directors' and Officers' Indemnification and Insurance.

(a) The Parent and the Merger Sub agree that all rights to indemnification, advancement of expenses, and exculpation by the Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer or director of the Company (each a “D&O Indemnified Party”) as provided in the Organizational Documents of the Company, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in Section 5.09 of the Disclosure Schedules, shall be assumed by the Surviving Corporation in the Merger, without further action, at the Effective Time and shall survive the Merger and shall remain in full force and effect in accordance with their terms and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) For six years after the Effective Time, to the fullest extent permitted under applicable Law, Parent and the Surviving Corporation (the “D&O Indemnifying Parties”) shall indemnify, defend, and hold harmless each D&O Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, judgments, and fines arising in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the transactions contemplated by this Agreement), and shall reimburse each D&O Indemnified Party for any legal or other expenses reasonably incurred by such D&O Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments, and fines as such expenses are incurred, subject to the Surviving Corporation’s receipt of an undertaking by such D&O Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final and non-appealable judgment of a court of competent jurisdiction that such D&O Indemnified Party is not entitled to be indemnified under applicable Law; *provided, however*, that the Surviving Corporation will not be liable for any settlement effected without the Surviving Corporation’s prior written consent (which consent shall not be unreasonably withheld, delayed, denied, or conditioned).

(c) As promptly as practicable following the Closing, the Stockholders shall obtain and fully pay for “tail” insurance policies with a claims period of at least six (6) years from the Effective Time with coverage, amount, terms, and conditions that are reasonably satisfactory to the Parent (including in connection with the transactions contemplated by this Agreement) (the “D&O Tail Policy”). The Stockholders shall bear the cost of the D&O Tail Policy. During the term of the D&O Tail Policy, the Parent shall not (and shall cause the Surviving Corporation not to) take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be amended or waived; *provided*, that none of the Parent, the Surviving Corporation, or any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(d) The obligations of the Parent and the Surviving Corporation under this Section 5.09 shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to affect adversely any D&O Indemnified Party to whom this Section 5.09 applies without the consent of such affected D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties to whom this Section 5.09 applies shall be third-party beneficiaries of this Section 5.09, each of whom may enforce the provisions of this Section 5.09).

(e) In the event the Parent, the Surviving Corporation, or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of the Parent or the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this [Section 5.09](#). The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any D&O Indemnified Party is entitled, whether pursuant to Law, Contract, or otherwise. Nothing in this Agreement is intended to, shall be construed to, or shall release, waive, or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or its officers, directors, and employees, it being understood and agreed that the indemnification provided for in this [Section 5.09](#) is not prior to, or in substitution for, any such claims under any such policies.

Section 5.10 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in [ARTICLE VII](#).

Section 5.11 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld, delayed, denied, or conditioned), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 5.12 Affiliate Agreements. Prior to the Closing, the Company shall terminate all Affiliate Agreements with respect to which there could be further or continuing liability or obligation on the part of the Parent or any of its Affiliates (including, after the Closing, the Company) without any further or continuing liability on the part of the Parent or any of its Affiliates (including, after the Closing, the Company).

Section 5.13 Audited Financial Statements. The Stockholders acknowledge that the Parent, within 71 days of Closing, may be required under applicable Law to provide certain audited financial statements covering the Company and any predecessor business thereof, as the Parent may determine to be required under the Commission's rules and regulations, in accordance with its periodic reporting obligations under the Exchange Act (collectively the "[Audited Financials](#)"). With respect to the foregoing, the Stockholders agree that they shall afford to the Parent, its Affiliates, and their respective Representatives, at the Parent's expense, during normal business hours, reasonable access to the books, records, and other data of the Stockholders, and use reasonable best efforts to cause the Company's accountants to make available all of their work papers, that in each case include or relate to the Company or any predecessor business thereof, and, to the extent permitted by such accountants, the Parent and its independent registered public accounting firm shall have the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the Parent or any of its Affiliates to prepare, complete, and file such Audited Financials at the expense of the Parent.

Section 5.14 Funding Obligations. The Parent agrees as follows: (a) subject to having obtained the consent of the Parent's lender, as of the Effective Time or as promptly as commercially practicable thereafter, the Parent shall provide funding to the Company in an amount not less than \$1,500,000, which shall be used by the Company in accordance with the Company's business plan approved in writing by the Parent (as it may be amended by the Chief Executive Officer of the Company from time to time in his business judgment and subject to his fiduciary duties to the Company and the Parent and the direction and approval of the Company Board and the Parent Board, the "Company Business Plan") and (b) the Parent shall provide additional funding to the Company in an amount not less than \$1,500,000, which shall be used by the Company in accordance with the Company Business Plan, as promptly as commercially practicable after, and subject to, the Company achieving (i) \$100,000 in subscription revenues in any one-month period during the 12-month period from and after the Closing Date or (ii) \$1,000,000 in total revenues during the 12-month period from and after the Closing Date, in each case with such revenues, if accrued and not collected, (A) having arisen from bona fide transactions entered into by the Company in the ordinary course of business, (B) constituting only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims, (C) net of allowance for doubtful accounts, and (D) collectible in full within 90 days after billing.

Section 5.15 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and behalf of the Company or the Merger Sub, any deeds, bills of sale, assignments, or assurances and to take and do, in the name and on behalf of the Company or the Merger Sub, any other actions and things to vest, perfect, or confirm of record or otherwise in the Surviving Corporation any and all right, title, and interest in, to, and under any of the rights, properties, or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 5.16 Reservation of Parent Shares. The Parent shall reserve a sufficient number of shares of Series A Preferred Stock to fulfill its obligations under this Agreement. Parent shall reserve a sufficient number of shares of Parent Common Stock to fulfill its obligations under the Certificate of Designation upon the conversion of the Parent Preferred Shares into Parent Common Stock in accordance with the Certificate of Designation.

Section 5.17 Required Parent Shareholder Approval.

(a) The Parent Board has adopted resolutions unanimously recommending that the holders of Parent Common Stock vote in favor of approval of the Series A Preferred Convertible Terms (the "Parent Board Recommendation"). The Parent Board may at any time prior to obtaining the Required Parent Shareholder Approval withdraw, modify, or change the Parent Board Recommendation (a "Parent Adverse Recommendation Change") in the event that the Parent Board determines in good faith, based upon advice of legal counsel, that withdrawing, modifying, or changing the Parent Board Recommendation is necessary to comply with its fiduciary duties under applicable Law (which withdrawal, modification, or change shall not constitute a breach by the Parent of this Agreement). The Parent shall provide written notice to the Company promptly upon the Parent taking any action referenced in the foregoing proviso.

(b) The Parent shall take all action necessary to duly call, give notice of, convene, and hold the Parent Shareholders Meeting as soon as reasonably practicable after the Closing, and, in connection therewith, the Parent shall transmit the Parent Proxy Statement to the holders of Parent Common Stock in advance of such meeting. Except to the extent that the Parent Board shall have effected a Parent Adverse Recommendation Change as permitted by Section 5.17(a), the Parent Proxy Statement shall include the Parent Board Recommendation. Subject to Section 5.17(a), the Parent shall use reasonable best efforts to: (i) solicit from the holders of Parent Common Stock proxies in favor of the approval of the Series A Preferred Convertible Terms and (ii) take all other actions necessary or advisable to secure the vote or consent of the holders of Parent Common Stock required by applicable Law to obtain such approval. The Parent shall not submit, or solicit, initiate, or knowingly take any action to facilitate or encourage any Person to submit, any other proposals for approval prior to the Parent Shareholders Meeting without the prior written consent of the Company. Once the Parent Shareholders Meeting has been called and noticed, the Parent shall not postpone or adjourn the Parent Shareholders Meeting without the consent of the Company (other than: (A) in order to obtain a quorum of its shareholders or (B) to allow reasonable additional time after the filing and mailing of any supplemental or amended disclosures to the Parent Proxy Statement for compliance with applicable Law or stock exchange requirements). If the Parent Board makes a Parent Adverse Recommendation Change, it will not alter the obligation of the Parent to submit the approval of the Series A Preferred Convertible Terms to the holders of Parent Common Stock at the Parent Shareholders Meeting to consider and vote upon, unless this Agreement shall have been terminated in accordance with its terms prior to the Parent Shareholders Meeting.

(c) Notwithstanding anything to the contrary elsewhere in this Agreement or in the Certificate of Designation, each Stockholder acknowledges and understands that the shares of Series A Preferred Stock (including the Parent Preferred Shares) shall not be convertible into shares of Parent Common Stock pursuant to the Series A Preferred Convertible Terms unless and until the Required Parent Shareholder Approval has been obtained. Each Stockholder covenants and agrees that, (i) at the Parent Shareholders Meeting (or any adjournment, postponement, or continuation thereof) or in any other circumstances other than a duly called meeting of the shareholders of Parent upon which a vote, consent, or other approval (including by written consent) with respect to the Series A Preferred Convertible Terms is sought, such Stockholder shall abstain from being present for purposes of a quorum and from voting, in person or by proxy, any Parent Preferred Shares owned of record or beneficially by such Stockholder on the proposal to approve the Series A Preferred Convertible Terms and (ii) such Stockholder, until such time as the Parent Shareholder Approval has been obtained, if ever, shall abstain from voting, in person or by proxy, any Parent Preferred Shares held by such Stockholder on any proposal submitted to the holders of Parent Common Stock for their approval. Each Stockholder agrees not to enter into any agreement or commitment with any Person, the effect of which would be inconsistent with or otherwise violate such Stockholder's covenants set forth in this Section 5.17(c).

ARTICLE VI TAX MATTERS

Section 6.01 Taxes. All Taxes on or with respect to the Company that are attributable to any Pre-Closing Tax Period shall be for the sole account, jointly and severally, of the Stockholders. All Taxes on or with respect to the Company that are attributable to any Post-Closing Tax Period shall be for the sole account of the Parent.

