
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 September 30, 2014

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 1-32630

FIDELITY NATIONAL FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

16-1725106

(I.R.S. Employer Identification Number)

601 Riverside Avenue, Jacksonville, Florida

(Address of principal executive offices)

32204

(Zip Code)

(904) 854-8100

(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 corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) 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, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES NO

The number of shares outstanding of the Registrant's common stock as of October 31, 2014 were:

FNF Group Common Stock 277,907,550

FNFV Group Common Stock 92,944,570

FORM 10-Q
QUARTERLY REPORT
Quarter Ended September 30, 2014
TABLE OF CONTENTS

	<u>Page</u>
<u>Part I: FINANCIAL INFORMATION</u>	
<u>Item 1. Condensed Consolidated Financial Statements</u>	
<u>A. Condensed Consolidated Balance Sheets as of September 30, 2014 and December 31, 2013</u>	<u>1</u>
<u>B. Condensed Consolidated Statements of Earnings for the three-month and nine-month periods ended September 30, 2014 and 2013</u>	<u>2</u>
<u>C. Condensed Consolidated Statements of Comprehensive Earnings for the three-month and nine-month periods ended September 30, 2014 and 2013</u>	<u>4</u>
<u>D. Condensed Consolidated Statement of Equity for the nine-month period ended September 30, 2014</u>	<u>5</u>
<u>E. Condensed Consolidated Statements of Cash Flows for the nine-month periods ended September 30, 2014 and 2013</u>	<u>7</u>
<u>F. Notes to Condensed Consolidated Financial Statements</u>	<u>8</u>
<u>Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>38</u>
<u>Item 3. Quantitative and Qualitative Disclosure About Market Risk</u>	<u>53</u>
<u>Item 4. Controls and Procedures</u>	<u>53</u>
<u>Part II: OTHER INFORMATION</u>	
<u>Item 1. Legal Proceedings</u>	<u>54</u>
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>54</u>
<u>Item 6. Exhibits</u>	<u>55</u>

Part I: FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements****FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS**

(Dollars in millions, except share data)

	September 30, 2014	December 31, 2013
	(Unaudited)	
ASSETS		
Investments:		
Fixed maturity securities available for sale, at fair value, at September 30, 2014 and December 31, 2013 includes pledged fixed maturity securities of \$351 and \$261, respectively, related to secured trust deposits	\$ 3,022	\$ 2,959
Preferred stock available for sale, at fair value	194	151
Equity securities available for sale, at fair value	149	136
Investments in unconsolidated affiliates	297	357
Other long-term investments	175	162
Short-term investments	26	26
Total investments	3,863	3,791
Cash and cash equivalents, at September 30, 2014 and December 31, 2013 includes \$385 and \$339, respectively, of pledged cash related to secured trust deposits	1,195	1,969
Trade and notes receivables, net of allowance of \$21, at September 30, 2014 and December 31, 2013	749	482
Goodwill	4,957	1,901
Prepaid expenses and other assets	758	682
Capitalized software, net	588	39
Other intangible assets, net	1,495	619
Title plants	395	370
Property and equipment, net	775	645
Income taxes receivable	—	30
	<u>\$ 14,775</u>	<u>\$ 10,528</u>
LIABILITIES AND EQUITY		
Liabilities:		
Accounts payable and accrued liabilities, at December 31, 2013 includes accounts payable to related parties of \$3	\$ 1,568	\$ 1,302
Notes payable	3,240	1,323
Reserve for title claim losses	1,640	1,636
Secured trust deposits	722	588
Income taxes payable	9	—
Deferred tax liability	555	144
Total liabilities	7,734	4,993
Commitments and Contingencies:		
Redeemable non-controlling interest by 33% minority holder of Black Knight Financial Services, LLC and 35% minority holder of ServiceLink Holdings, LLC	698	—
Equity:		
FNF Class A common stock, \$0.0001 par value; authorized 600,000,000 as of December 31, 2013; issued 292,289,166 as of December 31, 2013	—	—
FNF Group common stock, \$0.0001 par value; authorized 487,000,000 shares as of September 30, 2014; issued 277,876,023 as of September 30, 2014	—	—
FNFV Group common stock, \$0.0001 par value; authorized 113,000,000 shares as of September 30, 2014; issued 92,946,545 as of September 30, 2014	—	—
Preferred stock, \$0.0001 par value; authorized 50,000,000 shares; issued and outstanding, none	—	—
Additional paid-in capital	4,822	4,642
Retained earnings	1,130	1,089
Accumulated other comprehensive earnings	32	37
Less: treasury stock, 5,925 shares as of September 30, 2014 and 41,948,518 shares as of December 31, 2013, at cost	—	(707)
Total Fidelity National Financial, Inc. shareholders' equity	5,984	5,061
Non-controlling interests	359	474
Total equity	6,343	5,535
	<u>\$ 14,775</u>	<u>\$ 10,528</u>

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS

(Dollars in millions)

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
	(Unaudited)		(Unaudited)	
Revenues:				
Direct title insurance premiums	\$ 465	\$ 472	\$ 1,249	\$ 1,377
Agency title insurance premiums	528	630	1,450	1,779
Escrow, title related and other fees	735	437	2,097	1,361
Restaurant revenue	343	336	1,055	1,037
Auto parts revenue	290	266	892	834
Interest and investment income	29	29	94	99
Realized gains and losses, net	(7)	4	(6)	7
Total revenues	<u>2,383</u>	<u>2,174</u>	<u>6,831</u>	<u>6,494</u>
Expenses:				
Personnel costs	645	546	1,950	1,611
Agent commissions	396	482	1,098	1,352
Other operating expenses	428	329	1,289	1,020
Cost of auto parts revenue, includes \$19 of depreciation and amortization for the three months ended September 30, 2014 and 2013, respectively, and \$51 and \$55 for the nine months ended September 30, 2014 and 2013, respectively	266	223	771	704
Cost of restaurant revenue	296	292	899	889
Depreciation and amortization	102	36	305	104
Provision for title claim losses	59	77	169	221
Interest expense	37	27	111	71
Total expenses	<u>2,229</u>	<u>2,012</u>	<u>6,592</u>	<u>5,972</u>
Earnings from continuing operations before income taxes and equity in losses of unconsolidated affiliates	154	162	239	522
Income tax expense	59	52	79	170
Earnings from continuing operations before equity in losses of unconsolidated affiliates	95	110	160	352
Equity in losses of unconsolidated affiliates	(7)	(14)	(43)	(20)
Net earnings from continuing operations	88	96	117	332
Net loss from discontinued operations, net of tax	—	—	(1)	(2)
Net earnings	88	96	116	330
Less: Net (loss) earnings attributable to non-controlling interests	(14)	2	(75)	8
Net earnings attributable to Fidelity National Financial, Inc. common shareholders	<u>\$ 102</u>	<u>\$ 94</u>	<u>\$ 191</u>	<u>\$ 322</u>
Amounts attributable to Fidelity National Financial, Inc. common shareholders				
Net earnings from continuing operations attributable to Old FNF common shareholders	\$ —	\$ 94	\$ 88	\$ 320
Net loss from discontinued operations attributable to Old FNF common shareholders	\$ —	\$ —	\$ (1)	\$ (2)
Net earnings attributable to Old FNF common shareholders	<u>\$ —</u>	<u>\$ 94</u>	<u>\$ 89</u>	<u>\$ 322</u>
Net earnings attributable to FNF Group common shareholders	<u>\$ 114</u>	<u>\$ —</u>	<u>\$ 114</u>	<u>\$ —</u>
Net loss attributable to FNFV Group common shareholders	<u>\$ (12)</u>	<u>\$ —</u>	<u>\$ (12)</u>	<u>\$ —</u>

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS - Continued

(In millions, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
	(Unaudited)		(Unaudited)	
Earnings per share				
<i>Basic</i>				
Net earnings per share from continuing operations attributable to Old FNF common shareholders	\$ —	\$ 0.41	\$ 0.33	\$ 1.43
Net loss per share from discontinued operations attributable to Old FNF common shareholders	—	—	—	(0.01)
Net earnings per share attributable to Old FNF common shareholders	<u>\$ —</u>	<u>\$ 0.41</u>	<u>\$ 0.33</u>	<u>\$ 1.42</u>
Net earnings per share attributable to FNF Group common shareholders	<u>\$ 0.41</u>	<u>\$ —</u>	<u>\$ 0.41</u>	<u>\$ —</u>
Net loss per share attributable to FNFV Group common shareholders	<u>\$ (0.13)</u>	<u>\$ —</u>	<u>\$ (0.13)</u>	<u>\$ —</u>
<i>Diluted</i>				
Net earnings per share from continuing operations attributable to Old FNF common shareholders	\$ —	\$ 0.41	\$ 0.32	\$ 1.40
Net loss per share from discontinued operations attributable to Old FNF common shareholders	—	—	—	(0.01)
Net earnings per share attributable to Old FNF common shareholders	<u>\$ —</u>	<u>\$ 0.41</u>	<u>\$ 0.32</u>	<u>\$ 1.39</u>
Net earnings per share attributable to FNF Group common shareholders	<u>\$ 0.40</u>	<u>\$ —</u>	<u>\$ 0.40</u>	<u>\$ —</u>
Net loss per share attributable to FNFV Group common shareholders	<u>\$ (0.13)</u>	<u>\$ —</u>	<u>\$ (0.13)</u>	<u>\$ —</u>
Weighted average shares outstanding Old FNF common stock, basic basis	<u>—</u>	<u>226</u>	<u>183</u>	<u>225</u>
Weighted average shares outstanding Old FNF common stock, diluted basis	<u>—</u>	<u>230</u>	<u>189</u>	<u>230</u>
Cash dividends paid per share Old FNF common stock	<u>\$ —</u>	<u>\$ 0.16</u>	<u>\$ 0.36</u>	<u>\$ 0.48</u>
Weighted average shares outstanding FNF Group common stock, basic basis	<u>275</u>	<u>—</u>	<u>92</u>	<u>—</u>
Weighted average shares outstanding FNF Group common stock, diluted basis	<u>284</u>	<u>—</u>	<u>94</u>	<u>—</u>
Cash dividends paid per share FNF Group common stock	<u>\$ 0.18</u>	<u>\$ —</u>	<u>\$ 0.18</u>	<u>\$ —</u>
Weighted average shares outstanding FNFV Group common stock, basic basis	<u>92</u>	<u>—</u>	<u>31</u>	<u>—</u>
Weighted average shares outstanding FNFV Group common stock, diluted basis	<u>93</u>	<u>—</u>	<u>31</u>	<u>—</u>

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE EARNINGS
(In millions)

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
	(Unaudited)		(Unaudited)	
Net earnings	\$ 88	\$ 96	\$ 116	\$ 330
Other comprehensive earnings:				
Unrealized (loss) gain on investments and other financial instruments, net (excluding investments in unconsolidated affiliates) (1)	(12)	1	9	(22)
Unrealized loss on investments in unconsolidated affiliates (2)	(7)	(7)	(8)	(18)
Unrealized (loss) gain on foreign currency translation and cash flow hedging (3)	(8)	6	(5)	(3)
Reclassification adjustments for change in unrealized gains and losses included in net earnings (4)	1	1	—	(4)
Minimum pension liability adjustment (5)	—	—	—	(1)
Other comprehensive (loss) earnings	(26)	1	(4)	(48)
Comprehensive earnings	62	97	112	282
Less: Comprehensive (loss) earnings attributable to non-controlling interests	(14)	2	(75)	8
Comprehensive earnings attributable to Fidelity National Financial, Inc. common shareholders	<u>\$ 76</u>	<u>\$ 95</u>	<u>\$ 187</u>	<u>\$ 274</u>
Comprehensive earnings attributable to Old FNF common shareholders	<u>\$ —</u>	<u>\$ 95</u>	<u>\$ 111</u>	<u>\$ 274</u>
Comprehensive earnings attributable to FNF Group common shareholders	<u>\$ 100</u>	<u>\$ —</u>	<u>\$ 100</u>	<u>\$ —</u>
Comprehensive loss attributable to FNFV Group common shareholders	<u>\$ (24)</u>	<u>\$ —</u>	<u>\$ (24)</u>	<u>\$ —</u>

- (1) Net of income tax (benefit) expense of \$(7) million and \$1 million for the three-month periods ended September 30, 2014 and 2013, respectively, and \$5 million and \$(13) million for the nine-month periods ended September 30, 2014 and 2013, respectively.
- (2) Net of income tax benefit of \$4 million and \$4 million for the three-month periods ended September 30, 2014 and 2013, respectively, and \$5 million and \$11 million for the nine-month periods ended September 30, 2014 and 2013, respectively.
- (3) Net of income tax (benefit) expense of \$(5) million and \$4 million for the three-month periods ended September 30, 2014 and 2013, respectively, and \$(3) million and \$(2) million for the nine-month periods ended September 30, 2014 and 2013, respectively.
- (4) Net of income tax expense (benefit) of \$1 million for both the three-month periods ended September 30, 2014 and 2013, and \$(3) million for the nine-month period ended September 30, 2013.
- (5) Net of income tax benefit of less than \$1 million for the nine-month period ended September 30, 2013.