Section 6.02 Certain Tax Covenants.

(a) Without the prior written consent of the Parent, prior to the Closing, the Company, its Representatives, and the Stockholders shall not make, change, or rescind any Tax election, amend any Tax Return, or take any position on any Tax Return, take any action, omit to take any action, or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of the Parent or the Surviving Corporation in respect of any Post-Closing Tax Period. The Company agrees that the Parent is to have no liability for any Tax resulting from any action of the Company, any of its Representatives, or the Stockholders. The Stockholders shall, severally and jointly, indemnify and hold harmless the Parent against any such Tax or reduction of any Tax asset.

(b) All transfer, documentary, sales, use, stamp, registration, value added, and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by the Stockholders when due. The Stockholders shall timely file any Tax Return or other document with respect to such Taxes or fees (and the Parent shall cooperate with respect thereto as necessary).

Section 6.03 Termination of Existing Tax Indemnity, Tax Sharing, and Tax Allocation Agreements . Any and all existing, whether written or not, Tax indemnity agreements, Tax sharing agreements, Tax allocation agreements, and any similar agreement binding upon the Company shall be terminated as of the Closing Date and all payments thereunder settled immediately prior to the Closing Date with no payments permitted to be made thereunder on and after the Closing Date. After the Closing Date, neither the Company nor the Parent, nor any of the Parent's Affiliates and their respective Representatives (other than the Stockholders), shall have any further rights or liabilities thereunder.

Section 6.04 Tax Returns.

(a) The Company shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law).

(b) The Stockholders' Representative shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period (other than the Straddle Period). Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method (unless required by Law) and shall be submitted by the Stockholders' Representative to the Parent (together with schedules, statements, and, to the extent requested by the Parent, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax Return. If the Parent objects to any item on any such Tax Return, it shall, within 10 days after delivery of such Tax Return, notify the Stockholders' Representative in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, the Parent and the Stockholders' Representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If the Parent and the Stockholders' Representative are unable to reach such agreement within 10 days after receipt by the Stockholders' Representative of such notice, the disputed items shall be resolved by an independent public accountant mutually agreed upon by the Parent and the Stockholders' Representative (the "Independent Accountant") and any determination by the Independent Accountant shall be binding, final, and non-appealable. The Independent Accountant shall resolve any disputed items within 20 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by the Stockholders' Representative and then amended to reflect the Independent Accountant's resolution. The costs, fees, and expenses of the Independent Accountant shall be borne equally by the Parent and the Stockholders. The preparation and filing of any Tax Return of the Company, other than the Tax Returns specifically identified in the first sentence of this Section 6.04(b), shall be exclusively within the control of the Parent.

Section 6.05 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "Straddle Period"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital, or net worth, (ii) imposed in connection with the sale, transfer, or assignment of property, or (iii) required to be withheld, deemed equal to the amount that would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

Section 6.06 Cooperation and Exchange of Information. The Stockholders' Representative and the Parent shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this ARTICLE VI or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers, and documents relating to rulings or other determinations by Tax Authorities. Each of the Stockholders and the Parent shall retain all Tax Returns, schedules and work papers, records, and other documents in his or its possession relating to Tax matters of the Company or Taxes of the Stockholders related to the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying, or discarding any Tax Returns, schedules and work papers, records, and other documents in its or his possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, the Stockholders or the Parent (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

Section 6.07 Tax Indemnities.

(a) The Stockholders shall, jointly and severally, be responsible for and shall indemnify and hold the Company, the Parent, the Surviving Corporation, and each other Parent Indemnitee harmless against (i) any and all Taxes imposed on or payable by the Company for any Pre-Closing Tax Period; (ii) any and all Taxes attributable to the Pre-Closing Tax Period for which the Company is held liable under Treasury Regulation Section 1.1502-6; (iii) any and all Taxes of any Person other than the Company imposed on the Company as a transferee, indemnitor, or successor, by contract, pursuant to any Tax law, or otherwise which Taxes relate solely to an event or transaction occurring or relating to the Pre-Closing Tax Period or the agreements referenced in Section 6.03; (iv) any and all Losses incurred or sustained by, or imposed upon, any Parent Indemnitee based upon, arising out of, with respect to, or by reason of any breach or inaccuracy of any of the representations set forth in Section 3.17; and (v) any and all costs and expenses incurred by any Parent Indemnitee in connection with any and all Actions regarding any Taxes for which any Stockholder is required to reimburse the Parent Indemnitees pursuant to this Section 6.07.

(b) Payment of any amount due under this Section 6.07 shall be made within 10 days following the Stockholders' Representative receipt of written notice from the Company or the Parent regarding the same.

(c) Except for Section 8.06, Section 8.07, Section 8.08, Section 8.09, and Section 8.10, this Section 6.07 shall be the sole provision governing indemnities for Taxes and the breach or inaccuracy of any of the representations set forth in Section 3.17.

Section 6.08 Control of Audit or Tax Litigation. The Parent will control any and all Actions regarding any Taxes for which any Stockholder is required to indemnify the Parent, the Company, or any other Parent Indemnitee pursuant to Section 6.07. The Parent will (and will cause its Affiliates to) permit the Stockholders' Representative to review and comment on any documents in connection with such Action and will take any reasonable comments into consideration before filing any document. If the Stockholders' Representative or any Stockholder is subject to or receives notice of an audit of any Stockholder or other Action against any Stockholder relating to Taxes and such audit or other Action would reasonably be expected to (a) have an adverse effect on the Parent, the Surviving Corporation, or the Surviving Corporation's assets or (b) subject the Parent or the Surviving Corporation to any liability, in each case as a result of such audit or other Action, then the Stockholders' Representative will promptly notify the Parent of the same in writing upon receipt of such notice or upon becoming aware of such audit or other Action and will keep the Parent timely apprised of any developments in any such audit or litigation.

Section 6.09 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.17 and this ARTICLE VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation, or extension thereof) plus 60 days.

Section 6.10 Overlap. To the extent that any obligation or responsibility pursuant to ARTICLE VIII may overlap with an obligation or responsibility pursuant to this ARTICLE VI, the provisions of this ARTICLE VI shall govern.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of the Parent and the Merger Sub. The obligations of the Parent and the Merger Sub to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Parent's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of the Company and/or the Stockholders contained in Section 3.01, Section 3.02, Section 3.03, Section 3.06, and Section 3.19, the representations and warranties of the Company and/or the Stockholders contained in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Company Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Company Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Company and/or the Stockholders contained in Section 3.01, Section 3.02, Section 3.03, Section 3.06, and Section 3.19 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Company and the Stockholders shall have duly performed and complied in all material respects with all agreements, covenants, and conditions required by this Agreement to be performed or complied with by them prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants, and conditions that are qualified by materiality, the Company and the Stockholders shall have performed such agreements, covenants, and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against the Parent, the Merger Sub, the Company, or any Stockholder that would prevent the Closing. No Governmental Authority shall have enacted, issued, promulgated, enforced, or entered any Governmental Order that is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions, or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(d) All approvals, consents, and waivers that are required to be listed on Section 3.05 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to the Parent at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Company Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Company Material Adverse Effect.

(f) The Company shall have delivered each of the closing deliverables set forth in Section 2.03(a).

(g) The Employment Agreement shall have been executed by Gregg Sullivan and a true and complete copy thereof shall have been delivered to the Parent.

Section 7.02 Conditions to Obligations of the Company and the Stockholders. The obligations of the Company and the Stockholders to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of the Parent and the Merger Sub contained in Section 4.01 and Section 4.04, the representations and warranties of the Parent and Merger Sub contained in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Parent Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Parent Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Parent and the Merger Sub contained in Section 4.01 and Section 4.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) The Parent and the Merger Sub shall have duly performed and complied in all material respects with all agreements, covenants, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are qualified by materiality, the Parent and the Merger Sub shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Governmental Authority shall have enacted, issued, promulgated, enforced, or entered any Governmental Order that is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions, or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(d) From the date of this Agreement, there shall not have occurred any Parent Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Parent Material Adverse Effect.

(e) The Parent Board shall have authorized and approved (i) the issuance of the Parent Preferred Shares to the Stockholders and (ii) the issuance of the shares of Parent Common Stock issuable upon conversion of the Parent Preferred Shares pursuant to the Series A Preferred Convertible Terms.

(f) The Certificate of Designation shall have been filed and accepted for filing with the Secretary of State of the State of Minnesota and evidence thereof shall have been delivered to the Company.

(g) The Parent shall have delivered each of the closing deliverables set forth in Section 2.03(b).

(h) The Parent Board shall have taken such action to duly appoint Gregg Sullivan to the Board of Directors of the Surviving Corporation, effective as of the Closing or as promptly as practicable thereafter.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in Section 3.17 which are subject to ARTICLE VI) shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; *provided*, that the representations and warranties in Section 3.01, Section 3.02, Section 3.03, Section 3.12, Section 3.19, Section 4.01, and Section 4.04 shall survive indefinitely. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in ARTICLE VI, which are subject to ARTICLE VI) shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By the Stockholders. Subject to the other terms and conditions of this ARTICLE VIII, the Stockholders, jointly and severally, shall indemnify and defend each of the Parent and its Affiliates (including the Company and the Surviving Corporation) and their respective Representatives (collectively, the “Parent Indemnitees”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Parent Indemnitees based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company and/or the Stockholders contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement (other than in respect of [Section 3.17](#), it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to [ARTICLE VI](#)), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement, undertaking, or obligation to be performed by the Company or any Stockholder pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking, or obligation in [ARTICLE VI](#), it being understood that the sole remedy for any such breach, violation, or failure shall be pursuant to [ARTICLE VI](#)); or

(c) any claim made by any Person relating to such Person's rights with respect to the calculations and determinations set forth on the Closing Payment Certificate, including any Company Transaction Expenses or Closing Indebtedness Amount to the extent not paid or satisfied by the Company at or prior to the Closing.

Section 8.03 Indemnification By the Parent. Subject to the other terms and conditions of this [ARTICLE VIII](#), the Parent shall indemnify and defend each Stockholder and its or his Affiliates and their respective Representatives (collectively, the "[Stockholder Indemnitees](#)") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Stockholder Indemnitees based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Parent and the Merger Sub contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Parent or the Merger Sub pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement, undertaking, or obligation to be performed by the Parent or the Merger Sub pursuant to this Agreement (other than [ARTICLE VI](#), it being understood that the sole remedy for any such breach thereof shall be pursuant to [ARTICLE VI](#)).

Section 8.04 Certain Limitations. The indemnification provided for in [Section 8.02](#) and [Section 8.03](#) shall be subject to the following limitations:

(a) The Stockholders shall not be liable to the Parent Indemnitees for indemnification under [Section 8.02\(a\)](#) until the aggregate amount of all Losses in respect of indemnification under [Section 8.02\(a\)](#) exceeds \$92,500 (the "[Basket](#)"), in which event the Stockholders shall be required to pay or be liable for all such Losses from the first dollar. The aggregate amount of all Losses for which the Stockholders shall be liable pursuant to [Section 8.02\(a\)](#) shall not exceed \$1,850,000 (the "[Cap](#)").

(b) The Parent shall not be liable to the Stockholder Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event the Parent shall be required to pay or be liable for all such Losses from the first dollar. The aggregate amount of all Losses for which the Parent shall be liable pursuant to Section 8.03(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.04(a) and Section 8.04(b) shall not apply to Losses based upon, arising out of, with respect to, or by reason of fraud or any inaccuracy in or breach of any representation or warranty in Section 3.01, Section 3.02, Section 3.03, Section 3.12, Section 3.19, Section 4.01, and Section 4.04.

(d) For purposes of this ARTICLE VIII, any inaccuracy in or breach of any representation or warranty and the amount of any Losses incurred or suffered in connection with such breach or inaccuracy shall be determined without regard to any materiality, Material Adverse Effect, or other similar qualification contained in or otherwise applicable to such representation or warranty.

Section 8.05 Indemnification Procedures. The party making a claim under this ARTICLE VIII is referred to as the “Indemnified Party,” and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “Indemnifying Party.”

(a) *Third-party Claims.* If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third-party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third-party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-party Claim in reasonable detail, shall include copies of all material written evidence thereof, and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of, any Third-party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that, if the Indemnifying Party is any Stockholder, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third-party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal, or make counterclaims pertaining to any such Third-party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third-party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided*, that, if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third-party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third-party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, and defend such Third-party Claim and seek indemnification for any and all Losses based upon, arising from, or relating to such Third-party Claim. The Stockholders and the Parent shall cooperate with each other in all reasonable respects in connection with the defense of any Third-party Claim, including making available records relating to such Third-party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-party Claim.

(b) *Settlement of Third-party Claims.* Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-party Claim without the prior written consent of the Indemnified Party, except as provided in this [Section 8.05\(b\)](#). If a firm offer is made to settle a Third-party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-party Claim, the Indemnifying Party may settle the Third-party Claim upon the terms set forth in such firm offer to settle such Third-party Claim. If the Indemnified Party has assumed the defense pursuant to [Section 8.05\(a\)](#), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, delayed, denied, or conditioned).

(c) *Direct Claims.* Any Action by an Indemnified Party on account of a Loss that does not result from a Third-party Claim (a "[Direct Claim](#)") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof, and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents, or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) *Tax Claims.* Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event, or proceeding in respect of Taxes of the Company (including any such claim in respect of a breach of the representations and warranties in Section 3.17 hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in ARTICLE VI) shall be governed exclusively by ARTICLE VI hereof.

Section 8.06 Payments.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day-period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to, but excluding, the date such payment has been made at a rate per annum equal to the lesser of 10% or the highest rate permitted by applicable Law. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(b) Any Losses payable by any Stockholder to a Parent Indemnitee pursuant to ARTICLE VI and/or this ARTICLE VIII shall be satisfied in cash or other assets of the Stockholder, which, at the option of the Parent Indemnitee, may, but need not, include such Stockholder's Parent Preferred Shares and/or any shares of Parent Common Stock issued to such Stockholder upon conversion of Parent Preferred Shares pursuant to the Series A Preferred Convertible Terms, with the fair market value thereof to be determined by the Parent Board.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Merger Consideration for Tax purposes, unless otherwise required by Law.

Section 8.08 Effect of Investigation. The representations, warranties, and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was, or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in [Section 7.01](#) or [Section 7.02](#), as the case may be.

Section 8.09 Exclusive Remedies. Subject to [Section 5.07](#) and [Section 10.11](#), the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity, or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in [ARTICLE VI](#) and this [ARTICLE VIII](#). In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in [ARTICLE VI](#) and this [ARTICLE VIII](#). Nothing in this [Section 8.09](#) shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

Section 8.10 No Circular Recovery. Each Stockholder hereby agrees that he or it will not make any claim for indemnification against the Parent, the Company, or the Surviving Corporation by reason of the fact that such Stockholder was a Representative of the Company or was serving as such for another Person at the request of the Company (whether such claim is for Losses of any kind or otherwise and whether such claim is pursuant to any Law, Organizational Document, Contract, or otherwise) with respect to any claim brought by a Parent Indemnitee against any Stockholder relating to this Agreement or any of the transactions contemplated hereby. With respect to any claim brought by a Parent Indemnitee against any Stockholder relating to this Agreement or any of the transactions contemplated hereby, each Stockholder expressly waives any right of subrogation, contribution, advancement, indemnification, or other claim against the Company with respect to any amounts such Stockholder is liable for pursuant to the indemnification provisions set forth in [ARTICLE VI](#) or this [ARTICLE VIII](#).

ARTICLE IX TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and the Parent;

(b) by the Parent by written notice to the Company if:

(i) neither the Parent nor the Merger Sub is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by the Company and/or the Stockholders pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy, or failure has not been cured by the Company or the Stockholders within 10 days of the Company's receipt of written notice of such breach from the Parent; or

(ii) any of the conditions set forth in Section 7.01 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by August 31, 2017, unless such failure shall be due to the failure of the Parent to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by the Company by written notice to the Parent if:

(i) the Company and the Stockholders are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by the Parent or the Merger Sub pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy, or failure has not been cured by the Parent or the Merger Sub within 10 days of the Parent's receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by August 31, 2017, unless such failure shall be due to the failure of the Company or the Stockholders to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it or them prior to the Closing; or

(d) by the Parent or the Company in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this ARTICLE IX, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in Section 5.06, ARTICLE IX, and ARTICLE X; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

(a) If to the Parent:

Appliance Recycling Centers of America, Inc.
175 Jackson Avenue North
Suite 102
Minneapolis, Minnesota 55343
Attn: Tony Isaac, Chief Executive Officer

E-mail: tisaac@arcainc.com
with a copy (which shall not constitute notice) to:
Baker & Hostetler LLP
600 Anton Boulevard
Suite 900
Costa Mesa, California 92626
Attn: Randolph W. Katz, Esq.
E-mail: rwkatz@bakerlaw.com

(b) If to the Company:

GeoTraq Inc.
325 E. Warm Springs Road, Suite 102
Las Vegas, Nevada 89119
Attn: Gregg Sullivan
E-mail: gsullivan@geotraq.com

with a copy (which shall not constitute notice) to:

The Doney Law Firm
4955 S. Durango Drive, Suite 165
Las Vegas, Nevada 89113
Attn: Scott Doney, Esq.
E-mail: scott@doneylawfirm.com

(c) If to the Stockholders or the Stockholders' Representative:

Gregg Sullivan
309 Highland Mesa Court
Las Vegas, Nevada 89144
E-mail: gsullivan@geotraq.com

with a copy (which shall not constitute notice) to:

The Doney Law Firm
4955 S. Durango Drive, Suite 165
Las Vegas, Nevada 89113
Attn: Scott Doney, Esq.
E-mail: scott@doneylawfirm.com

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules, and Exhibits mean the Articles and Sections of, Disclosure Schedules hereto and delivered concurrently herewith, and the Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in [Section 5.07\(e\)](#), upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Exhibits or the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as provided in Section 5.09, Section 6.07, and ARTICLE VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada without giving effect to any choice or conflict of law provision or rule (whether of the State of Nevada or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEVADA IN EACH CASE LOCATED IN THE CITY OF LAS VEGAS, COUNTY OF CLARK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE, OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION, OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION, OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13 Stockholders' Representative. By executing this Agreement, each Stockholder hereby irrevocably authorizes and appoints the Stockholders' Representative as such Person's representative and attorney-in-fact to act on behalf of such Person with respect to this Agreement and to take any and all actions and make any decisions required or permitted to be taken by the Stockholders' Representative pursuant to this Agreement. Notices or communications to or from the Stockholders' Representative shall constitute notice to or from each of the Stockholders. Any decision or action by the Stockholders' Representative hereunder, including any agreement between the Stockholders' Representative and the Parent relating to the defense, payment, or

settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Stockholders and shall be final, binding, and conclusive upon each such Stockholder. No Stockholder shall have the right to object to, dissent from, protest, or otherwise contest the same. The provisions of this Section, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest, and shall not be terminated by any act of any one or Stockholders, or by operation of Law, whether by death or other event.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have, as of the date first written above, (i) executed this Agreement or (ii) caused this Agreement to be executed by their respective officers thereunto duly authorized, as applicable.

THE PARENT:

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: /s/ Tony Isaac
Tony Isaac, Chief Executive Officer

THE COMPANY:

GEOTRAQ INC.