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF EQUITY

(In millions)

(Unaudited)

	Fidelity National Financial, Inc. Common Shareholders													Redeemable Non- controlling Interests					
	FNF Class A Common Stock		FNF Group Common Stock		FNFV Group Common Stock		Additional Paid-in Capital		Retained Earnings		Accumulated Other Comprehensive Earnings (Loss)		Treasury Stock		Non- controlling Interests		Total Equity		
	Shares	\$	Shares	\$	Shares	\$	Capital	Earnings	(Loss)	Shares	\$	Interests	Equity		Interests				
Balance, December 31, 2013	292	\$—	—	\$—	—	\$—	\$ 4,642	\$ 1,089	\$ 37	42	\$(707)	\$ 474	\$ 5,535	\$ —					
Acquisition of Lender Processing Services, Inc.	26	—	—	—	—	—	839	—	—	—	—	—	839	—					
Exercise of stock options	1	—	1	—	—	—	22	—	—	—	—	—	22	—					
Recapitalization of FNF stock	(277)	—	277	—	92	—	(6)	—	—	—	—	—	(6)	—					
Tax benefit associated with the exercise of stock options	—	—	—	—	—	—	5	—	—	—	—	—	5	—					
Other comprehensive earnings — unrealized gain on investments and other financial instruments (excluding investments in unconsolidated affiliates)	—	—	—	—	—	—	—	—	9	—	—	—	9	—					
Other comprehensive earnings — unrealized loss on investments in unconsolidated affiliates	—	—	—	—	—	—	—	—	(8)	—	—	—	(8)	—					
Other comprehensive earnings — unrealized loss on foreign currency translation and cash flow hedging	—	—	—	—	—	—	—	—	(5)	—	—	(2)	(7)	—					
Other comprehensive earnings — minimum pension liability adjustment	—	—	—	—	—	—	—	—	(1)	—	—	—	(1)	—					
Stock-based compensation	—	—	—	—	—	—	26	—	—	—	—	2	28	11					
Retirement of treasury shares	(42)	—	—	—	—	—	(707)	—	—	(42)	707	—	—	—					
Dividends declared	—	—	—	—	—	—	—	(150)	—	—	—	—	(150)	—					
Issuance of restricted stock awards	—	—	—	—	1	—	—	—	—	—	—	—	—	—					
Contribution by minority owner to acquire minority interest in Black Knight Financial Services, LLC and ServiceLink Holdings, LLC	—	—	—	—	—	—	1	—	—	—	—	(1)	—	687					
Contributions to non-controlling interests	—	—	—	—	—	—	—	—	—	—	—	8	8	—					
Subsidiary dividends declared to non-controlling interests	—	—	—	—	—	—	—	—	—	—	—	(47)	(47)	—					
Net earnings (loss)	—	—	—	—	—	—	—	191	—	—	—	(75)	116	—					
Balance, September 30, 2014	—	\$—	278	\$—	93	\$—	\$ 4,822	\$ 1,130	\$ 32	—	\$ —	\$ 359	\$ 6,343	\$ 698					

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)

	For the nine months Ended	
	September 30,	
	2014	2013
	(Unaudited)	
Cash flows from operating activities:		
Net earnings	\$ 116	\$ 330
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	356	159
Equity in losses of unconsolidated affiliates	43	20
Gain (loss) on sales of investments and other assets, net	6	(7)
Stock-based compensation cost	39	24
Tax benefit associated with the exercise of stock options	(5)	(3)
Changes in assets and liabilities, net of effects from acquisitions:		
Net decrease in pledged cash, pledged investments, and secured trust deposits	—	11
Net increase in trade receivables	(53)	(14)
Net increase in prepaid expenses and other assets	(56)	(47)
Net decrease in accounts payable, accrued liabilities, deferred revenue and other	(182)	(23)
Net decrease in reserve for title claim losses	(50)	(81)
Net change in income taxes	75	(25)
Net cash provided by operating activities	289	344
Cash flows from investing activities:		
Proceeds from sales of investment securities available for sale	581	495
Proceeds from calls and maturities of investment securities available for sale	321	230
Proceeds from sale of other assets	2	—
Additions to property and equipment and capitalized software	(144)	(116)
Purchases of investment securities available for sale	(841)	(681)
Net proceeds from short-term investment securities	—	16
Net purchases of other long-term investments	(57)	(81)
Distribution from (contributions to) investments in unconsolidated affiliates	33	(19)
Net other investing activities	(3)	17
Acquisition of Lender Processing Services, Inc., net of cash acquired	(2,253)	—
Acquisition of USA Industries, Inc., net of cash acquired	(40)	—
Other acquisitions/disposals of businesses, net of cash acquired	(45)	(19)
Net cash used in investing activities	(2,446)	(158)
Cash flows from financing activities:		
Borrowings	1,683	329
Debt service payments	(860)	(325)
Additional investment in non-controlling interest	—	(14)
Proceeds from sale of 4% ownership interest of Digital Insurance, Inc.	—	3
Proceeds from sale of 35% of Black Knight Financial Services, LLC and ServiceLink, LLC to minority interest holder	687	—
Dividends paid	(150)	(109)
Subsidiary dividends paid to non-controlling interest shareholders	(47)	(15)
Exercise of stock options	22	49
Equity and debt issuance costs	(3)	(14)
Tax benefit associated with the exercise of stock options	5	3
Purchases of treasury stock	—	(34)
Net cash provided by (used in) financing activities	1,337	(127)
Net (decrease) increase in cash and cash equivalents, excluding pledged cash related to secured trust deposits	(820)	59
Cash and cash equivalents, excluding pledged cash related to secured trust deposits at beginning of period	1,630	866
Cash and cash equivalents, excluding pledged cash related to secured trust deposits at end of period	\$ 810	\$ 925
Supplemental cash flow information:		
Income taxes paid, net	\$ (7)	\$ 183
Interest paid	\$ 101	\$ 72

See Notes to Condensed Consolidated Financial Statements

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

Note A — Basis of Financial Statements

The unaudited financial information in this report includes the accounts of Fidelity National Financial, Inc. and its subsidiaries (collectively, “we,” “us,” “our,” or “FNF”) prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and the instructions to Form 10-Q and Article 10 of Regulation S-X. All adjustments considered necessary for a fair presentation have been included. This report should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2013.

Certain reclassifications have been made in the 2013 Condensed Consolidated Financial Statements to conform to classifications used in 2014. In addition, we have corrected an immaterial prior period error to accrued personnel cost which affected the Balance Sheet, the Statement of Earnings and the Statement of Equity. We reviewed the impact of this error on the prior period financial statements and determined that the error was not material to the financial statements.

A summary of the effects of the immaterial correction on our Condensed Consolidated Financial Statements for the three and nine month periods ended September 30, 2013 and as of December 31, 2013 is as follows: Personnel costs increased \$6 million in both the three and nine month periods ended September 30, 2013 and Income tax expense decreased by \$2 million, resulting in Net earnings attributable to common shareholders decreasing by \$4 million in each period, with a corresponding decrease to EPS of \$0.02 for each period. On the December 31, 2013 Balance Sheet, Income taxes payable decreased by \$4 million, Accounts payable and accrued expenses increased by \$12 million and Retained earnings decreased by \$8 million. There was no impact on our other Condensed Consolidated Financial Statements presented.

Description of the Business

We have organized our business into two groups, FNF Core Operations and FNF Ventures, known as “FNFV.” Through our Core operations, FNF is a leading provider of title insurance, technology and transaction services to the real estate and mortgage industries. FNF is the nation’s largest title insurance company through its title insurance underwriters - Fidelity National Title, Chicago Title, Commonwealth Land Title, Alamo Title and National Title of New York - that collectively issue more title insurance policies than any other title company in the United States. FNF also provides industry-leading mortgage technology solutions and transaction services, including MSP®, the leading residential mortgage servicing technology platform in the U.S., through its majority-owned subsidiaries, Black Knight Financial Services, LLC (“BKFS”) and ServiceLink Holdings, LLC. In addition, in our FNFV group, we own majority and minority equity investment stakes in a number of entities, including American Blue Ribbon Holdings, LLC (“ABRH”), J. Alexander’s, LLC (“J. Alexander’s”), Remy International, Inc. (“Remy”), Ceridian HCM, Inc. and Comdata Inc. (collectively “Ceridian”) and Digital Insurance, Inc. (“Digital Insurance”).

Recent Developments

On October 28, 2014, our Board of Directors approved a three-year stock purchase program, effective November 6, 2014, under which we can repurchase up to 10 million shares of our FNFV Group common stock through November 30, 2017. We may make repurchases from time to time in the open market, in block purchases or in privately negotiated transactions, depending on market conditions and other factors. We did not repurchase any FNFV Group shares from November 6, 2014 through market close on November 7, 2014.

On September 9, 2014, we filed a draft registration statement with the Securities and Exchange Commission (“SEC”) relating to a proposed initial public offering of J. Alexander’s common stock. J. Alexander’s is currently presented as part of the Restaurant Group segment. The number of shares to be offered and the price range for the proposed offering have not yet been determined. The registration statement has not yet become effective. As a result shares to be registered may not be sold nor may offers to buy be accepted prior to the time when the registration statement becomes effective.

On September 7, 2014, we entered into an agreement with Remy for a transaction (the “Spin-off”). Under the Spin-off, FNFV will combine all of the 16,342,508 shares of Remy common stock that FNFV owns and a small company called Fidelity National Technology Imaging, LLC (“Imaging”) into a newly-formed subsidiary (“New Remy”). New Remy will then be distributed to FNFV shareholders. Immediately following the distribution of New Remy to FNFV shareholders, New Remy and Remy will engage in a series of stock-for-stock transactions ending with a new publicly-traded holding company, New Remy Holdco (“New Holdco”). In the Spin-off, FNFV shareholders will receive an estimated total of 16,615,359 shares of New Holdco common stock, or approximately 0.18117 shares for each share of FNFV tracking stock owned. The remaining shareholders of Remy (other than New Remy) will receive an estimated total of 15,652,824 shares, or one share of New Holdco for each share of Remy owned. Remy currently has approximately 32 million shares of common stock outstanding and at the conclusion of the Spin-off, New Holdco will have approximately 32 million shares of common stock outstanding. The Spin-off should be tax-free to all existing Remy and FNFV shareholders. This structure will result in New Holdco becoming the new public parent of Remy. Under the organizational documents of New Holdco, the rights of the holders of the common stock of New Holdco will be the same as the

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

rights of holders of Remy common stock. The Spin-off is subject to customary closing conditions, including Remy shareholder approval, which based on FNFV's ownership of Remy is assured. On October 6, 2014, New Holdco filed an initial Form S-4 registration statement with the SEC, which includes a preliminary proxy statement with respect to the foregoing shareholder vote. In addition, on October 10, 2014, New Remy filed a Form S-1 registration statement with the SEC with regard to the Spin-off. Both of these filings are subject to SEC review and comment before the Remy shareholder meeting can be set. The Spin-off is expected to close in December 2014 or in the first quarter of 2015.

On August 25, 2014, we acquired a 70% ownership interest in LandCastle Title ("LandCastle"), in exchange for our agreement to fund any escrow shortfalls in LandCastle's escrow accounts. At the time of the acquisition, LandCastle was a large third-party agent of FNF, operating primarily in the State of Georgia. To date, FNF's total cash contribution to LandCastle is approximately \$19 million and based on our current understanding of the business could increase by approximately \$0 - \$10 million.

On August 19, 2014, ABRH completed a recapitalization whereby they entered into a new credit agreement for \$210 million. As part of the recapitalization, ABRH's parent paid a special dividend to its members, totaling \$75 million. Of this special dividend, FNFV received \$41 million. ABRH's parent also distributed its 28% ownership interest in J. Alexander's to FNFV, resulting in FNFV now directly owning 87% of J. Alexander's. See Note F for further discussion of the new credit agreement.

On August 12, 2014, we announced that Ceridian reached an agreement to exchange its subsidiary Comdata Inc. ("Comdata") with FleetCor Technologies Inc. ("FleetCor") stock in a transaction valued at approximately \$3.5 billion. After repayment of existing Comdata indebtedness and transaction related expenses, total consideration received by Ceridian will be approximately \$950 million, which will be paid in approximately 7 million shares of FleetCor common stock. FNFV owns approximately 32% of Ceridian. Approximately \$250 million of the common stock of FleetCor will be placed in an escrow account to cover potential indemnity claims as set forth in the merger agreement. The escrowed shares will be released over a three-year period. The actual number of shares of FleetCor common stock received by Ceridian will be subject to adjustment based on the amounts of indebtedness and working capital outstanding at Comdata at the closing of the transaction as set forth in the merger agreement. The shares of FleetCor common stock that Ceridian will receive will be subject to a six-month lockup period after closing of the transaction. At the expiration of the six-month lockup period, Ceridian will be entitled to demand registration rights on all shares of FleetCor common stock, subject to customary limitations. At closing of the Comdata merger FNFV will indirectly own approximately 3% of the outstanding shares of FleetCor. The stock-for-stock transaction is expected to be tax-free for Ceridian and its shareholders. The transaction is subject to customary closing conditions and is expected to close in the fourth quarter of 2014.