By: /s/ Gregg Sullivan
Gregg Sullivan, Chief Executive Officer

THE MERGER SUB:

APPLIANCE RECYCLING ACQUISITION CORP.

By: /s/ Tony Isaac
Tony Isaac, Chief Executive Officer

THE STOCKHOLDERS:

/s/ Gregg Sullivan
Gregg Sullivan

/s/ Juan Yunis
Juan Yunis

ISAAC CAPITAL GROUP LLC

By: /s/ Jon Isaac
Jon Isaac, CEO/Manager

Signature Page 1 of 2 to Agreement and Plan of Merger

/s/ Gregg Sullivan
Gregg Sullivan

/s/ Juan Yunis
Juan Yunis

ISAAC CAPITAL GROUP LLC

By: /s/ Jon Isaac
Jon Isaac, CEO/Manager

THE STOCKHOLDERS' REPRESENTATIVE:

/s/ Gregg Sullivan
Gregg Sullivan

Signature Page 2 of 2 to Agreement and Plan of Merger

EXHIBIT A

Form of Certificate of Designation

(attached)

CERTIFICATE OF DESIGNATION
OF
APPLIANCE RECYCLING CENTERS OF AMERICA, INC.
Pursuant to Section 302A.401 of the
Minnesota Statutes

Pursuant to Minnesota Statutes, Section 302A.401, Subd. 3(b), Appliance Recycling Centers of America, Inc., a corporation organized and existing under the laws of the State of Minnesota (the "**Company**"),

DOES HEREBY CERTIFY that, pursuant to the authority conferred upon the Board of Directors by the Articles of Incorporation of the Company, and pursuant to Section 302A.401 of the Minnesota Statutes, the Board of Directors, at a meeting duly noticed and held on July 20, 2017, duly adopted a resolution providing for the designation of a series of preferred stock, to be known as the Company's Series A Convertible Preferred Stock, which resolution is and reads as follows:

RESOLVED, that, pursuant to the authority expressly granted to and vested in the Board of Directors of Appliance Recycling Centers of America, Inc. (the "**Company**"), by the provisions of the Articles of Incorporation of the Company, as amended, a series of the preferred stock, no par value per share, of the Company be, and it hereby is, established; and

FURTHER RESOLVED, that the series of preferred stock of the Company be, and it hereby is, given the distinctive designation of "**Series A Convertible Preferred Stock**"; and

FURTHER RESOLVED, that the Series A Convertible Preferred Stock shall consist of Two Hundred Eighty-eight Thousand Five Hundred Eighty-eight (288,588) shares; and

FURTHER RESOLVED, that the Series A Convertible Preferred Stock shall have the powers and preferences, and the relative, participating, optional and other rights, and the qualifications, limitations, and restrictions thereon set forth below (the "**Designation**" or the "**Certificate of Designation**");

Section 1. DESIGNATION OF SERIES. The authorized number of shares of Series A Convertible Preferred Stock shall initially consist of Two Hundred Eighty-eight Thousand Five Hundred Eighty-eight (288,588) shares.

Section 2. DEFINITIONS.

For purposes of this Designation, the following definitions shall apply:

- (a) “**Business Day**” means a day in which a majority of the banks in the State of Minnesota in the United States of America are open for business.
- (b) “**Common Stock**” means the Company’s no par value common stock, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.
- (c) “**Conversion Date**” shall mean the date on which a share or shares of the Series A Convertible Preferred Stock is converted pursuant to this Certificate of Designation.
- (d) “**Distribution**” shall mean the transfer of cash or other property without consideration, whether by way of dividend or otherwise (other than dividends on Common Stock payable in Common Stock), or the purchase or redemption of shares of the Company for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of capital stock of the Company in connection with the settlement of disputes with any shareholder, (iv) any other repurchase or redemption of capital stock of the Company approved by the holders of (a) a majority of the Common Stock and (b) a majority of the Preferred Stock of the Company voting as separate classes.
- (e) “**Holder**” shall mean the person or entity in which the Series A Convertible Preferred Stock is registered on the books of the Company, which shall initially be the person or entity that subscribes for the Series A Convertible Preferred Stock, and shall thereafter be the permitted and legal assigns of which the Company is notified by the Holder and in respect of which the Holder has provided a valid legal opinion in connection therewith to the Company.
- (f) “**Holders**” shall mean all Holders of the Series A Convertible Preferred Stock.
- (g) “**Junior Stock**” shall mean the Common Stock and each other class of capital stock or series of preferred stock of the Company established prior to or after the Original Issue Date, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Series A Convertible Preferred Stock upon the liquidation, winding-up or dissolution of the Company.
- (h) “**Original Issue Date**” shall mean the date upon which the shares of Series A Convertible Preferred Stock are first issued.

- (i) “**Preferred Stock Certificates**” means the certificates, as replaced from time to time, evidencing the outstanding Preferred Stock shares.
- (j) “**Recapitalization**” shall mean any stock dividend, stock split, and combination of shares, reorganization, recapitalization, reclassification, or other similar event.

Section 3. DIVIDENDS.

(a) The Company shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Company unless (in addition to the obtaining of any consents required elsewhere in the Articles of Incorporation) the holders of the Series A Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Convertible Preferred Stock pursuant to this Section 3. The holders of the Series A Convertible Preferred Stock shall be entitled to receive, as declared by the Board of Directors and out of funds legally available for the purpose, a dividend in the aggregate amount of one (1) dollar, regardless of the number of then-issued and outstanding shares of Series A Convertible Preferred Stock. The remaining dividends allocated by the Board of Directors shall be distributed in an equal amount per share to the holders of outstanding Common Stock and Series A Convertible Preferred Stock (on an as-if-converted to Common Stock basis pursuant to the Conversion Ratio as defined below).

(b) To the fullest extent permitted by the Minnesota Statutes, the Company shall be expressly permitted, but not required, to redeem, repurchase or make distributions on the shares of its capital stock in all circumstances other than where doing so would cause the Company to be unable to pay its debts as they become due in the usual course of business.

Section 4. NO LIQUIDATION PREFERENCE. Immediately prior to the occurrence of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, all shares of Series A Convertible Preferred Stock shall automatically convert into shares of Common Stock based upon the then-applicable Conversion Ratio and shall participate in the liquidation proceeds in the same manner as other shares of Common Stock.

Section 5. CONVERSION. The Series A Convertible Preferred Stock shall not be convertible into Common Stock and have no other conversion rights except as specifically set forth below:

(a) Conversion. The “**Conversion Ratio**” per share of the Series A Convertible Preferred Stock in connection with any Conversion shall be at a ratio of 1:100, meaning every (1) one share of Series A Convertible Preferred Stock, if and when converted into Common Stock, shall convert into 100 shares of Common Stock (the “**Conversion**”). Each Holder shall have the right, exercisable at any time and from time to time (unless otherwise prohibited by law, rule or regulation, or as restricted below), to convert any or all of such Holder’s shares of Series A Convertible Preferred Stock into shares of Common Stock at the Conversion Ratio. Notwithstanding anything to the contrary herein, the Holders may not effectuate any Conversion and the Company may not issue any shares of Common Stock in connection therewith that would trigger any NASDAQ requirement to obtain shareholder approval prior to a Conversion or any issuance of shares of Common Stock in connection therewith that would be in excess of that number of shares of Common Stock equivalent to 19.9% of the number of shares of Common Stock as of the date hereof; *provided, however*, that the Holders may effectuate any Conversion and the Company shall be obligated to issue shares of Common Stock in connection therewith that would not trigger such a requirement. This restriction shall be of no further force or effect upon the approval of the shareholders in compliance with NASDAQ’s shareholder voting requirements. Notwithstanding anything to the contrary contained herein, the Holders may not effectuate any Conversion and the Company shall not issue any shares of Common Stock in connection therewith until the later of (x) February 28, 2019, or (y) sixty-one (61) days following the date on which the shareholders of the Company shall have approved the voting, Conversion, and other potential rights of the holders of Series A Convertible Preferred Stock otherwise set forth in this Certificate of Designation in accordance with the relevant NASDAQ requirements.

(b) Taxes. The Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock upon conversion in a name other than that in which the shares of the Series A Convertible Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid. The Company shall withhold from any payment due whatsoever in connection with the Series A Convertible Preferred Stock any and all required withholdings and/or taxes the Company, in its sole discretion deems reasonable or necessary, absent an opinion from Holder's accountant or legal counsel, acceptable to the Company in its sole determination, that such withholdings and/or taxes are not required to be withheld by the Company.

(c) Stock Dividends, Splits, and Reclassifications. If the Company shall (i) declare a dividend or other distribution payable in securities or (ii) split its outstanding shares of Common Stock into a larger number, including any such reclassification in connection with a merger, consolidation or other business combination in which the Company is the continuing entity (any such corporate event, an "**Event**"), then in each instance the Conversion Ratio shall be adjusted such that the number of shares issued upon conversion of one share of Series A Convertible Preferred Stock will equal the number of shares of Common Stock that would otherwise be issued but for such Event.

(d) Fractional Shares. If any Conversion of Series A Convertible Preferred Stock would result in the issuance of a fractional share of Common Stock (aggregating all shares of Series A Convertible Preferred Stock being converted pursuant to each Conversion), such fractional share shall be rounded up to the nearest whole share and the Holder shall be entitled to receive, in lieu of the final fraction of a share, one additional whole share of Common Stock.

(e) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Convertible Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then-outstanding shares of the Series A Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A Convertible Preferred Stock, the Company will within a reasonable time period make a good faith effort to take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) Effect of Conversion. On any Conversion Date, all rights of any Holder with respect to the shares of the Series A Convertible Preferred Stock so converted, including the rights, if any, to receive distributions of the Company's assets or notices from the Company, will terminate, except only for the rights of any such Holder to receive certificates (if applicable) for the number of shares of Common Stock into which such shares of the Series A Convertible Preferred Stock have been converted.

Section 6. VOTING. The Holder of each share of Series A Convertible Preferred Stock shall have such number of votes as is determined by multiplying (a) the number of shares of Series A Convertible Preferred Stock held by such holder, and (b) 100. Such voting calculation is hereby authorized by the Company and the Company acknowledges such calculation may result in the total number of possible votes cast by the Series A Holders and all other classes of the Company's common stock in any given voting matter exceeding the total aggregate number of shares that this Company shall have authority to issue. With respect to any shareholder vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the Bylaws of this Company, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. The holders of Series A Convertible Preferred Stock shall vote together with all other classes and series of common and preferred stock of the Company as a single class on all actions to be taken by the Common Stock shareholders of the Company, except to the extent that voting as a separate class or series is required by law. Notwithstanding anything to the contrary herein, the Holders of shares of Series A Convertible Preferred Stock may not engage in any vote where the voting power would trigger any NASDAQ requirement to obtain shareholder approval; *provided, however*, the Holders shall have the right to vote that portion of their voting power that would not trigger such a requirement. This restriction shall lapse upon the requisite approval of the shareholders in compliance with NASDAQ's shareholder voting requirements in effect at the time of such approval.

Section 7. REDEMPTION. The Series A Convertible Preferred Stock shall have no redemption rights.

Section 8. PROTECTIVE PROVISIONS. In addition to any other rights provided by law, at any time any shares of Series A Convertible Preferred Stock are outstanding, as a legal party in interest, the Company, through action directly initiated by the Company's Board of Directors or indirectly initiated by the Company's Board of Directors through judicial action or process, including any action by the shareholders of the Company's Common Stock, shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, take any of the following actions without first obtaining the affirmative approval of a majority of the Holders.

(a) Increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Convertible Preferred Stock;

(b) Effect an exchange, reclassification, or cancellation of all or a part of the Series A Convertible Preferred Stock, but excluding a stock split or reverse stock split or combination of the Common Stock or Preferred Stock;

(c) Effect an exchange, or create a right of exchange, of all or part of the shares of another class of shares into shares of Series A Convertible Preferred Stock; or

(d) Alter or change the rights, preferences or privileges of the shares of Series A Convertible Preferred Stock so as to affect adversely the shares of such series, including the rights set forth in this Designation;

PROVIDED, HOWEVER, that the Company may, by any means authorized by law and without any vote of the Holders of shares of the Series A Convertible Preferred Stock, make technical, corrective, administrative or similar changes in this Certificate of Designation that do not, individually or in the aggregate, materially adversely affect the rights or preferences of the Holders of shares of the Series A Convertible Preferred Stock.

Section 9. PREEMPTIVE RIGHTS. Holders of Series A Convertible Preferred Stock and holders of Common Stock shall not be entitled to any preemptive, subscription or similar rights in respect to any securities of the Company, except as specifically set forth herein or in any other document agreed to by the Company.

Section 10. REPORTS. The Company shall mail to all holders of Series A Convertible Preferred Stock those reports, proxy statements and other materials that it mails to all of its holders of Common Stock.

Section 11. NOTICES. In addition to any other means of notice provided by law or in the Company's Bylaws, any notice required by the provisions of this Certificate of Designation to be given to the Holders shall be deemed given if deposited in the United States mail, postage prepaid, return receipt requested and addressed to each Holder of record at such Holder's address appearing on the books of the Company.

Section 12. MISCELLANEOUS.

(a) The headings of the various sections and subsections of this Certificate of Designation are for convenience of reference only and shall not affect the interpretation of any of the provisions of this Certificate of Designation.

(b) Whenever possible, each provision of this Certificate of Designation shall be interpreted in a manner as to be effective and valid under applicable law and public policy. If any provision set forth herein is held to be invalid, unlawful, or incapable of being enforced by reason of any rule of law or public policy, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions of this Certificate of Designation. No provision herein set forth shall be deemed dependent upon any other provision unless so expressed herein. If a court of competent jurisdiction should determine that a provision of this Certificate of Designation would be valid or enforceable if a period of time were extended or shortened, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

(c) The Company will provide to the Holders of the Series A Convertible Preferred Stock all communications sent by the Company to the holders of the Common Stock.

(d) Except as may otherwise be required by law, the shares of the Series A Convertible Preferred Stock shall not have any powers, designations, preferences or other special rights, other than those specifically set forth in this Certificate of Designations.

(e) Shares of the Series A Convertible Preferred Stock converted into Common Stock shall be retired and canceled and shall have the status of authorized but unissued shares of preferred stock of the Company undesignated as to any specific series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or re-designated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company.

(f) Notwithstanding the above terms and conditions of this Certificate of Designation and the dollar amounts and share numbers set forth herein shall be subject to adjustment, as appropriate, whenever there shall occur a stock split, stock dividend, combination, reclassification or other similar event involving shares of the Series A Convertible Preferred Stock. Such adjustments shall be made in such manner and at such time as the Board of Directors in good faith determines to be equitable in the circumstances, any such determination to be evidenced in a resolution duly adopted by the Board of Directors. Upon any such equitable adjustment, the Company shall promptly deliver to each Holder a notice describing in reasonable detail the event requiring the adjustment and the method of calculation thereof and specifying the increased or decreased Liquidation Preference following such adjustment.

(g) With respect to any notice to a Holder required to be provided hereunder, such notice shall be mailed to the registered address of such Holder, and neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any redemption, conversion, distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation, winding-up or other action, or the vote upon any action with respect to which the Holders are entitled to vote. All notice periods referred to herein shall commence on the date of the mailing of the applicable notice. Any notice that was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

IN WITNESS WHEREOF, the Company has caused this statement to be duly executed by its sole director this 18th day of August, 2017.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: _____
Tony Isaac – Chief Executive Officer

EXHIBIT B

Form of Closing Payment Certificate

(attached)

GEOTRAQ INC.

Closing Payment Certificate

August 18, 2017

Reference is hereby made to that certain Agreement and Plan of Merger, dated as of August 18, 2017 (the "Merger Agreement"), by and among Appliance Recycling Centers of America, Inc., a Minnesota corporation (the "Parent"), Appliance Recycling Acquisition Corp., a Nevada corporation and a wholly-owned subsidiary of the Parent (the "Merger Sub"), GeoTraq Inc., a Nevada corporation (the "Company"), the Stockholders (as defined in the Merger Agreement), and the Stockholders' Representative (as defined in the Merger Agreement). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

Pursuant to Section 2.03(a)(vii) of the Merger Agreement, the Company and the Stockholders hereby certify to the Parent and the Merger Sub as follows:

1. The Closing Indebtedness Amount is \$0.00 / none.
2. The amount of Company Transaction Expenses unpaid as of immediately prior to the Effective Time is \$0.00 / none.
3. The number of issued and outstanding Company Shares held by each Stockholder, each Stockholder's Pro Rata Share of the Merger Consideration (as a percentage interest) and the Parent Preferred Shares, the respective amounts of the Earnest Money Deposit Amount paid the Stockholders prior to the date hereof, and the respective initial principal amounts payable to the Stockholders under the Promissory Notes are as follows:

| Stockholder | Company Shares | Merger Consideration | Parent Preferred Shares | Earnest Money Deposit Amount | Principal Amount of Promissory Note |
|-------------------------|----------------|----------------------|-------------------------|------------------------------|-------------------------------------|
| Gregg Sullivan | 20 | 20% | 57,718 | \$100,000 | \$100,000 |
| Juan Yunis | 65 | 65% | 187,582 | \$25,000 | \$625,000 |
| Isaac Capital Group LLC | 15 | 15% | 43,288 | \$75,000 | \$75,000 |

[Signature page follows.]

IN WITNESS WHEREOF, this Closing Payment Certificate has been executed by the undersigned as of the date first set forth above.

THE COMPANY:

GEOTRAQ INC.

By: _____
Gregg Sullivan, CEO

THE STOCKHOLDERS:

Gregg Sullivan

Juan Yunis

ISAAC CAPITAL GROUP LLC

By: _____
Jon Isaac, CEO/Manager

[Signature Page to Closing Payment Certificate]

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EXHIBIT C

Form of Employment Agreement

(attached)

EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made and entered into as of August 18, 2017 (the "Effective Date"), by and between GeoTraq Inc., a Nevada corporation (the "Company"), and Gregg Sullivan (the "Executive").

WHEREAS, the Company and the Executive desire to enter into this Employment Agreement to ensure the Company of the services of the Executive, to provide for compensation and other benefits to be paid and provided by the Company to the Executive in connection therewith, and to set forth the rights and duties of the parties in connection therewith; and

WHEREAS, certain capitalized terms used herein are defined in Section 9 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, and for such other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Employment Position, Duties, and Place

(a) During the Term, the Executive shall serve as the "Chief Executive Officer" of the Company and shall devote substantially all of his business time and best reasonable efforts to his employment and perform diligently such duties as are customarily performed by comparable chief executive officers of companies that are at a similar development, operational, and/or growth stage as the Company, together with such other duties as may be reasonably assigned from time to time by the Board of Directors of the Company (the "Board"), the Board of Directors of the Parent, or the Chief Executive Officer of the Parent, which duties shall be consistent with the Executive's position as set forth above. The Executive shall report directly to the Board, the Board of Directors of the Parent, and the Chief Executive Officer of the Parent. The Executive shall, if requested by the Chief Executive Officer of the Parent, also serve as a member of the Board for no additional compensation.

(b) During the Term, the Executive shall not, directly or indirectly, without the prior written consent of the Parent, other than in the performance of duties naturally inherent to the businesses of the Company and in furtherance thereof, render services of a business, professional, or commercial nature to any other Person, whether for compensation or otherwise; *provided, however*, that, so long as it does not interfere with the Executive's full-time employment hereunder, and so long as the Executive provides prior written notice thereof to the Parent, the Executive may attend to passive outside investments and serve as a director, trustee, or officer of, or otherwise participate in any similar capacity in educational, welfare, social, religious, civic, or trade organizations.