On June 30, 2014, we completed the recapitalization of FNF common stock into two tracking stocks, FNF Group common stock and FNFV Group common stock. Each share of the previously outstanding FNF Class A common stock ("Old FNF common stock") was converted into one share of FNF Group common stock, which now trades on the New York Stock Exchange under the current trading symbol "FNF," and 0.3333 of a share of FNFV Group common stock, which now trades on the New York Stock Exchange under the trading symbol "FNFV." Both FNF and FNFV began regular trading on July 1, 2014.

Effective June 1, 2014, we completed an internal reorganization to contribute our subsidiary Property Insight, a company which provides information used by title insurance underwriters, title agents and closing attorneys to underwrite title insurance policies for real property sales and transfer, from our Title segment to BKFS. As a result of this transfer, our ownership percentage in BKFS increased to 67%. Our results for periods since June 1, 2014, reflect our now 67% ownership interest in BKFS.

On January 13, 2014, Remy acquired substantially all of the assets of United Starters and Alternators Industries, Inc. ("USA Industries"). USA Industries is a leading North American distributor of premium quality remanufactured and new alternators, starters, constant velocity axles and disc brake calipers for the light-duty aftermarket. Total consideration paid was \$40 million, net of cash acquired.

On January 2, 2014, we completed the purchase of Lender Processing Services, Inc. ("LPS"). The purchase consideration paid was \$37.14 per share, of which \$28.10 per share was paid in cash and the remaining \$9.04 was paid in FNF common shares. The purchase consideration represented an exchange ratio of 0.28742 Old FNF common shares per share of LPS common stock. Total consideration paid for LPS was \$3.4 billion, which consisted of \$2,535 million in cash and \$839 million in Old FNF common stock. In order to pay the stock component of the consideration, we issued 25,920,078 Old FNF shares to the former LPS shareholders. See Note B for further discussion.

Discontinued Operations

In April 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*. This ASU raises the threshold for a disposal to qualify as a discontinued operation and requires new disclosures of both discontinued operations and certain other disposals that do not meet

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

the definition of a discontinued operation. This ASU is effective for annual periods beginning after December 15, 2014, and interim periods within annual periods beginning on or after December 15, 2015, with early adoption permitted. We have adopted this ASU for the interim period beginning July 1, 2014 and this update did not have a material impact on our financial statements.

The results from a small software company, which we acquired with LPS and which was sold during the second quarter of 2014, are included in the Condensed Consolidated Statements of Earnings as discontinued operations for all periods presented. Total revenues included in discontinued operations were \$2 million for the nine months ending September 30, 2014. Pre-tax earnings included in discontinued operations are \$1 million for the nine months ending September 30, 2014.

The results from two closed J. Alexander's locations and a settlement services company closed in the second quarter of 2013 are reflected in the Condensed Consolidated Statements of Earnings as discontinued operations for all periods presented. There were no revenues included in discontinued operations for the three months ending September 30, 2013, and \$8 million for the nine months ending September 30, 2013. Pre-tax loss included in discontinued operations was \$3 million for the nine months ending September 30, 2013. There was no pre-tax earnings or loss for the three months ending September 13, 2013

Transactions with Related Parties

As we no longer have any officers in common with Fidelity National Information Services, Inc. ("FIS"), effective January 1, 2014, we no longer consider FIS a related party.

Agreements with FIS

A summary of the agreements that were in effect with FIS through December 31, 2013 is as follows:

- Information Technology ("IT") and data processing services from FIS. This agreement governs IT support services provided to us by FIS, primarily consisting of infrastructure support and data center management. Certain subsidiaries of FIS also provided technology consulting services to FNF during 2013.
- Administrative aviation corporate support and cost-sharing services to FIS.

A detail of net revenues and expenses between us and FIS that were included in our results of operations for the periods presented is as follows:

	Three months ended September 30, 2013	Nine months ended September 30, 2013
	(in millions)	
Corporate services and cost-sharing revenue	\$ 1	\$ 4
Data processing expense	(9)	(25)
Net expense	<u>\$ (8)</u>	<u>\$ (21)</u>

We believe the amounts earned by us or charged to us under each of the foregoing arrangements are fair and reasonable. The IT infrastructure support and data center management services provided to us are priced within the range of prices that FIS offers to its unaffiliated third party customers for the same types of services. However, the amounts we earned or were charged under these arrangements were not negotiated at arm's-length, and may not represent the terms that we might have obtained from an unrelated third party. The net amount due to FIS as a result of these agreements was \$3 million as of December 31, 2013.

Included in equity securities available for sale at December 31, 2013, are 1,303,860 shares of FIS stock which were purchased during the fourth quarter of 2009 in connection with a merger between FIS and Metavante Technologies, Inc. The fair value of our investment was \$70 million as of December 31, 2013.

Also included in fixed maturities available for sale are FIS bonds with a fair value of \$42 million as of December 31, 2013.

Earnings Per Share

Basic earnings per share, as presented on the Condensed Consolidated Statement of Earnings, is computed by dividing net earnings available to common shareholders by the weighted average number of common shares outstanding during the period. In periods when earnings are positive, diluted earnings per share is calculated by dividing net earnings available to common shareholders by the weighted average number of common shares outstanding plus the impact of assumed conversions of potentially dilutive securities. For periods when we recognize a net loss, diluted earnings per share is equal to basic earnings per share as the impact of assumed conversions of potentially dilutive securities is considered to be antidilutive. We have granted certain stock options, shares of restricted stock, convertible debt instruments and certain other convertible share based payments which have

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

been treated as common share equivalents for purposes of calculating diluted earnings per share for periods in which positive earnings have been reported.

Options or other instruments which provide the ability to purchase shares of our common stock that are antidilutive are excluded from the computation of diluted earnings per share. There were no antidilutive options during the three and nine month periods ended September 30, 2014. There were one million shares related to antidilutive options excluded for the three and nine month periods ended September 30, 2013.

As of the close of business on June 30, 2014, we completed the recapitalization of Old FNF common stock into two tracking stocks, FNF Group common stock and FNFV Group common stock. As a result of the recapitalization, the weighted average shares outstanding presented on the Condensed Consolidated Statements of Earnings includes shares of Old FNF common stock, FNF Group common stock and FNFV Group common stock. Earnings per share for all periods presented is attributed to the related class of common stock.

Note B — Acquisition of Lender Processing Services, Inc.

The results of operations and financial position of the entities acquired during any year are included in the Condensed Consolidated Financial Statements from and after the date of acquisition.

On January 2, 2014, we completed the purchase of LPS. The purchase consideration paid was \$37.14 per share, of which \$28.10 per share was paid in cash and the remaining \$9.04 was paid in Old FNF common shares. The purchase consideration represented an exchange ratio of 0.28742 Old FNF common shares per share of LPS common stock. Total consideration paid for LPS was \$3.4 billion, which consisted of \$2,535 million in cash and \$839 million in Old FNF common stock. In order to pay the stock component of the consideration, we issued 25,920,078 Old FNF shares to the former LPS shareholders. Goodwill has been recorded based on the amount that the purchase price exceeded the fair value of the net assets acquired.

The initial purchase price is as follows (in millions):

Cash paid for LPS outstanding shares	\$ 2,535
Less: cash acquired from LPS	(282)
Net cash paid for LPS	2,253
FNF common stock issued (25,920,078 shares)	839
Total net consideration paid	\$ 3,092

The purchase price has been initially allocated to the LPS assets acquired and liabilities assumed based on our best estimates of their fair values as of the acquisition date. Goodwill has been recorded based on the amount that the purchase price exceeds the fair value of the net assets acquired. This estimate is preliminary and subject to adjustments as we complete our valuation process with respect to certain intangible assets, legal contingencies, taxes and goodwill, which we expect to have complete by December 2014.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

The initial purchase price allocation is as follows (in millions):

Trade and notes receivable	\$ 184
Investments	77
Prepaid expenses and other assets	59
Property and equipment	149
Capitalized software	552
Intangible assets including title plants	1,010
Income tax receivable	60
Goodwill	3,012
Total assets	5,103
Notes payable	1,091
Reserve for title claims	54
Deferred tax liabilities	435
Other liabilities assumed	431
Total liabilities	2,011
Net assets acquired	\$ 3,092

In connection with the LPS acquisition, we formed a wholly-owned subsidiary, Black Knight Holdings, Inc. ("Black Knight"). Black Knight is the mortgage and finance industries' leading provider of integrated technology, data and analytics solutions, and transaction services. Black Knight has two operating businesses, ServiceLink and BKFS. After acquiring LPS, we retained a 65% ownership interest in each of the subsidiaries and the subsidiaries each issued 35% minority ownership interest to funds affiliated with Thomas H. Lee Partners and certain related entities on January 3, 2014. BKFS and ServiceLink now own and operate the former LPS businesses and our legacy ServiceLink business.

The following table summarizes the intangible assets acquired (in millions, except for useful life):

	Fair Value as of Consolidation	Weighted Average Useful Life in Years as of Consolidation	Residual Value as of September 30, 2014
Amortizing intangible assets:			
Developed technology	\$ 530	8	\$ 483
Purchased technology	22	3	17
Trade names	13	10	11
Customer relationships	910	10	842
Non-compete agreements	5	3	3
Other intangibles	4	8	3
Non-amortizing intangible assets:			
Developed technology	54		54
Title plants	24		24
Total intangible assets and capitalized software	\$ 1,562		\$ 1,437

Pro-forma Financial Results

For comparative purposes, selected unaudited pro-forma consolidated results of operations of FNF for the three and nine months ending September 30, 2014 and 2013 are presented below. Pro-forma results presented assume the consolidation of Black Knight occurred as of the beginning of the 2013 period. Amounts reflect our 65% ownership interest in BKFS and our 65%

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

ownership interest in ServiceLink and were adjusted to exclude costs directly attributable to the acquisition of LPS including transaction costs, severance costs and costs related to our synergy bonus program associated with the acquisition (in millions).

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
Total revenues	\$ 2,383	\$ 2,593	\$ 6,831	\$ 7,854
Net earnings attributable to Fidelity National Financial, Inc. common shareholders	129	129	304	430

Effective June 1, 2014, we completed an internal reorganization to contribute our subsidiary Property Insight, a company which provides information used by title insurance underwriters, title agents and closing attorneys to underwrite title insurance policies for real property sales and transfer, from our Title segment to BKFS. As a result of this transfer, our ownership percentage in BKFS increased to 67%. Our results for periods since June 1, 2014, reflect our now 67% ownership interest in BKFS.

As a result of our acquisition of LPS, the following additions were made to our significant accounting policies during the first quarter of 2014:

BKFS Revenue Recognition

Within our BKFS segment, we recognize revenues in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 605, Revenue Recognition (“ASC 605”). Recording revenues requires judgment, including determining whether an arrangement includes multiple elements, whether any of the elements are essential to the functionality of any other elements, and the allocation of the consideration based on each element’s relative selling price. Customers receive certain contract elements over time and changes to the elements in an arrangement, or in our determination of the relative selling price for these elements, could materially impact the amount of earned and unearned revenue reflected in our financial statements.

The primary judgments relating to our revenue recognition are determining when all of the following criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the seller’s price to the buyer is fixed or determinable; and (4) collectability is reasonably assured. Judgment is also required to determine whether an arrangement involving more than one deliverable contains more than one unit of accounting and how the arrangement consideration should be measured and allocated to the separate units of accounting.

If the deliverables under a contract are software related, we determine the appropriate units of accounting and how the arrangement consideration should be measured and allocated to the separate units. This determination, as well as management’s ability to establish vendor specific objective evidence (“VSOE”) for the individual deliverables, can impact both the amount and the timing of revenue recognition under these agreements. The inability to establish VSOE for each contract deliverable results in having to record deferred revenues and/or applying the residual method. For arrangements where we determine VSOE for software maintenance using a stated renewal rate within the contract, we use judgment to determine whether the renewal rate represents fair value for that element as if it had been sold on a stand-alone basis. For a small percentage of revenues, we use contract accounting when the arrangement with the customer includes significant customization, modification, or production of software. For elements accounted for under contract accounting, revenue is recognized using the percentage-of-completion method since reasonably dependable estimates of revenues and contract hours applicable to various elements of a contract can be made.

We are often party to multiple concurrent contracts with the same customer. These situations require judgment to determine whether the individual contracts should be aggregated or evaluated separately for purposes of revenue recognition. In making this determination we consider the timing of negotiating and executing the contracts, whether the different elements of the contracts are interdependent and whether any of the payment terms of the contracts are interrelated.

Due to the large number, broad nature and average size of individual contracts we are a party to, the impact of judgments and assumptions that we apply in recognizing revenue for any single contract is not likely to have a material effect on our consolidated operations. However, the broader accounting policy assumptions that we apply across similar arrangements or classes of customers could significantly influence the timing and amount of revenue recognized in our result of operations.

Capitalized Software

Capitalized software includes the fair value of software acquired in business combinations, purchased software and capitalized software development costs. Purchased software is recorded at cost and amortized using the straight-line method over its estimated useful life. Software acquired in business combinations is recorded at its fair value and amortized using straight-line or accelerated

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

methods over its estimated useful life, ranging from 5 to 10 years. In our BKFS segment we have significant internally developed software. These costs are amortized using the straight-line method over the estimated useful life. Useful lives of computer software range from 3 to 10 years. Capitalized software development costs are accounted for in accordance with either ASC Topic 985, Software, Subtopic 20, Costs of Software to Be Sold, Leased, or Marketed ("ASC 985-20"), or ASC 350, Subtopic 40, Internal-Use Software ("ASC 350-40"). For software products to be sold, leased, or otherwise marketed (ASC 985-20 software), all costs incurred to establish the technological feasibility are research and development costs, and are expensed as they are incurred. Costs incurred subsequent to establishing technological feasibility, such as programmers' salaries and related payroll costs and costs of independent contractors, are capitalized and amortized on a product by product basis commencing on the date of general release to customers. We do not capitalize any costs once the product is available for general release to customers. For internal-use computer software products (ASC 350-40 software), internal and external costs incurred during the preliminary project stage are expensed as they are incurred. Internal and external costs incurred during the application development stage are capitalized and amortized on a product by product basis commencing on the date the software is ready for its intended use. We do not capitalize any costs once the software is ready for its intended use.

We also assess the recorded value of computer software for impairment on a regular basis by comparing the carrying value to the estimated future cash flows to be generated by the underlying software asset. There is an inherent uncertainty in determining the expected useful life of or cash flows to be generated from computer software. We have not historically experienced material changes in these estimates but could be subject to them in the future.

Redeemable Non-controlling Interest

As discussed above, subsequent to the acquisition of LPS we issued 35% ownership interests in each of BKFS and ServiceLink to funds affiliated with Thomas H. Lee Partners ("THL" or "the minority interest holder"). As part of the Unit Purchase Agreement with THL, THL has an option to put their ownership interests of either or both of BKFS and ServiceLink to us if no public offering of the corresponding business has been consummated after four years from the date of FNF's purchase of LPS. The units owned by THL ("redeemable noncontrolling interests") may be settled in cash or common stock of FNF or a combination of both at our election. The redeemable noncontrolling interests will be settled at the current fair value at the time we receive notice of THL's put election as determined by the parties or by a third party appraisal under the terms of the Unit Purchase Agreement. As of September 30, 2014, we do not believe the exercise of this put right to be probable.

As these redeemable noncontrolling interests provide for redemption features not solely within our control, we classify the redeemable noncontrolling interests outside of permanent equity in accordance with ASC 480-10, "Distinguishing Liabilities from Equity." Redeemable noncontrolling interests held by third parties in subsidiaries owned or controlled by FNF is reported on the Condensed Consolidated Balance Sheet outside permanent equity; and the Condensed Consolidated Statement of Earnings reflects the respective redeemable noncontrolling interests in Net earnings (loss) attributable to non-controlling interests, the effect of which is removed from the net earnings attributable to Fidelity National Financial, Inc. common shareholders.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Note C — Fair Value Measurements

The following table presents the fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of September 30, 2014 and December 31, 2013, respectively:

	September 30, 2014			
	Level 1	Level 2	Level 3	Total
	(In millions)			
Assets:				
Fixed maturity securities available for sale:				
U.S. government and agencies	\$ —	\$ 126	\$ —	\$ 126
State and political subdivisions	—	1,020	—	1,020
Corporate debt securities	—	1,744	—	1,744
Mortgage-backed/asset-backed securities	—	96	—	96
Foreign government bonds	—	36	—	36
Preferred stock available for sale	50	144	—	194
Equity securities available for sale	149	—	—	149
Foreign currency contracts	—	2	—	2
Total assets	<u>\$ 199</u>	<u>\$ 3,168</u>	<u>\$ —</u>	<u>\$ 3,367</u>
Liabilities:				
Interest rate swap contracts	\$ —	\$ 2	\$ —	\$ 2
Commodity contracts	—	2	—	2
Foreign currency contracts	—	1	—	1
Total liabilities	<u>\$ —</u>	<u>\$ 5</u>	<u>\$ —</u>	<u>\$ 5</u>
	December 31, 2013			
	Level 1	Level 2	Level 3	Total
	(In millions)			
Assets:				
Fixed maturity securities available for sale:				
U.S. government and agencies	\$ —	\$ 126	\$ —	\$ 126
State and political subdivisions	—	1,075	—	1,075
Corporate debt securities	—	1,606	—	1,606
Mortgage-backed/asset-backed securities	—	109	—	109
Foreign government bonds	—	43	—	43
Preferred stock available for sale	73	78	—	151
Equity securities available for sale	136	—	—	136
Other long-term investments	—	—	38	38
Foreign currency contracts	—	4	—	4
Interest rate swap contracts	—	2	—	2
Total assets	<u>\$ 209</u>	<u>\$ 3,043</u>	<u>\$ 38</u>	<u>\$ 3,290</u>
Liabilities:				
Interest rate swap contracts	\$ —	\$ 1	\$ —	\$ 1
Commodity contracts	—	2	—	2
Total liabilities	<u>\$ —</u>	<u>\$ 3</u>	<u>\$ —</u>	<u>\$ 3</u>

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Our Level 2 fair value measures for fixed-maturities available for sale are provided by third-party pricing services. We utilize one firm for our taxable bond and preferred stock portfolio and another for our tax-exempt bond portfolio. These pricing services are leading global providers of financial market data, analytics and related services to financial institutions. We rely on one price for each instrument to determine the carrying amount of the assets on our balance sheet. The inputs utilized in these pricing methodologies include observable measures such as benchmark yields, reported trades, broker dealer quotes, issuer spreads, two sided markets, benchmark securities, bids, offers and reference data including market research publications. We review the pricing methodologies for all of our Level 2 securities by obtaining an understanding of the valuation models and assumptions used by the third-party as well as independently comparing the resulting prices to other publicly available measures of fair value and internally developed models. The pricing methodologies used by the relevant third party pricing services are as follows:

- U.S. government and agencies: These securities are valued based on data obtained for similar securities in active markets and from inter-dealer brokers.
- State and political subdivisions: These securities are valued based on data obtained for similar securities in active markets and from inter-dealer brokers. Factors considered include relevant trade information, dealer quotes and other relevant market data.
- Corporate debt securities: These securities are valued based on dealer quotes and related market trading activity. Factors considered include the bond's yield, its terms and conditions, and any other feature which may influence its risk and thus marketability, as well as relative credit information and relevant sector news.
- Mortgage-backed/asset-backed securities: These securities are comprised of agency mortgage-backed securities, collateralized mortgage obligations, and asset-backed securities. They are valued based on available trade information, dealer quotes, cash flows, relevant indices and market data for similar assets in active markets.
- Foreign government bonds: These securities are valued based on a discounted cash flow model incorporating observable market inputs such as available broker quotes and yields of comparable securities.
- Preferred stocks: Preferred stocks are valued by calculating the appropriate spread over a comparable U.S. Treasury security. Inputs include benchmark quotes and other relevant market data.

Our Level 2 fair value measures for our interest rate swap, foreign currency contracts, and commodity contracts are valued using the income approach. This approach uses techniques to convert future amounts to a single present value amount based upon market expectations (including present value techniques, option-pricing and excess earnings models).

Our Level 3 investments consist of structured notes that were purchased in 2009. During the third quarter of 2014, all of our outstanding structured notes matured and we received \$39 million in cash upon maturity, resulting in a net realized (loss) gain of \$(2) million and \$1 million for the three and nine months ending September 30, 2014. We recorded no gain or loss relating to the structured notes during the three months ended September 30, 2013, and recorded a net loss of \$2 million in the nine months ended September 30, 2013. We held no structured notes at September 30, 2014 and the structured notes had a par value and a fair value of \$38 million at December 31, 2013. The structured notes were held for general investment purposes and represented approximately one percent of our total investment portfolio. The structured notes were classified as other long-term investments and were measured in their entirety at fair value with changes in fair value recognized in earnings. The fair value of these instruments represented exit prices obtained from a broker-dealer. These exit prices were the product of a proprietary valuation model utilized by the trading desk of the broker-dealer and contain assumptions relating to volatility, the level of interest rates, and the value of the underlying commodity indices. We reviewed the pricing methodologies for our Level 3 investments to ensure that they are reasonable and we believe they represented an exit price for the securities at December 31, 2013.

The following table presents the changes in our investments that are classified as Level 3 for the period ended September 30, 2014 (in millions):

Balance, December 31, 2013	\$	38
Net realized gain		1
Proceeds received upon maturity		(39)
Balance, September 30, 2014	\$	—

The carrying amounts of short-term investments, accounts receivable and notes receivable approximate fair value due to their short-term nature. Additional information regarding the fair value of our investment portfolio is included in Note D.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Note D — Investments

The carrying amounts and fair values of our available for sale securities at September 30, 2014 and December 31, 2013 are as follows:

	September 30, 2014				
	Carrying	Cost	Unrealized	Unrealized	Fair
	Value	Basis	Gains	Losses	Value
(In millions)					
Fixed maturity securities available for sale:					
U.S. government and agencies	\$ 126	\$ 122	\$ 4	\$ —	\$ 126
State and political subdivisions	1,020	984	36	—	1,020
Corporate debt securities	1,744	1,711	43	(10)	1,744
Foreign government bonds	36	38	—	(2)	36
Mortgage-backed/asset-backed securities	96	92	4	—	96
Preferred stock available for sale	194	194	3	(3)	194
Equity securities available for sale	149	73	76	—	149
Total	\$ 3,365	\$ 3,214	\$ 166	\$ (15)	\$ 3,365

	December 31, 2013				
	Carrying	Cost	Unrealized	Unrealized	Fair
	Value	Basis	Gains	Losses	Value
(In millions)					
Fixed maturity securities available for sale:					
U.S. government and agencies	\$ 126	\$ 121	\$ 5	\$ —	\$ 126
State and political subdivisions	1,075	1,042	36	(3)	1,075
Corporate debt securities	1,606	1,565	47	(6)	1,606
Foreign government bonds	43	44	1	(2)	43
Mortgage-backed/asset-backed securities	109	105	4	—	109
Preferred stock available for sale	151	158	3	(10)	151
Equity securities available for sale	136	71	65	—	136
Total	\$ 3,246	\$ 3,106	\$ 161	\$ (21)	\$ 3,246

The cost basis of fixed maturity securities available for sale includes an adjustment for amortized premium or discount since the date of purchase.

The following table presents certain information regarding contractual maturities of our fixed maturity securities at September 30, 2014:

Maturity	September 30, 2014			
	Amortized	% of	Fair	% of
	Cost	Total	Value	Total
(Dollars in millions)				
One year or less	\$ 346	12%	\$ 349	12%
After one year through five years	2,006	68	2,059	68
After five years through ten years	494	17	509	17
After ten years	9	—	9	—
Mortgage-backed/asset-backed securities	92	3	96	3
Total	\$ 2,947	100%	\$ 3,022	100%
Subject to call	\$ 1,702	58%	\$ 1,732	57%

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Expected maturities may differ from contractual maturities because certain borrowers have the right to call or prepay obligations with or without call or prepayment penalties. Included above in amounts subject to call are \$1,393 million and \$1,417 million in amortized cost and fair value, respectively, of fixed maturity securities with make-whole call provisions as of September 30, 2014.

Included in our other long-term investments at December 31, 2013, are fixed maturity structured notes purchased in 2009 and various cost-method investments. The structured notes matured during the third quarter of 2014. The structured notes were carried at fair value (see Note C) and changes in the fair value of these structured notes were recorded as Realized gains and losses in the Condensed Consolidated Statements of Earnings.