(c) The principal place of the Executive's employment shall be the Company's principal executive office, currently located at 325 E. Warm Springs Road, Suite 102, Las Vegas, Nevada 89119; *provided that*, from time to time, the Executive may be required to travel on Company business during the Term.

2. Term. The term of employment covered by this Agreement shall begin on the Effective Date and shall continue until the third anniversary of the Effective Date, unless terminated earlier pursuant to Section 5. This Agreement may be extended, upon the same terms and conditions, for successive periods of one year, if at least 90 days' prior to the expiration of the then-applicable initial or renewal Term, both parties provide written notice to the other party of his/its intention to extend the term of this Agreement. The period during which the Executive is employed by the Company hereunder is referred to as the "Term."

3. Compensation.

(a) Annual Base Salary. The Company shall pay the Executive an annual rate of base salary of \$240,000.00 (the "Base Salary"), payable monthly in arrears at the rate of \$20,000 per month; *provided, however*, that a portion of the monthly payment of the Base Salary shall be deferred as follows (such deferred payments, collectively, the "Deferred Salary") and paid in accordance with Section 3(b) (subject to Section 5(a)):

(i) \$10,000 (i.e., 50%) of each monthly payment of the Base Salary shall be deferred until such time, if any, as the Company achieves either of the following (as applicable, the "Initial Milestone") and the monthly amount of the Deferred Salary is reduced pursuant to Section 3(a)(ii) below: (A) \$100,000 in subscription revenues in any calendar month during the Term or (B) \$1,000,000 in total revenues during any 12-month period during the Term;

(ii) following such time, if any, as the Company achieves the Initial Milestone, the monthly amount of the Deferred Salary shall be reduced as follows: (A) \$8,000 (i.e., 40%) of the monthly payment of the Base Salary shall be deferred for each of the three months of the first fiscal quarter following the achievement of the Initial Threshold, (B) \$6,000 (i.e., 30%) of the monthly payment of the Base Salary shall be deferred for each of the three months of the second fiscal quarter following the achievement of the Initial Threshold, (C) \$4,000 (i.e., 20%) of the monthly payment of the Base Salary shall be deferred for each of the three months of the third fiscal quarter following the achievement of the Initial Threshold, and (D) \$2,000 (i.e., 10%) of the monthly payment of the Base Salary shall be deferred for each month following such third fiscal quarter until such time, if any, as the Company achieves \$5,000,000 in total revenues during any 12-month period during the Term (the "Second Milestone");¹ and

(iii) for each monthly payment of the Base Salary commencing with the first month of the first fiscal quarter following the Company having achieved the Second Milestone, if any, no portion of the monthly salary payment of the Base Salary shall be deferred.

(b) Payment of Deferred Salary. The Deferred Salary shall become due and payable, in installments as set forth in this Section 3(b), at such time, if any, as the Company (i) achieves \$10,000,000 in total revenues during any 12-month period during the Term or (ii) the Company has operated on a cash flow positive basis, after payment of all operating and administrative expenses and as reasonably determined by the Parent's Board, for a period of three consecutive calendar months (the "Payment Milestone"). In the event that the Company achieves the Payment Milestone, the accrued amount of the Deferred Salary shall be paid out of excess cash flow (after payment of all operating and administrative expenses) on a *pro rata* basis over the twelve months following the month-end at which the Company achieved the Payment Milestone.

(c) Revenues. For purposes of determining whether the Company has achieved the Initial Milestone, the Second Milestone, or the Payment Milestone, as applicable, all revenues referred to in Section 3(a) and/or Section 3(b), if accrued and not collected, shall (A) have arisen from bona fide transactions entered into by the Company in the ordinary course of business, (B) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims, (C) be net of allowance for doubtful accounts, and (D) be collectible in full within 90 days after billing.

¹ By way of example, if the Initial Milestone is achieved in February 2018, the monthly amount of the Deferred Salary would be as follows: (i) \$10,000 for March 2018, (ii) \$8,000 for each of April, May, and June 2018, (iii) \$6,000 for each of July, August, and September 2018, (iv) \$4,000 for each of October, November, and December 2018, and (v) \$2,000 for January 2019 and each month thereafter until the first month of the first fiscal quarter following the Company having achieved the Second Milestone.

(d) Bonus. For each complete calendar year during the Term, the Executive may be eligible to earn an annual bonus (the "Annual Bonus") based upon the achievement of annual Company performance goals established by the Board and the Chief Executive Officer of the Parent in their sole and absolute discretion. The Annual Bonus, if any, will be paid after the end of the applicable calendar year at such time as determined by the Parent in its discretion.

4. Benefits: Vacation; Paid Time-Off; Business Expenses.

(a) Fringe Benefits and Perquisites. During the Term, the Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Parent and to the extent the Parent provides similar benefits or perquisites (or both) to similarly situated executives of the Parent or its subsidiaries.

(b) Employee Benefits. During the Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Parent, as in effect from time to time (collectively, "Employee Benefit Plans"), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Parent reserves the right to amend or cancel any Employee Benefit Plans at any time in its sole and absolute discretion, subject to the terms of such Employee Benefit Plan and applicable law.

(c) Vacation; Paid Time-Off. During the Term, the Executive shall be entitled to two weeks of paid vacation per calendar year (prorated for partial years) in accordance with the Parent's vacation policies, as in effect from time to time. The Executive shall receive other paid time-off in accordance with the Parent's policies for executive officers of the Parent or its subsidiaries, as such policies may exist from time to time.

(d) Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Parent's expense reimbursement policies and procedures.

5. Termination.

(a) Termination for Cause: Termination Without Good Reason. The Executive's employment hereunder may be terminated by the Company for Cause or by the Executive without Good Reason. In the event of such termination, the Executive shall forfeit any and all right, title, and interest in and to any and all accrued and unpaid Deferred Salary and, instead, shall be entitled to receive the following (collectively, the "Accrued Amounts"):

(i) any accrued but unpaid Base Salary (excluding any and all accrued and unpaid Deferred Salary) and accrued but unused vacation, which shall be paid on the pay date immediately following the Termination Date in accordance with the Company's customary payroll procedures, unless a different date shall be required by applicable law;

(ii) any earned but unpaid Annual Bonus, which shall be paid on the applicable payment date;

(iii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Parent's expense reimbursement policy; and

(iv) such employee benefits, if any, to which the Executive may be entitled under the Parent's employee benefit plans as of the Termination Date; *provided that*, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments.

Termination of the Executive's employment shall not be deemed to be for Cause unless and until the Company or the Chief Executive Officer of the Parent delivers to the Executive a copy of a resolution duly adopted by a majority of the Board (after reasonable written notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that the Executive has engaged in the conduct described in the definition of "Cause" in Section 9. Except for a failure, breach, or refusal that, by its nature, cannot reasonably be expected to be cured, the Executive shall have ten (10) business days from the delivery of written notice by the Company or the Chief Executive Officer of the Parent within which to cure any acts constituting Cause.

(b) Termination Without Cause or for Good Reason. The Term and the Executive's employment hereunder may be terminated by the Executive for Good Reason or by the Company without Cause. In the event of such termination, the Executive shall be entitled to receive (i) any and all accrued and unpaid Deferred Salary (payable (A) on a *pro rata* basis over the twelve months following the month during which the Termination Date occurs if the Company has not achieved the Payment Milestone prior to such termination or (B) in accordance with Section 3(b) if the Company has achieved the Payment Milestone prior to such termination) and (ii) the Accrued Amounts (payable as set forth in Section 5(a)). The Executive cannot terminate his employment for Good Reason unless he has provided written notice to the Company and the Parent of the existence of the circumstances providing grounds for termination for Good Reason within 30 days of the initial existence of such grounds and the Company has had at least 30 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate his employment for Good Reason within 65 days after the first occurrence of the applicable grounds, then the Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

(c) Death or Disability. The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Term, and the Company may terminate the Executive's employment on account of the Executive's Disability. If the Executive's employment is terminated during the Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive (i) subject to the Company having achieved the Payment Milestone prior to such termination, any and all accrued and unpaid Deferred Salary (payable in accordance with Section 3(b)) and (ii) the Accrued Amounts (payable as set forth in Section 5(a)). Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner that is consistent with federal and state law.

(d) Expiration of the Term. The Executive's employment hereunder shall terminate upon the expiration of the then-applicable initial or renewal Term unless the term of this Agreement has been extended in accordance with the provisions of Section 2. In the event of such termination, the Executive shall be entitled to receive (i) subject to the Company having achieved the Payment Milestone prior to such termination, any and all accrued and unpaid Deferred Salary (payable in accordance with Section 3(b)) and (ii) the Accrued Amounts (payable as set forth in Section 5(a)).

(e) Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Term (other than termination pursuant to Section 5(c) on account of the Executive's death or pursuant to Section 5(d)) shall be communicated by written notice of termination ("Notice of Termination") to the other party hereto in accordance with Section 18. The Notice of Termination shall specify:

(i) the termination provision of this Agreement relied upon;

(ii) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and

(iii) the applicable Termination Date.

(f) Resale Restrictions and Effect of Termination on the Parent Shares.

(i) Resale Restrictions. Subject to Section 5(f)(ii), the Executive agrees not to sell, contract to sell, grant any option to purchase, transfer the economic risk of ownership in, make any short sale of, pledge, or otherwise transfer or dispose of any Parent Shares (or any interest in any Parent Shares) (the foregoing restrictions, the "Resale Restrictions") before the third (3rd) anniversary of the Effective Date (the "Resale Restrictions Period").