Net unrealized losses on investment securities and the fair value of the related securities, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at September 30, 2014 and December 31, 2013, were as follows (in millions):

September 30, 2014

	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Corporate debt securities	\$ 536	\$ (8)	\$ 25	\$ (2)	\$ 561	\$ (10)
Foreign government bonds	24	(1)	12	(1)	36	(2)
Preferred stock available for sale	62	(1)	19	(2)	81	(3)
Total temporarily impaired securities	\$ 622	\$ (10)	\$ 56	\$ (5)	\$ 678	\$ (15)

December 31, 2013

	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
States and political subdivisions	\$ 123	\$ (3)	\$ —	\$ —	\$ 123	\$ (3)
Corporate debt securities	367	(4)	39	(2)	406	(6)
Foreign government bonds	17	(1)	14	(1)	31	(2)
Preferred stock available for sale	95	(10)	—	—	95	(10)
Total temporarily impaired securities	\$ 602	\$ (18)	\$ 53	\$ (3)	\$ 655	\$ (21)

During the three and nine month period ended September 30, 2014, we recorded no impairment charges relating to investments. During the three-month period ended September 30, 2013, we recorded no impairment charges relating to investments. During the nine month period ended September 30, 2013, we recorded impairment charges on fixed maturity securities relating to investments that were determined to be other-than-temporarily impaired, which resulted in additional expense of \$1 million. As of September 30, 2014, we held no fixed maturity securities for which an other-than-temporary impairment had been previously recognized. It is possible that future events may lead us to recognize potential future impairment losses related to our investment portfolio and that unanticipated future events may lead us to dispose of certain investment holdings and recognize the effects of any market movements in our condensed consolidated financial statements.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

The following table presents realized gains and losses on investments and other assets and proceeds from the sale or maturity of investments and other assets for the three and nine-month periods ending September 30, 2014 and 2013, respectively:

	Three months ended September 30, 2014				Nine months ended September 30, 2014			
	Gross Realized Gains	Gross Realized Losses	Net Realized Gains (Losses)	Gross Proceeds from Sale/Maturity	Gross Realized Gains	Gross Realized Losses	Net Realized Gains (Losses)	Gross Proceeds from Sale/Maturity
	(Dollars in millions)				(Dollars in millions)			
Fixed maturity securities available for sale	\$ 1	\$ —	\$ 1	\$ 232	\$ 4	\$ —	\$ 4	\$ 829
Preferred stock available for sale	—	—	—	15	—	(3)	(3)	73
Other long-term investments			(2)				—	—
Other assets			(6)	39			(7)	2
Total			\$ (7)	\$ 286			\$ (6)	\$ 904

	Three months ended September 30, 2013				Nine months ended September 30, 2013			
	Gross Realized Gains	Gross Realized Losses	Net Realized Gains (Losses)	Gross Proceeds from Sale/Maturity	Gross Realized Gains	Gross Realized Losses	Net Realized Gains (Losses)	Gross Proceeds from Sale/Maturity
	(Dollars in millions)				(Dollars in millions)			
Fixed maturity securities available for sale	\$ 1	\$ (1)	\$ —	\$ 111	\$ 8	\$ (4)	\$ 4	\$ 577
Preferred stock available for sale	1	—	1	11	7	(2)	5	121
Equity securities available for sale	2	(1)	1	20	4	(1)	3	27
Other long-term investments			—	—			(2)	—
Debt extinguishment costs			—	—			(3)	—
Other assets			2	—			—	—
Total			\$ 4	\$ 142			\$ 7	\$ 725

Investments in unconsolidated affiliates are recorded using the equity method of accounting. As of September 30, 2014 and December 31, 2013, investments in unconsolidated affiliates consisted of the following (dollars in millions):

	Current Ownership	September 30, 2014	December 31, 2013
Ceridian	32%	\$ 238	\$ 295
Other	Various	59	62
Total		\$ 297	\$ 357

During the year ended December 31, 2013, we purchased \$32 million in Ceridian bonds which are included in Fixed maturity securities available for sale on the Condensed Consolidated Balance Sheets and had a fair value of \$36 million as of December 31, 2013. During the nine month period ended September 30, 2014, we sold \$2 million of the Ceridian bonds. Our remaining investment in Ceridian bonds had a fair value of \$33 million as of September 30, 2014.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

We have historically accounted for our equity in Ceridian on a three-month lag. However, during the first quarter of 2014, we began to account for our equity in Ceridian on a real-time basis. Accordingly, our net earnings for the three-month period ended September 30, 2014, includes our equity in Ceridian's earnings for the three-month period ended September 30, 2014. Our earnings for the three-month period ended September 30, 2013 includes our equity in Ceridian's earnings for the three-month period ended June 30, 2013. Our earnings for the nine-month period ended September 30, 2014, includes our equity in Ceridian's earnings for the three-month period ended December 31, 2013 and the nine-month period ended September 30, 2014. Our net earnings for the nine-month period ended September 30, 2013, includes our equity in Ceridian's earnings for the nine-month period ended June 30, 2013. During the three month periods ended September 30, 2014 and 2013, we recorded \$9 million and \$14 million, in equity in losses of Ceridian, respectively. During the nine month periods ending September 30, 2014 and 2013, we recorded \$44 million and \$24 million, respectively, in equity in Ceridian's losses. There was \$2 million equity in earnings for other unconsolidated affiliates during the three month period ending September 30, 2014, and there were no equity in earnings of other unconsolidated affiliates during the three months ending September 30, 2013. There were \$1 million and \$4 million in equity in earnings of other unconsolidated affiliates during the nine month periods ended September 30, 2014 and 2013, respectively.

Summarized financial information for Ceridian for the relevant dates and time periods included in our Condensed Consolidated Financial Statements is presented below.

	September 30, 2014	December 31, 2013
	(In millions)	
Total current assets before customer funds	\$ 1,212	\$ 1,097
Customer funds	2,113	3,897
Goodwill and other intangible assets, net	4,356	4,452
Other assets	113	122
Total assets	\$ 7,794	\$ 9,568
Current liabilities before customer obligations	\$ 1,070	\$ 958
Customer obligations	2,091	3,883
Long-term obligations, less current portion	3,411	3,406
Other long-term liabilities	459	500
Total liabilities	7,031	8,747
Equity	763	821
Total liabilities and equity	\$ 7,794	\$ 9,568

	Three Months Ended September 30, 2014	Three Months Ended June 30, 2013	Twelve Months Ended September 30, 2014	Nine Months Ended June 30, 2013
	(In millions)			
Total revenues	\$ 379	\$ 359	\$ 1,483	\$ 1,134
Loss before income taxes	(31)	(40)	(154)	(72)
Net loss	(33)	(48)	(159)	(86)

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Note E —Remy Derivative Financial Instruments and Concentration of Risk

The following describes financial market risks faced by, and derivative instruments held by, Remy.

Foreign Currency Risk

Remy manufactures and sells products primarily in North America, South America, Asia, Europe and Africa. As a result, financial results could be significantly affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets in which Remy manufactures and sells products. Remy generally tries to use natural hedges within its foreign currency activities, including the matching of revenues and costs, to minimize foreign currency risk. Where natural hedges are not in place, Remy considers managing certain aspects of its foreign currency activities through the use of foreign exchange contracts. Remy primarily utilizes forward exchange contracts with maturities generally within eighteen months to hedge against currency rate fluctuations, all of which are designated as hedges. As of September 30, 2014 and December 31, 2013, Remy had the following outstanding foreign currency contracts to hedge forecasted purchases and revenues (in millions):

Foreign currency contract	Currency Denomination	
	September 30, 2014	December 31, 2013
South Korean Won Forward	\$ 80	\$ 74
Mexican Peso Contracts	\$ 73	\$ 74
Brazilian Real Forward	\$ 14	\$ 11
Hungarian Forint Forward	€ 13	€ 14
British Pound Forward	£ 1	£ 4

There were no net accumulated unrealized gains and \$2 million relating to these instruments recorded in Accumulated other comprehensive earnings (loss) as of September 30, 2014 and December 31, 2013, respectively. As of September 30, 2014, there were no gains related to these instruments expected to be reclassified to the Condensed Consolidated Statement of Earnings within the next 12 months. Any ineffectiveness during the three and nine month period ended September 30, 2014 was immaterial.

Interest rate risk

During 2010, Remy entered into an interest rate swap agreement in respect of 50% of the outstanding principal balance of its Term B Loan under which a variable LIBOR rate with a floor of 1.75% was swapped to a fixed rate of 3.35%. Due to the significant value of the terminated swaps which were transferred into this swap, this interest rate swap is an undesignated hedge and changes in the fair value are recorded as Interest expense in the accompanying Condensed Consolidated Statements of Earnings.

On March 27, 2013, Remy terminated its undesignated Term B Loan interest rate swap and transferred the value into a new undesignated interest rate swap agreement of \$72 million of the outstanding principal loan balance under which Remy will swap a variable LIBOR rate with a floor of 1.25% to a fixed rate of 4.05% with an effective date of December 30, 2016 and expiration date of December 31, 2019. The notional value of this interest rate swap is \$72 million. Due to the significant value of the terminated swaps which were transferred into this new swap, this interest rate swap is an undesignated hedge and changes in the fair value are recorded as Interest expense in the accompanying Condensed Consolidated Statements of Earnings.

On March 27, 2013, Remy also entered into a designated interest rate swap agreement for \$72 million of the outstanding principal balance of its long term debt. Under the terms of the new interest rate swap agreement, Remy will swap a variable LIBOR rate with a floor of 1.25% to a fixed rate of 2.75% with an effective date of December 30, 2016 and expiration date of December 31, 2019. The notional value of this interest rate swap is \$72 million. This interest rate swap has been designated as a cash flow hedging instrument. There were no accumulated unrealized gains or losses recorded in Accumulated other comprehensive earnings (loss) as of September 30, 2014. Accumulated unrealized net gains of \$1 million were recorded in Accumulated other comprehensive (loss) earnings as of December 31, 2013. As of September 30, 2014, no gains are expected to be reclassified to the Condensed Consolidated Statement of Earnings within the next twelve months. Any ineffectiveness during the three and nine month periods ended September 30, 2014 was immaterial.

The interest rate swaps reduce Remy's overall interest rate risk.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Commodity price risk

Remy production processes are dependent upon the supply of certain components whose raw materials are exposed to price fluctuations on the open market. The primary purpose of Remy's commodity price forward contract activity is to manage the volatility associated with forecasted purchases. Remy monitors commodity price risk exposures regularly to maximize the overall effectiveness of commodity forward contracts. The principal raw material hedged is copper. Forward contracts are used to mitigate commodity price risk associated with raw materials, generally related to purchases forecast for up to twenty-four months in the future. Additionally, Remy purchases certain commodities during the normal course of business which result in physical delivery and are excluded from hedge accounting.

Remy had thirty-seven commodity price hedge contracts outstanding at September 30, 2014, and thirty-two commodity price hedge contracts outstanding at December 31, 2013, with combined notional quantities of 7,169 and 6,368 metric tons of copper, respectively. These contracts mature within the next eighteen months and are designated as cash flow hedging instruments. Accumulated unrealized net losses of \$2 million and \$1 million, excluding the tax effect, were recorded in Accumulated other comprehensive earnings as of September 30, 2014 and December 31, 2013, respectively, related to these contracts. As of September 30, 2014, there are \$2 million in net losses related to these contracts that expected to be reclassified to the accompanying Condensed Consolidated Statement of Earnings within the next 12 months. Hedging ineffectiveness during the three and nine month periods ended September 30, 2014 was immaterial.

Other

Remy's derivative positions and any related material collateral under master netting agreements are presented in our financial statements on a gross basis.

For derivatives designated as cash flow hedges, changes in the time value are excluded from the assessment of hedge effectiveness. Unrealized gains and losses associated with ineffective hedges, determined using the change in fair value method, are recognized in the accompanying Condensed Consolidated Statement of Earnings. Derivative gains and losses included in Accumulated other comprehensive earnings for effective hedges are reclassified into the accompanying Condensed Consolidated Statement of Earnings upon recognition of the hedged transaction.

Any derivative instrument designated initially, but no longer effective as a hedge, or initially not effective as a hedge, is recorded at fair value and the related gains and losses are recognized in the accompanying Condensed Consolidated Statement of Earnings. Remy's undesignated hedges are primarily Remy's interest rate swaps whose fair value at inception of the instrument due to the rollover of existing interest rate swaps resulted in ineffectiveness. All asset and liability derivatives are included in Prepaid expenses and other assets and Accounts payable and accrued liabilities, respectively, on the Condensed Consolidated Balance Sheets. The following table discloses the fair values of Remy's derivative instruments (in millions):

	September 30, 2014		December 31, 2013	
	Asset Derivatives	Liability Derivatives	Asset Derivatives	Liability Derivatives
Derivatives designated as hedging instruments:				
Commodity contracts	\$ —	\$ 2	\$ —	\$ 2
Foreign currency contracts	2	1	4	—
Interest rate swap contracts	—	—	2	—
Total derivatives designated as hedging instruments	\$ 2	\$ 3	\$ 6	\$ 2
Derivatives not designated as hedging instruments:				
Interest rate swap contracts	\$ —	\$ 2	\$ —	\$ 1

Gains and losses on Remy's derivative instruments, which are reclassified from Accumulated other comprehensive earnings (AOCE) into earnings, are included in Cost of auto parts revenue for commodity and foreign currency contracts, and Interest expense for interest rate swap contracts in the accompanying Condensed Consolidated Statement of Earnings.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

The following table discloses the effect of Remy's derivative instruments for the three months ended September 30, 2014 (in millions):

	Amount of gain (loss) recognized in AOCE (effective portion)	Amount of gain (loss) reclassified from AOCE into earnings (effective portion)	Amount of gain (loss) recognized in earnings (ineffective portion and amount excluded from effectiveness testing)	Amount of gain (loss) recognized in earnings
Derivatives designated as cash flow hedging instruments:				
Commodity contracts	\$ (2)	\$ (1)	\$ —	\$ —
Foreign currency contracts	(2)	1	—	—
Interest rate swap contracts	—	—	—	—
Total derivatives designated as hedging instruments	\$ (4)	\$ —	\$ —	\$ —
Derivatives not designated as hedging instruments:				
Interest rate swap contracts	\$ —	\$ —	\$ —	\$ —

The following table discloses the effect of Remy's derivative instruments for the three months ended September 30, 2013 (in millions):

	Amount of gain (loss) recognized in AOCE (effective portion)	Amount of gain (loss) reclassified from AOCE into earnings (effective portion)	Amount of gain (loss) recognized in earnings (ineffective portion and amount excluded from effectiveness testing)	Amount of gain (loss) recognized in earnings
Derivatives designated as cash flow hedging instruments:				
Commodity contracts	\$ 3	\$ (2)	\$ —	\$ —
Foreign currency contracts	3	1	—	—
Interest rate swap contracts	—	—	—	—
Total derivatives designated as hedging instruments	\$ 6	\$ (1)	\$ —	\$ —
Derivatives not designated as hedging instruments:				
Interest rate swap contracts	\$ —	\$ —	\$ —	\$ —

The following table discloses the effect of Remy's derivative instruments for the nine months ended September 30, 2014 (in millions):

	Amount of gain (loss) recognized in AOCE (effective portion)	Amount of gain (loss) reclassified from AOCE into earnings (effective portion)	Amount of gain (loss) recognized in earnings (ineffective portion and amount excluded from effectiveness testing)	Amount of gain (loss) recognized in earnings
Derivatives designated as cash flow hedging instruments:				
Commodity contracts	\$ (3)	\$ (3)	\$ —	\$ —
Foreign currency contracts	—	3	—	—
Interest rate swap contracts	(1)	—	—	—
Total derivatives designated as hedging instruments	\$ (4)	\$ —	\$ —	\$ —
Derivatives not designated as hedging instruments:				
Interest rate swap contracts	\$ —	\$ —	\$ —	\$ (1)

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

The following table discloses the effect of Remy's derivative instruments for the nine months ended September 30, 2013 (in millions):

	Amount of gain (loss) recognized in AOCE (effective portion)	Amount of gain (loss) reclassified from AOCE into earnings (effective portion)	Amount of gain (loss) recognized in earnings (ineffective portion and amount excluded from effectiveness testing)	Amount of gain (loss) recognized in earnings
Derivatives designated as cash flow hedging instruments:				
Commodity contracts	\$ (5)	\$ (3)	\$ —	\$ —
Foreign currency contracts	2	5	—	—
Interest rate swap contracts	1	—	—	—
Total derivatives designated as hedging instruments	\$ (2)	\$ 2	\$ —	\$ —
Derivatives not designated as hedging instruments:				
Interest rate swap contracts	\$ —	\$ —	\$ —	\$ 1

Note F —Notes Payable

Notes payable consists of the following:

	September 30, 2014	December 31, 2013
	(In millions)	
Unsecured notes, net of discount, interest payable semi-annually at 5.50%, due September 2022	\$ 398	\$ 398
Unsecured convertible notes, net of discount, interest payable semi-annually at 4.25%, due August 2018	287	285
Unsecured notes, net of discount, interest payable semi-annually at 6.60%, due May 2017	300	300
Unsecured Black Knight Infoserv notes, including premium, interest payable semi-annually at 5.75%, due April 2023	617	—
Revolving Credit Facility, unsecured, unused portion of \$700 at September 30, 2014, due July 2018 with interest payable monthly at LIBOR + 1.45% (1.60% at September 30, 2014)	100	—
FNF Term Loan, interest payable monthly at LIBOR + 1.75% (1.90% at September 30, 2014), due January 2019	1,100	—
Remy Amended and Restated Term B Loan, interest payable quarterly at LIBOR (floor of 1.25%) + 3.00% (4.25% at September 30, 2014), due March 2020	265	266
Remy Revolving Credit Facility, unused portion of \$57 at September 30, 2014, due September 2018 with interest payable monthly at base rate 3.25% + base rate margin .50% (3.75% at September 30, 2014)	20	—
ABRH Term Loan, interest payable monthly at LIBOR + 3.50%	—	53
ABRH Term Loan, interest payable monthly at LIBOR + 2.75% (2.90% at September 30, 2014), due August 2019	110	—
ABRH Revolving Credit Facility, unused portion of \$64 at September 30, 2014, due August 2019 with interest payable monthly LIBOR + 2.75% (2.90% at September 30, 2014)	17	—
ABRH Revolving Credit Facility, unused portion of \$64 at September 30, 2014, due August 2019 with interest payable monthly at base rate 3.25% + base rate margin 1.75% (5.00% at September 30, 2014)	2	—
Other	24	21
	\$ 3,240	\$ 1,323

At September 30, 2014, the estimated fair value of our long-term debt was approximately \$3,474 million or \$234 million higher than its carrying value. The fair value of our long-term debt at December 31, 2013 was approximately \$1,555 million or \$232 million higher than its carrying value. The fair value of our unsecured notes payable was \$1,869 million as of September 30, 2014. The fair values of our unsecured notes payable are based on established market prices for the securities on September 30,

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

2014 and are considered Level 2 financial liabilities. The carrying value of the FNF, ABRH and Remy revolving credit facilities approximates fair value at September 30, 2014, as the FNF and Remy facilities carry a variable interest rate and the ABRH facility was entered into during the third quarter of 2014. The revolving credit facilities are considered Level 2 financial liabilities. The fair value of our FNF Term Loan was \$1,100 million at September 30, 2014. The fair value of our FNF Term Loan is based on established market prices for the loan on September 30, 2014 and is considered a Level 2 financial liability. The fair value of our Remy Term Loan was \$265 million based on established market prices for the loan on September 30, 2014 and is considered a Level 2 financial liability. The carrying value of our Restaurant Group Term Loan was \$110 million on September 30, 2014, and approximates fair value as the loan was entered into during the third quarter of 2014. The Restaurant Group Term Loan is considered a Level 2 financial liability.

On August 19, 2014, ABRH entered into a credit agreement (the "ABRH Credit Facility") with Wells Fargo Bank, National Association as Administrative Agent, Swingline Lender and Issuing Lender (the "ABRH Administrative Agent"), Bank of America, N.A. as Syndication Agent and the other financial institutions party thereto. The ABRH Credit Facility provides for a maximum revolving loan of \$100 million (the "ABRH Revolver") with a maturity date of August 19, 2019. As of September 30, 2014, ABRH has borrowed \$19 million under such term loan. Additionally, the ABRH Credit Facility provides for a maximum term loan (the "ABRH Term Loan") of \$110 million with quarterly installment repayments through June 30, 2019 and a maturity date of August 19, 2019 for the outstanding unpaid principal balance and all accrued and unpaid interest. ABRH has borrowed the entire \$110 million under this term loan. Pricing for the ABRH Credit Facility is based on an applicable margin between 225 basis points to 300 basis points over LIBOR and between 125 basis points and 200 basis points over the Base Rate (which is the highest of (a) 50 basis points in excess of the federal funds rate, (b) the ABRH Administrative Agent "prime rate," or (c) the sum of 100 basis points plus one-month LIBOR). A commitment fee amount is also due at a rate per annum equal to between 325 and 400 basis points on the average daily unused portion of the commitments under the ABRH Revolver. The ABRH Credit Facility also allows for ABRH to request up to \$40 million of letters of credit commitments and \$20 million in swingline debt from the ABRH Administrative Agent. The ABRH Credit Facility allows for ABRH to elect to enter into incremental term loans or request incremental revolving commitments (the "ABRH Incremental Loans") under this facility so long as, (i) the total outstanding balance of the ABRH Revolver, the ABRH Term Loan and any ABRH Incremental Loans does not exceed \$250 million, (ii) ABRH is in compliance with its financial covenants, (iii) no default or event of default exists under the ABRH Credit Facility on the day of such request either before or after giving effect to the request, (iv) the representations and warranties made under the ABRH Credit Facility are correct and (v) certain other conditions are satisfied. The ABRH Credit Facility is subject to affirmative, negative and financial covenants customary for financings of this type, including, among other things, limits on ABRH's creation of liens, sales of assets, incurrence of indebtedness, restricted payments and transactions with affiliates. The covenants addressing restricted payments include certain limitations on the declaration or payment of dividends by ABRH to its parent, Fidelity Newport Holdings, LLC ("FNH"), and by FNH to its members. One such limitation restricts the amount of dividends that ABRH can pay to its parent (and that FNH can in turn pay to its members) up to \$2 million in the aggregate (outside of certain other permitted dividend payments) in a fiscal year (with some carryover rights for undeclared dividends for subsequent years). Another limitation allows that, so long as ABRH satisfies certain leverage and liquidity requirements to the satisfaction of the ABRH Administrative Agent, ABRH may declare a special one-time dividend to Newport Global Opportunities Fund LP, and Fidelity National Financial Ventures, LLC or one of the entities under their control (other than portfolio companies) in an amount up to \$75 million if such dividend occurs on or before November 17, 2014, or up to \$1.5 million if such dividend occurs on or before June 15, 2016. The ABRH Credit Facility includes customary events of default for facilities of this type (with customary grace periods, as applicable), which include a cross-default provision whereby an event of default will be deemed to have occurred if ABRH or any of its guarantors, which consists of FNH and certain of its subsidiaries (together, the "Loan Parties") or any of their subsidiaries default on any agreement with a third party of \$10 million or more related to their indebtedness and such default results in a right by such third party to accelerate such Loan Party's or its subsidiary's obligations. The ABRH Credit Facility provides that, upon the occurrence of an event of default, the ABRH Administrative Lender may (i) declare the principal of, and any and all accrued and unpaid interest and all other amounts owed in respect of, the loans immediately due and payable, (ii) terminate loan commitments and (iii) exercise all other rights and remedies available to the ABRH Administrative Lender or the lenders under the loan documents. ABRH had \$17 million of outstanding letters of credit and \$64 million of remaining borrowing capacity under our revolving credit facility as of September 30, 2014.

On January 2, 2014, as a result of the LPS acquisition, FNF acquired \$600 million aggregate principal amount of 5.75% Senior Notes due 2023, initially issued by Black Knight Infoserv, LLC (formerly LPS, "Black Knight Infoserv") on October 12, 2012 (the "Black Knight Senior Notes"). The Black Knight Senior Notes were registered under the Securities Act of 1933, as amended, carry an interest rate of 5.75% and will mature on April 15, 2023. Interest is payable semi-annually on the 15th day of April and October. The Black Knight Senior Notes are senior unsecured obligations and were guaranteed by us as of January 2, 2014. At any time and from time to time, prior to October 15, 2015, Black Knight Infoserv may redeem up to a maximum of 35% of the