(ii) Effect of Termination on the Parent Shares. Notwithstanding anything to the contrary in Section 5(f)(i), in the event the Executive's employment hereunder is terminated during the Resale Restrictions Period:

(A) by the Executive without Good Reason or by the Company for Cause within three years after the Effective Date, then (1) one-half of the Parent Shares shall automatically be deemed to have been returned the Parent's treasury for cancellation effective as of the Termination Date and (2) the remaining Parent Shares shall be subject to the Resale Restrictions for a period ending on the one-year anniversary of the Termination Date; or

(B) by the Executive for Good Reason or by the Company without Cause, then the Parent Shares shall be subject to the Resale Restrictions for a period ending the earlier of the one-year anniversary of the Termination Date and the date of the expiration of the Resale Restrictions Period.

(iii) Legend. The Parent and its transfer agent are hereby authorized to decline to make any transfer of Parent Shares if such transfer would constitute a violation or breach of this Agreement. Any attempted transfer by the Executive in breach of this Agreement shall be null and void. The Executive acknowledges and agrees that stock certificates issued to the Executive for the Parent Shares shall bear the following restrictive legend:

THE SALE, PLEDGE, HYPOTHECATION, ASSIGNMENT, OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF AN EMPLOYMENT AGREEMENT BETWEEN THE SHAREHOLDER AND THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE CORPORATION.

(g) Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its Affiliates, as well as any other employment or consultancy relationships with the Company or any of its Affiliates.

(h) Exit Obligations. Upon the termination of the Executive's employment, the Executive (or, in the event of the Executive's death, the personal representative of his estate) shall (i) provide or return to the Company any and all Company property and all Company documents and materials belonging to the Company and stored in any fashion, including, without limitation, those that constitute or contain any Confidential Information or Work Product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with his employment by the Company and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's (or his estate's) possession or control, including those stored on any non-Company devices, networks, storage locations, and media in the Executive's (or his estate's) possession or control.

(i) Cooperation. The parties agree that certain matters in which the Executive will be involved during the Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason (except in the event of the Executive's death), to the extent reasonably requested by the Board or the Chief Executive Officer of the Parent, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; *provided that*, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

6. Confidential Information.

(a) Company Creation and Use of Confidential Information. The Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer/subscriber base, generating customer/subscriber and potential customer/subscriber lists, training its employees, and improving its offerings in the industry in which it conducts its business. The Executive understands and acknowledges that, as a result of these efforts, the Company has created, and continues to use and create, Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(b) Disclosure and Use Restrictions. The Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not, directly or indirectly, to disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any Person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of the Executive's authorized employment duties to the Company or with the prior approval of the Board or the Chief Executive Officer of the Parent in each instance (and, then, such disclosure shall be made only within the limits and to the extent of such duties or approval); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of the Executive's authorized employment duties to the Company or with the prior approval of the Board or the Chief Executive Officer of the Parent in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or approval). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, *provided that* the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Chief Executive Officer of the Parent.

(c) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 Notwithstanding any other provision of this Agreement:

(i) The Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

(d) Duration. The Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Executive first having access to such Confidential Information (whether before or after he begins employment by the Company) and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of the Executive's breach of this Agreement or breach by those acting in concert with the Executive or on the Executive's behalf.

7. Restrictive Covenants.

(a) Acknowledgement. The Executive acknowledges and agrees that the nature of the Executive's position gives him access to and knowledge of Confidential Information and places him in a position of trust and confidence with the Company. The Executive acknowledges and agrees that the services he provides to the Company are unique, special, or extraordinary, that the Executive will obtain knowledge and skill relevant to the Company's industry, methods of doing business, and marketing strategies by virtue of the Executive's employment; and that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interest of the Company. The Executive further acknowledges and agrees that the Company's ability to reserve these for the exclusive knowledge and use of the Company is of great competitive importance and commercial value to the Company, and that improper use or disclosure by the Executive is likely to result in unfair or unlawful competitive activity. The Executive further acknowledges that (i) the amount of his compensation reflects, in part, his obligations and the Company's rights under Sections 6 and 7; (ii) he has no expectation of any additional compensation, royalties, or other payment of any kind not otherwise referenced herein in connection herewith; and (iii) he will not be subject to undue hardship by reason of his full compliance with the terms and conditions of Sections 6 and 7 or the Company's enforcement thereof.

(b) Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to the Executive and because of the transactions contemplated by the Merger Agreement, the Executive agrees and covenants not to engage in Restricted Activity within the Restricted Area during the Restriction Period. Nothing herein shall prohibit the Executive from purchasing or owning less than five percent (5%) of the publicly traded securities of any corporation, *provided that* such ownership represents a passive investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation.

(c) Non-Solicitation of Employees. The Executive agrees and covenants that he will not, directly or indirectly, solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment of any employee of the Company or Affiliate thereof during the Restriction Period.

(d) Non-Solicitation of Customers/Subscribers. The Executive understands and acknowledges that because of the Executive's experience and relationship with the Company, he will have access to and learn about much or all of the Company's customer/subscriber information. The Executive understands and acknowledges that loss of customer/subscriber relationships and/or goodwill will cause significant and irreparable harm. The Executive agrees and covenants, during the Restriction Period, that he will not, directly or indirectly, solicit, contact (including but not limited to e-mail, regular mail, express mail, telephone, fax, and instant message), attempt to contact, or meet with the Company's current, former, or prospective customers/subscribers for purposes of offering or accepting goods or services similar to or competitive with those offered by the Company.

(e) Non-Disparagement. The Executive agrees and covenants that he will not at any time make, publish, or communicate to any Person or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company, any Affiliate thereof, or any of their respective businesses, or any of the Company's employees, officers, and existing and prospective customers/subscribers, suppliers, and other associated third parties. The Company agrees and covenants that it shall cause its officers and directors to refrain from making any defamatory or disparaging remarks, comments, or statements concerning the Executive to any third parties.

(f) Non-Waiver. This Section 7 does not, in any way, restrict or impede the Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, *provided that* such compliance does not exceed that required by the law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Parent.

(g) Remedies. In the event of a breach or threatened breach by the Executive of Section 6 or 7, the Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

8. Proprietary Rights.

(a) Work Product. The Executive acknowledges and agrees that all right, title, and interest in and to all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by the Executive individually or jointly with others during the period of his employment by the Company and relate in any way to the business or contemplated business, products, activities, research, or development of the Company or result from any work performed by the Executive for the Company (in each case, regardless of when or where prepared or whose equipment or other resources is used in preparing the same), all rights and claims related to the foregoing, and all printed, physical and electronic copies, and other tangible embodiments thereof (collectively, "Work Product"), as well as any and all rights in and to United States and foreign (i) patents, patent disclosures, and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (iii) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (iv) trade secrets, know-how, and other confidential information, and (v) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights, all improvements thereto, and all similar or equivalent rights or forms of protection in any part of the world (collectively, "Intellectual Property Rights"), shall be the sole and exclusive property of the Company.

(b) Work Made for Hire: Assignment. The Executive acknowledges that, by reason of being employed by the Company at the relevant times, to the extent permitted by law, all of the Work Product consisting of copyrightable subject matter is "work made for hire" as defined in 17 U.S.C. § 101 and such copyrights are therefore owned by the Company. To the extent that the foregoing does not apply, the Executive hereby irrevocably assigns to the Company, for no additional consideration, the Executive's entire right, title, and interest in and to all Work Product and Intellectual Property Rights therein, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title, or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than that the Company would have had in the absence of this Agreement.

(c) Further Assurances: Power of Attorney. During and after his employment, the Executive agrees to cooperate reasonably with the Company to (i) apply for, obtain, perfect, and transfer to the Company the Work Product, as well as any and all Intellectual Property Rights in the Work Product in any jurisdiction in the world and (ii) maintain, protect, and enforce the same, including, without limitation, giving testimony and executing and delivering to the Company any and all applications, oaths, declarations, affidavits, waivers, assignments, and other documents and instruments as shall be requested by the Company. The Executive hereby irrevocably grants the Company a power of attorney to execute and deliver any such documents on the Executive's behalf in his name and to do all other lawfully permitted acts to transfer the Work Product to the Company and further the transfer, prosecution, issuance, and maintenance of all Intellectual Property Rights therein, to the full extent permitted by law, if the Executive does not promptly cooperate with the Company's request (without limiting the rights the Company shall have in such circumstances by operation of law). The power of attorney is coupled with an interest and shall not be affected by the Executive's subsequent incapacity.

9. Definitions. When used herein, the following terms shall have the following meanings:

- (a) "Affiliate" means any Person controlling, under common control with, or controlled by the Parent.
- (b) "Cause" means:

- (i) the Executive's willful failure to perform his duties (other than any such failure resulting from incapacity due to physical or mental illness);
- (ii) the Executive's willful failure to comply with any valid and legal directive of the Board or the Chief Executive Officer of the Parent;
- (iii) the Executive's engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the Company or its Affiliates;
- (iv) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;
- (v) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude, if such felony or other crime is work-related, materially impairs the Executive's ability to perform services for the Company, or results in material reputational or financial harm to the Company or its Affiliates;
- (vi) the Executive's willful unauthorized disclosure of Confidential Information;
- (vii) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company; or
- (viii) any material failure by the Executive to comply with the Company's written policies or rules, as they may be in effect from time to time during the Term, if such failure causes material reputational or financial harm to the Company or its Affiliates.

(c) "Confidential Information" means, without limitation, all information not generally known to the public, in spoken, printed, electronic, or any other form or medium, relating to the Company, its Affiliates, the respective businesses of the Company or its Affiliates, or any existing or prospective customer/subscriber, supplier, investor, or other associated third party of the Company, and information of any other Person that has been entrusted to the Company in confidence. The Executive understands that the foregoing definition is not exhaustive and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. The Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to the Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Executive; *provided that*, such disclosure is through no direct or indirect fault of the Executive or person(s) acting on the Executive's behalf.