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

original aggregate principal amount of the Black Knight Senior Notes with the proceeds of one or more equity offerings, at a redemption price equal to 105.75% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date). Prior to October 15, 2017, Black Knight Infoserv may redeem some or all of the Black Knight Senior Notes by paying a “make-whole” premium based on U.S. Treasury rates. On or after October 15, 2017, Black Knight Infoserv may redeem some or all of the Black Knight Senior Notes at the redemption prices described in the Black Knight Senior Notes indenture, plus accrued and unpaid interest. In addition, if a change of control occurs, Black Knight Infoserv is required to offer to purchase all outstanding Black Knight Senior Notes at a price equal to 101% of the principal amount plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date). The Black Knight Senior Notes contain covenants that, among other things, limit Black Knight Infoserv’s ability and the ability of certain of its subsidiaries (a) to incur or guarantee additional indebtedness or issue preferred stock, (b) to make certain restricted payments, including dividends or distributions on equity interests held by persons other than Black Knight Infoserv or certain subsidiaries, in excess of an amount generally equal to 50% of consolidated net income generated since July 1, 2008, (c) to create or incur certain liens, (d) to engage in sale and leaseback transactions, (e) to create restrictions that would prevent or limit the ability of certain subsidiaries to (i) pay dividends or other distributions to Black Knight Infoserv or certain other subsidiaries, (ii) repay any debt or make any loans or advances to Black Knight Infoserv or certain other subsidiaries or (iii) transfer any property or assets to Black Knight Infoserv or certain other subsidiaries, (f) to sell or dispose of assets of Black Knight Infoserv or any restricted subsidiary or enter into merger or consolidation transactions and (g) to engage in certain transactions with affiliates. As a result of our guarantee of the Black Knight Senior Notes on January 2, 2014, the notes became rated investment grade. The indenture provides that certain covenants are suspended while the Black Knight Senior Notes are rated investment grade. Currently covenants (a), (b), (e), certain provisions of (f) and (g) outlined above are suspended. These covenants will continue to be suspended as long as the notes are rated investment grade, as defined in the indenture. These covenants are subject to a number of exceptions, limitations and qualifications in the Black Knight Senior Notes indenture. The Black Knight Senior Notes contain customary events of default, including failure of Black Knight Infoserv (i) to pay principal and interest when due and payable and breach of certain other covenants and (ii) to make an offer to purchase and pay for the Black Knight Senior Notes tendered as required by the Black Knight Senior Notes. Events of default also include defaults with respect to any other debt of Black Knight Infoserv or debt of certain subsidiaries having an outstanding principal amount of \$80 million or more in the aggregate for all such debt, arising from (i) failure to make a principal payment when due and such defaulted payment is not made, waived or extended within the applicable grace period or (ii) the occurrence of an event which results in such debt being due and payable prior to its scheduled maturity. Upon the occurrence of an event of default (other than a bankruptcy default with respect to Black Knight Infoserv or certain subsidiaries), the trustee or holders of at least 25% of the Black Knight Senior Notes then outstanding may accelerate the Black Knight Senior Notes by giving us appropriate notice. If, however, a bankruptcy default occurs with respect to Black Knight Infoserv or certain subsidiaries, then the principal of and accrued interest on the Black Knight Senior Notes then outstanding will accelerate immediately without any declaration or other act on the part of the trustee or any holder. Subsequent to year end, on January 16, 2014, we issued an offer to purchase the Black Knight Senior Notes pursuant to the change of control provisions above at a purchase price of 101% of the principal amount plus accrued interest to the purchase date. The offer expired on February 18, 2014. As a result of the offer, bondholders tendered \$5 million in principal of the Black Knight Senior Notes, which were subsequently purchased by us on February 24, 2014.

On October 24, 2013, FNF entered into a bridge loan commitment letter (the “Bridge Loan Commitment Letter”) with Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. (“Bank of America”), J.P. Morgan Securities LLC and JP Morgan Chase Bank, N.A. The Bridge Loan Commitment Letter provided for up to an \$800 million short-term loan facility (the “Bridge Facility”). The proceeds of the loans under the Bridge Facility were used to fund, in part, the cash consideration for the acquisition of LPS and pay certain costs, fees and expenses in connection with the LPS merger. Pursuant to the Bridge Loan Commitment Letter, we executed a promissory note in favor of the Bridge Facility lenders on the closing date of the Merger that evidenced the terms of the Bridge Facility. The Bridge Facility matured on the second business day following the funding thereof and required scheduled amortization payments. Borrowings under the Bridge Facility bear interest at a rate equal to the highest of (i) the Bank of America prime rate, (ii) the federal fund effective rate from time to time plus 0.5% and (iii) the one month adjusted London interbank offered rate (“LIBOR”) plus 1.0%. Other than as set forth in this paragraph, the terms of the Bridge Facility are substantially the same as the terms of the Term Loan Agreement discussed below. As part of the acquisition of LPS on January 2, 2014, the Bridge Facility was funded and subsequently repaid the following day.

On July 11, 2013, FNF entered into a term loan credit agreement with Bank of America, N.A., as administrative agent (in such capacity, the “TL Administrative Agent”), the lenders party thereto and the other agents party thereto (the “Term Loan Agreement”). The Term Loan Agreement permits us to borrow up to \$1.1 billion to fund the acquisition of LPS. The term loans under the Term Loan Agreement mature on the date that is five years from the funding date of the term loans under the Term Loan

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Agreement. Term loans under the Term Loan Agreement generally bear interest at a variable rate based on either (i) the base rate (which is the highest of (a) 0.5% in excess of the federal funds rate, (b) the TL Administrative Agent's "prime rate", or (c) the sum of 1.0% plus one-month LIBOR) plus a margin of between 50 basis points and 100 basis points depending on the senior unsecured long-term debt ratings of FNF or (ii) LIBOR plus a margin of between 150 basis points and 200 basis points depending on the senior unsecured long-term debt ratings of FNF. Based on our current Moody's and Standard & Poor's senior unsecured long-term debt ratings of Baa3/BBB-, respectively, the applicable margin for term loans subject to LIBOR is 175 basis points over LIBOR. Under the Term Loan Agreement, we are subject to customary affirmative, negative and financial covenants, including, among other things, limits on the creation of liens, limits on the incurrence of indebtedness, restrictions on investments, dispositions and transactions with affiliates, limitations on dividends and other restricted payments, a minimum net worth and a maximum debt to capitalization ratio. The Term Loan Agreement also includes customary events of default for facilities of this type (with customary grace periods, as applicable) and provides that, if an event of default occurs and is continuing, the interest rate on all outstanding obligations may be increased, payments of all outstanding term loans may be accelerated and/or the lenders' commitments may be terminated. In addition, upon the occurrence of certain insolvency or bankruptcy related events of default, all amounts payable under the Term Loan Agreement shall automatically become immediately due and payable, and the lenders' commitments will automatically terminate. Under the Term Loan Agreement the financial covenants are the same as under the Revolving Credit Facility. On October 27, 2013, we amended the Term Loan Agreement to permit us to incur the indebtedness in respect of the Bridge Facility and incorporate technical changes to describe the structure of the LPS merger. As part of the acquisition of LPS on January 2, 2014, the Term Loan Agreement was fully funded.

On June 25, 2013, FNF entered into an agreement to amend and restate our existing \$800 million second amended and restated credit agreement (the "Existing Credit Agreement"), dated as of April 16, 2012 with Bank of America, N.A., as administrative agent (in such capacity, the "Administrative Agent") and the other agents party thereto (the "Revolving Credit Facility"). Among other changes, the Revolving Credit Facility amends the Existing Credit Agreement to permit us to make a borrowing under the Revolving Credit Facility to finance a portion of the acquisition of LPS on a "limited conditionality" basis, incorporates other technical changes to permit us to enter into the Acquisition and extends the maturity of the Existing Credit Agreement. The lenders under the Existing Credit Agreement have agreed to extend the maturity date of their commitments under the credit facility from April 16, 2016 to July 15, 2018 under the Revolving Credit Facility. Revolving loans under the credit facility generally bear interest at a variable rate based on either (i) the base rate (which is the highest of (a) 0.5% in excess of the federal funds rate, (b) the Administrative Agent's "prime rate", or (c) the sum of 1.0% plus one-month LIBOR) plus a margin of between 32.5 and 60 basis points depending on the senior unsecured long-term debt ratings of FNF or (ii) LIBOR plus a margin of between 132.5 and 160 basis points depending on the senior unsecured long-term debt ratings of FNF. Based on our current Moody's and Standard & Poor's senior unsecured long-term debt ratings of Baa3/BBB-, respectively, the applicable margin for revolving loans subject to LIBOR is 145 basis points. In addition, we will pay a facility fee of between 17.5 and 40 basis points on the entire facility, also depending on our senior unsecured long-term debt ratings. Under the Revolving Credit Facility, we are subject to customary affirmative, negative and financial covenants, including, among other things, limits on the creation of liens, limits on the incurrence of indebtedness, restrictions on investments, dispositions and transactions with affiliates, limitations on dividends and other restricted payments, a minimum net worth and a maximum debt to capitalization ratio. The Revolving Credit Facility also includes customary events of default for facilities of this type (with customary grace periods, as applicable) and provides that, if an event of default occurs and is continuing, the interest rate on all outstanding obligations may be increased, payments of all outstanding loans may be accelerated and/or the lenders' commitments may be terminated. These events of default include a cross-default provision that, subject to limited exceptions, permits the lenders to declare the Revolving Credit Facility in default if: (i) (a) we fail to make any payment after the applicable grace period under any indebtedness with a principal amount (including undrawn committed amounts) in excess of 3.0% of our net worth, as defined in the Revolving Credit Facility, or (b) we fail to perform any other term under any such indebtedness, or any other event occurs, as a result of which the holders thereof may cause it to become due and payable prior to its maturity; or (ii) certain termination events occur under significant interest rate, equity or other swap contracts. In addition, upon the occurrence of certain insolvency or bankruptcy related events of default, all amounts payable under the Revolving Credit Facility shall automatically become immediately due and payable, and the lenders' commitments will automatically terminate. Under the Revolving Credit Facility the financial covenants remain essentially the same as under the Existing Credit Agreement, except that the total debt to total capitalization ratio limit of 35% will increase to 37.5% for a period of one year after the closing of the LPS acquisition and the net worth test was reset. Also on October 24, 2013, FNF entered into amendments to amend the Revolving Credit Facility to permit us to incur the indebtedness in respect of the Bridge Facility and incorporate other technical changes to describe the structure of the LPS merger. As of September 30, 2014, there was \$100 million outstanding balance under the Revolving Credit Facility. During the three and nine months ending September 30, 2014, we repaid \$200 million on the Revolving Credit Facility.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

On March 5, 2013, Remy entered into a First Amendment to its existing five year Asset-Based Revolving Credit Facility (the "Remy Credit Facility" and "Remy Credit Facility First Amendment") to extend the maturity date of the Remy Credit Facility from December 17, 2015 to September 5, 2018 and reduce the interest rate. The Remy Credit Facility now bears interest at a defined Base Rate plus 0.50%-1.00% per year or, at Remy's election, at an applicable LIBOR Rate plus 1.50%-2.00% per year and is paid monthly. The Remy Credit Facility First Amendment maintains the current maximum availability at \$95 million, which may be increased, under certain circumstances, by \$20 million, though the actual amount that may be borrowed is based on the amount of collateral. The Remy Credit Facility is secured by substantially all domestic accounts receivable and inventory held by Remy. Remy will incur an unused commitment fee of 0.375% on the unused amount of commitments under the Remy Credit Facility First Amendment. At September 30, 2014, the Remy Credit Facility balance was \$20 million. Based upon the collateral supporting the Remy Credit Facility, the amount borrowed, and the outstanding letters of credit of \$14 million, there was additional availability for borrowing of \$57 million on September 30, 2014. The Remy Credit Facility contains various restrictive covenants, which include, among other things: (i) a maximum leverage ratio, decreasing over the term of the facility; (ii) a minimum interest coverage ratio, increasing over the term of the facility; (iii) mandatory prepayments upon certain asset sales and debt issuances; (iv) requirements for minimum liquidity; and (v) limitations on the payment of dividends in excess of a specified amount. During the three months ended September 30, 2014, Remy borrowed \$43 million and repaid \$23 million under this facility. During the nine months ended September 30, 2014, Remy borrowed \$52 million and repaid \$32 million under this facility.

On March 5, 2013, Remy entered into a \$300 million Amended and Restated Term B Loan Credit Agreement ("Term B Amendment") to refinance the existing \$287 million Term B Loan, extend the maturity from December 17, 2016 to March 5, 2020, and reduce the interest rate. The Term B Amendment now bears interest paid quarterly at LIBOR (subject to a floor of 1.25%) plus 3% per year, with an original issue discount of approximately \$1 million. The Term B Amendment also contains an option to increase the borrowing provided certain conditions are satisfied, including maintaining a maximum leverage ratio. The Term B Amendment is secured by a first priority lien on the stock of Remy's subsidiaries and substantially all domestic assets other than accounts receivable and inventory pledged to the Remy Credit Facility. Principal payments in the amount of approximately \$1 million are due at the end of each calendar quarter with termination and final payment no later than March 5, 2020. The Term B Amendment also includes covenants and events of default customary for a facility of this type, including a cross-default provision under which the lenders may declare the loan in default if Remy (i) fails to make a payment when due under any debt having a principal amount greater than \$5 million or (ii) breaches any other covenant in any such debt as a result of which the holders of such debt are permitted to accelerate its maturity. Remy is in compliance with all covenants as of September 30, 2014. The Term B Loan is subject to an excess cash calculation which may require the payment of additional principal on an annual basis. At September 30, 2014, the average borrowing rate, including the impact of the interest rate swaps, was 4.25%.

On August 28, 2012, FNF completed an offering of \$400 million in aggregate principal amount of 5.50% notes due September 2022 (the "5.50% notes"), pursuant to an effective registration statement previously filed with the Securities and Exchange Commission. The notes were priced at 99.513% of par to yield 5.564% annual interest. As such we recorded a discount of \$2 million, which is netted against the \$400 million aggregate principal amount of the 5.50% notes. The discount is amortized to September 2022 when the 5.50% notes mature. The 5.50% notes will pay interest semi-annually on the 1st of March and September, beginning March 1, 2013. We received net proceeds of \$396 million, after expenses, which were used to repay the \$237 million aggregate principal amount outstanding of our 5.25% unsecured notes maturing in March 2013, and \$50 million outstanding on our revolving credit facility, with the remainder being used for general corporate purposes. These notes contain customary covenants and events of default for investment grade public debt. These events of default include a cross default provision, with respect to any other debt of the Company in an aggregate amount exceeding \$100 million for all such debt, arising from (i) failure to make a principal payment when due or (ii) the occurrence of an event which results in such debt being due and payable prior to its scheduled maturity.