(d) “Disability” means the Executive’s inability, due to physical or mental incapacity, to perform the essential functions of his job, with or without reasonable accommodation, for one hundred eighty (180) days out of any three hundred sixty-five (365)-day period; *provided, however*, in the event that the Company temporarily replaces the Executive, or transfers the Executive’s duties or responsibilities to another individual on account of the Executive’s inability to perform such duties due to a mental or physical incapacity that is, or is reasonably expected to become, a Disability, then the Executive’s employment shall not be deemed terminated by the Company and the Executive shall not be able to resign with Good Reason as a result thereof. Any question as to the existence of the Executive’s Disability as to which the Executive and the Board cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. If the Executive and the Board cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third who shall make such determination in writing. The determination of Disability made in writing by such physician shall be final and conclusive for all purposes of this Agreement.

(e) “Good Reason” means the occurrence of any of the following, in each case during the Term without the Executive’s written consent:

(i) a reduction in the Executive’s Base Salary;

(ii) any material breach by the Company of any material provision of this Agreement;

(iii) the Company’s failure to obtain an agreement from any successor to the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law; or

(iv) a material, adverse change in the Executive’s title, authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law).

(f) “Merger Agreement” means that certain Agreement and Plan of Merger, dated as of August 17, 2017, by and among the Parent, the Merger Sub named therein, the Company, the Executive, in his capacity as a stockholder of the Company, the other stockholders of the Company, and the Stockholders’ Representative named therein.

(g) “Parent” means Appliance Recycling Centers of America, Inc., a Minnesota corporation and the sole stockholder of the Company.

(h) “Parent Common Stock” has the meaning set forth in the Merger Agreement.

(i) “Parent Preferred Shares” has the meaning set forth in the Merger Agreement.

(j) “Parent Shares” means the Parent Preferred Shares issued to the Executive pursuant to the Merger Agreement and all shares of Parent Common Stock issuable or issued upon conversion of such Parent Preferred Shares.

(k) “Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

(l) “Restricted Activity” means any activity in which the Executive contributes his knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, agent, employee, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar business as the Company. Restricted Activity also includes activity that may require or inevitably requires disclosure of trade secrets, proprietary information, or Confidential Information.

(m) “Restricted Area” means each area of each state and territory of the United States of America.

(n) “Restriction Period” means the period commencing on the Effective Date of this Agreement and ending on the date that is the first (1st) anniversary of the Termination Date.

(o) “Section 409A” means Section 409A of the Internal Revenue Code of 1986, as amended.

(p) “Termination Date” means:

(i) if the Executive’s employment hereunder terminates on account of the Executive’s death, the date of the Executive’s death;

(ii) if the Executive’s employment hereunder is terminated on account of the Executive’s Disability, the date that it is determined that the Executive has a Disability;

(iii) if the Company terminates the Executive’s employment hereunder for Cause, the date the Notice of Termination is delivered to the Executive;

(iv) if the Company terminates the Executive’s employment hereunder without Cause, the date specified in the Notice of Termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered to the Executive;

(v) if the Executive terminates his employment hereunder with or without Good Reason, the date specified in the Executive’s Notice of Termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered to the Company; or

(vi) if the Executive’s employment hereunder terminates pursuant to Section 2, the date of expiration of the then-applicable initial or renewal Term.

10. Governing Law: Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Nevada without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a federal court of the United States of America or a court of the State of Nevada, in each case located in the City of Las Vegas, County of Clark. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

11. Entire Agreement. Unless specifically provided herein and without limiting the Merger Agreement, this Agreement contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties mutually agree that this Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of this Agreement.

12. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive, the Company, and the Parent. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

13. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

14. Captions. Captions and headings of the sections and subsections of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or subsection. When reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement, unless otherwise indicated.

15. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

16. Section 409A.

(a) General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

(b) Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A and the Executive is determined to be a “specified employee” as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on the Executive’s death (the “Specified Employee Payment Date”). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Executive’s separation from service occurs shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

(c) Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(i) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(ii) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(iii) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

17. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and its permitted successors and assigns.

18. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

GeoTraq Inc.
c/o Appliance Recycling Centers of America, Inc.
175 Jackson Avenue North
Suite 102
Minneapolis, Minnesota 55343
Attn: Tony Isaac, Chief Executive Officer

If to the Executive:

Gregg Sullivan
309 Highland Mesa Court
Las Vegas, Nevada 89144

19. Withholding. The Company shall have the right to withhold from any amount payable hereunder any federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

20. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

21. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS, AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date first set forth above.

GEOTRAQ INC.

By: _____
Tony Isaac, Secretary

EXECUTIVE:

Gregg Sullivan

Acknowledged and agreed to by the Parent:

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: _____
Tony Isaac, Chief Executive Officer

[Signature Page to Employment Agreement]

EXHIBIT D

Form of Promissory Note



PROMISSORY NOTE

\$ __, __.00

August 18, 2017
Las Vegas, Nevada

This Promissory Note (this “Note”) is being delivered pursuant to that certain Agreement and Plan of Merger, dated as of August 18, 2017 (the “Merger Agreement”), by and among Appliance Recycling Centers of America, Inc., a Minnesota corporation (the “Parent”), Appliance Recycling Acquisition Corp., a Nevada corporation and a wholly-owned subsidiary of the Parent (the “Merger Sub”), GeoTraq Inc., a Nevada corporation (the “Company”), the Stockholders (as defined in the Merger Agreement), including the Holder (as defined below), and the Stockholders’ Representative (as defined in the Merger Agreement), pursuant to which the Merger Sub will merge with and into the Company, with the Company surviving the Merger as a wholly-owned subsidiary of the Parent, on the terms set forth in the Merger Agreement. Terms used but not defined in this Note shall have the meanings ascribed to them in the Merger Agreement.

1. Principal and Interest; Maturity; Payments.

(a) Principal and Interest. The Parent, for value received, hereby promises to pay to the order of _____ (the “Holder”) (i) the aggregate principal amount of this Note and (ii) interest on the unpaid principal balance from time to time outstanding under this Note, from the date hereof until the principal balance is paid in full, at the rate equal to the annual Short-Term Applicable Federal Rate of 1.29%, as announced by the U.S. Internal Revenue Service in Revenue Ruling 2017-15 for the month of August 2017, compounded annually based on a 365-day year and the actual number of days elapsed.

(b) Maturity and Payments. The principal amount of this Note, together with accrued and unpaid interest thereon, shall be due and payable on August 17, 2018. Principal and interest under this Note shall be payable in U.S. dollars to the Holder by wire transfer in immediately available funds to an account designated by the Holder in writing. If any payment on this Note is due on a day that is not a Business Day, such payment will be due on the next succeeding Business Day, and such extension of time will be taken into account in calculating the amount of interest payable under this Note.

2. Default.

(a) Events of Default. The occurrence of either of the following shall constitute an “Event of Default” under this Note: (i) the Parent fails to pay when due any payment under this Note or (ii) the Parent (A) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (B) consents to the appointment of a trustee, receiver, assignee, liquidator, or similar official; or (C) makes a general assignment for the benefit of its creditors or institutes a proceeding, or has an involuntary proceeding instituted against it, seeking a judgment of insolvency, bankruptcy, or any other similar relief under any bankruptcy, insolvency, or other similar Law affecting creditors’ rights that is not dismissed within 120 days thereafter.

(b) Remedies. Upon the occurrence of an Event of Default hereunder and following the expiration of any cure period set forth in Section 2(a)(iii)(C), the Holder may (i) by written notice to the Parent, declare the entire unpaid principal balance of this Note immediately due and payable or (ii) exercise any rights and remedies available to him under applicable Law.

3. Miscellaneous.

(a) Governing Law; Jurisdiction; Jury. This Note has been delivered in and shall be governed by and construed in accordance with the internal laws of the State of Nevada without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or based upon this Note may be instituted in the federal courts of the United States of America or the courts of the State of Nevada in each case located in the City of Las Vegas, County of Clark. Each party hereto irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS NOTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS NOTE.

(b) Electronic Signature. Any signature delivered by electronic means (facsimile or email/pdf, etc.) shall be binding to the same extent as an original signature page with regard to this Note or any amendments thereof, subject to the terms thereof.

(c) Time Is of the Essence. Time is of the essence regarding payments due under this Note.

[Signature Page Follows]

IN WITNESS WHEREOF, a duly authorized representative of the Parent has duly executed and delivered this Note as of the date first written above.

APPLIANCE RECYCLING CENTERS OF AMERICA, INC.

By: _____
Tony Isaac, Chief Executive Officer

Signature Page to Promissory Note (Sullivan)

EXHIBIT E

Directors and Officers of the Surviving Corporation

Directors:

Gregg Sullivan
Tony Isaac
Jon Isaac

Officers:

Chief Executive Officer
Secretary
Treasurer

Gregg Sullivan
Tony Isaac
Tony Isaac

CERTIFICATIONS:

I, Tony Isaac, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Appliance Recycling Centers of America, Inc.;
2. Based on my knowledge, this report 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2017

/s/ Tony Isaac
Tony Isaac
Chief Executive Officer

CERTIFICATIONS:

I, Virland Johnson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Appliance Recycling Centers of America, Inc.;
2. Based on my knowledge, this report 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of and for the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 21, 2017

/s/ Virland A. Johnson
Virland A. Johnson
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350 (as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002), the undersigned Chief Executive Officer of Appliance Recycling Centers of America, Inc. (the "Company") hereby certifies that the Quarterly Report on Form 10-Q of the Company for the period ended July 1, 2017 (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 21, 2017

/s/ Tony Isaac
Tony Isaac
Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350 (as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002), the undersigned Chief Financial Officer of Appliance Recycling Centers of America, Inc. (the "Company") hereby certifies that the Quarterly Report on Form 10-Q of the Company for the period ended July 1, 2017 (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 21, 2017

/s/ Virland A. Johnson

Virland A. Johnson
Chief Financial Officer