On May 31, 2012, ABRH entered into a credit agreement (the "ABRH Credit Facility") with Wells Fargo Capital Finance, LLC as administrative agent and swing lender (the "ABRH Administrative Lender") and the other financial institutions party thereto. The ABRH Credit Facility provides for a maximum revolving loan of \$80 million ("the ABRH Revolver") with a maturity date of May 31, 2017. Additionally, the ABRH Credit Facility provides for a maximum term loan ("ABRH Term Loan") of \$85 million with quarterly installment repayments through December 25, 2016 and a maturity date of May 31, 2017 for the outstanding unpaid principal balance and all accrued and unpaid interest. On May 31, 2012, ABRH borrowed the entire \$85 million under such term loan. Pricing for the ABRH Credit Facility is based on an applicable margin between 300 basis points to 375 basis points over LIBOR. The ABRH Credit Facility is subject to affirmative, negative and financial covenants customary for financings of this type, including, among other things, limits on ABRH's creation of liens, sales of assets, incurrence of indebtedness, restricted payments, transactions with affiliates, and certain amendments. The covenants addressing restricted payments include certain limitations on the declaration or payment of dividends by ABRH to its parent, Fidelity Newport Holdings, LLC ("FNH"), and by FNH to its members, and one such limitation restricts the amount of dividends that ABRH can pay to its parent (and that FNH can

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

in turn pay to its members) to \$5 million in the aggregate (outside of certain other permitted dividend payments) in fiscal year 2012 (with varying amounts for subsequent years). The ABRH Credit Facility includes customary events of default for facilities of this type (with customary grace periods, as applicable), which include a cross-default provision whereby an event of default will be deemed to have occurred if (i) ABRH or any of its guarantors, which consists of FNH and certain of its subsidiaries (together, the "Loan Parties") or any of their subsidiaries default on any agreement with a third party of \$2 million or more related to their indebtedness and such default (a) occurs at the final maturity of the obligations thereunder or (b) results in a right by such third party to accelerate such Loan Party's or its subsidiary's obligations or (ii) a default or an early termination occurs with respect to certain hedge agreements to which a Loan Party or its subsidiaries is a party involving an amount of \$0.75 million or more. The ABRH Credit Facility provides that, upon the occurrence of an event of default, the ABRH Administrative Lender may (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the loans immediately due and payable, (ii) terminate loan commitments and (iii) exercise all other rights and remedies available to the ABRH Administrative Lender or the lenders under the loan documents. During the three and nine months ended September 30, 2014, ABRH did not borrow under this facility and repaid \$54 million on this facility.

On August 2, 2011, FNF completed an offering of \$300 million in aggregate principal amount of 4.25% convertible senior notes due August 2018 (the "Notes") in an offering conducted in accordance with Rule 144A under the Securities Act of 1933, as amended. The Notes contain customary event-of-default provisions which, subject to certain notice and cure-period conditions, can result in the acceleration of the principal amount of, and accrued interest on, all outstanding Notes if we breach the terms of the Notes or the indenture pursuant to which the Notes were issued. The Notes are unsecured and unsubordinated obligations and (i) rank senior in right of payment to any of our existing or future unsecured indebtedness that is expressly subordinated in right of payment to the Notes; (ii) rank equal in right of payment to our existing and future unsecured indebtedness that is not so subordinated; (iii) are effectively subordinated in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and (iv) are structurally subordinated to all existing and future indebtedness and liabilities of our subsidiaries. Interest is payable on the principal amount of the Notes, semi-annually in arrears in cash on February 15 and August 15 of each year, commencing February 15, 2012. The Notes mature on August 15, 2018, unless earlier purchased by us or converted. The Notes were issued for cash at 100% of their principal amount. However, for financial reporting purposes, the notes were deemed to have been issued at 92.818% of par value, and as such we recorded a discount of \$22 million to be amortized to August 2018, when the Notes mature. The Notes will be convertible into cash, shares of common stock, or a combination of cash and shares of common stock, at our election, based on an initial conversion rate, subject to adjustment, of 46.387 shares per \$1,000 principal amount of the Notes (which represents an initial conversion price of approximately \$21.56 per share), only in the following circumstances and to the following extent: (i) during any calendar quarter commencing after December 31, 2011, if, for each of at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on, and including, the last trading day of the immediately preceding calendar quarter, the last reported sale price per share of our common stock on such trading day is greater than or equal to 130% of the applicable conversion price on such trading day; (ii) during the five consecutive business day period immediately following any ten consecutive trading day period (the "measurement period") in which, for each trading day of the measurement period, the trading price per \$1,000 principal amount of notes was less than 98% of the product of the last reported sale price per share of our common stock on such trading day and the applicable conversion rate on such trading day; (iii) upon the occurrence of specified corporate transactions; or (iv) at any time on and after May 15, 2018. However, in all cases, the Notes will cease to be convertible at the close of business on the second scheduled trading day immediately preceding the maturity date. It is our intent and policy to settle conversions through "net-share settlement". Generally, under "net-share settlement," the conversion value is settled in cash, up to the principal amount being converted, and the conversion value in excess of the principal amount is settled in shares of our common stock. As of October 1, 2013, these notes were convertible under the 130% Sale Price Condition described above. On March 28, 2014, \$42 thousand in principal of these bonds were converted at the election of the bondholder. These bonds had a fair value of \$65 thousand. The conversion was completed in the second quarter of 2014.

Remy has revolving credit facilities with three Korean banks with a total facility amount of approximately \$12 million, of which \$2 million is borrowed at average interest rates of 3.16% at September 30, 2014. In Hungary, there is one revolving credit facility with one bank for a total facility amount of \$1 million, of which nothing is borrowed at September 30, 2014. Remy also has a revolving credit facility in China with one bank for a total credit facility of \$10 million, of which \$5 million was borrowed at an average interest rate of 4.15% at September 30, 2014. During the three-months ended September 30, 2014, Remy did not borrow or repay any amounts under this facility. During the nine-months ended September 30, 2014, Remy borrowed \$5 million under this facility, and did not make any repayments.

On May 5, 2010, FNF completed an offering of \$300 million in aggregate principal amount of our 6.60% notes due May 2017 (the "6.60% Notes"), pursuant to an effective registration statement previously filed with the Securities and Exchange Commission. The 6.60% Notes were priced at 99.897% of par to yield 6.61% annual interest. We received net proceeds of \$297 million, after

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

expenses, which were used to repay outstanding borrowings under our credit agreement. Interest is payable semi-annually. These notes contain customary covenants and events of default for investment grade public debt. These events of default include a cross default provision, with respect to any other debt of the Company in an aggregate amount exceeding \$100 million for all such debt, arising from (i) failure to make a principal payment when due or (ii) the occurrence of an event which results in such debt being due and payable prior to its scheduled maturity.

Gross principal maturities of notes payable at September 30, 2014 are as follows (in millions):

2014 (remaining)	\$	10
2015		120
2016		176
2017		533
2018		656
Thereafter		1,743
	\$	<u>3,238</u>

Note G — Commitments and Contingencies

Legal and Regulatory Contingencies

In the ordinary course of business, we are involved in various pending and threatened litigation matters related to our title operations, some of which include claims for punitive or exemplary damages. This customary litigation includes but is not limited to a wide variety of cases arising out of or related to title and escrow claims, for which we make provisions through our loss reserves. Additionally, like other insurance companies, our ordinary course litigation includes a number of class action and purported class action lawsuits, which make allegations related to aspects of our insurance operations. We believe that no actions, other than the matters discussed below, depart from customary litigation incidental to our insurance business.

Remy is a defendant from time to time in various legal proceedings arising in the ordinary course of business, including claims relating to commercial transactions, product liability, safety, health, taxes, environmental, intellectual property and other matters.

Our Restaurant Group companies are a defendant from time to time in various legal proceedings arising in the ordinary course of business, including claims relating to injury or wrongful death under “dram shop”, laws that allow a person to sue us based on any injury caused by an intoxicated person who was wrongfully served alcoholic beverages at one of the restaurants, individual and purported class action claims alleging violation of federal and state wage and hour and other employment laws, and claims from guests or employees alleging illness, injury or other food quality, health or operational concerns. These companies are also subject to compliance with extensive government laws and regulations related to employment practices and policies and the manufacture, preparation, and sale of food and alcohol.

We review lawsuits and other legal and regulatory matters (collectively “legal proceedings”) on an ongoing basis when making accrual and disclosure decisions. When assessing reasonably possible and probable outcomes, management bases its decision on its assessment of the ultimate outcome assuming all appeals have been exhausted. For legal proceedings where it has been determined that a loss is both probable and reasonably estimable, a liability based on known facts and which represents our best estimate has been recorded. Our accrual for legal and regulatory matters was \$92 million as of September 30, 2014 and \$9 million as of December 31, 2013. Of this accrual, \$75 million relates to historical LPS matters. As discussed elsewhere, LPS was acquired on January 2, 2014. None of the amounts we have currently recorded are considered to be individually or in the aggregate material to our financial condition. Actual losses may materially differ from the amounts recorded and the ultimate outcome of our pending cases is generally not yet determinable. While some of these matters could be material to our operating results or cash flows for any particular period if an unfavorable outcome results, at present we do not believe that the ultimate resolution of currently pending legal proceedings, either individually or in the aggregate, will have a material adverse effect on our financial condition.

Following a review by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (collectively, the “banking agencies”), LPS entered into a consent order (the “Order”) dated April 13, 2011 with the banking agencies. The banking agencies' review of LPS' services included the services provided by its default operations to mortgage servicers regulated by the banking agencies, including document execution services. The Order does not make any findings of fact or conclusions of wrongdoing, nor does LPS admit any fault or liability. Under the Order, LPS agreed to further study the issues identified in the review and to enhance its compliance, internal audit, risk management and board oversight plans with respect to those businesses. LPS also agreed to engage an

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

independent third party to conduct a risk assessment and review of its default management businesses and the document execution services we provided to servicers from January 1, 2008 through December 31, 2010. The document execution review by the independent third party is likely to take longer than previously anticipated. LPS accrued for the additional fees and costs expected to be charged by the independent third party to complete the review. To the extent such review, once completed, requires additional remediation of mortgage documents or identifies any financial injury from the document execution services LPS provided, LPS agreed to implement an appropriate plan to address the issues. The Order contains various deadlines by which LPS has agreed to accomplish the undertakings set forth therein, including the preparation of a remediation plan following the completion of the document execution review. LPS agreed and we will continue to make periodic reports to the banking agencies on our progress with respect to each of the undertakings in the Order. The Order does not include any fine or other monetary penalty, although the banking agencies have not yet concluded their assessment of whether any civil monetary penalties may be imposed. We have accrued for estimated losses expected to be paid for this matter in our legal and regulatory accrual.

On December 16, 2013, LPS received notice that Merion Capital, L.P. and Merion Capital II, L.P. (together "Merion Capital") were asserting their appraisal right relative to their ownership of 5,682,276 shares of LPS stock in connection with our acquisition of LPS. On February 6, 2014, *Merion Capital LP and Merion Capital II, LP v. Lender Processing Services, Inc. n/k/a Black Knight InfoServ, LLC ("LPS")*, C.A. No. 9320-VCL, was filed in the Court of Chancery in Delaware seeking a judicial determination of the "fair" value of Merion Capital's 5,682,276 shares of LPS common stock under Delaware law (the "Appraisal Shares"), together with statutory interest. We filed an answer to this suit on March 3, 2014, and discovery is ongoing. On August 26, 2014, we filed a motion to pay the merger consideration to Merion Capital and stop the accrual of additional statutory interest during the pendency of the appraisal proceeding. On September 18, 2014, we reached an agreement with Merion Capital to resolve the interest motion and Merion Capital received the merger consideration, approximately 1.6 million shares of common stock and approximately \$160 million in cash, which was previously held in escrow for Merion Capital, in respect of the Merion Appraisal Shares, together with interest of approximately \$9 million through the date of payment. Due to the early stages of the case, we are unable to estimate a range of loss, if any, at this time. We will continue to vigorously defend against the appraisal proceedings; however, we do not believe the result will have a material impact to us.

In September 2008, Remy filed suit against Tecnomatic in the U.S. District Court, Southern District of Indiana, Indianapolis Division (Civil Action No.: 1:08-CV-1227-SEB-JMS), titled *Remy, Inc. v. Tecnomatic S.p.A.* for breach of contract, among other claims, with respect to a machine Tecnomatic sold to Remy to build an engine component. In March 2011, Tecnomatic filed a lawsuit in U.S. District Court, N.D. of Illinois, against Remy, its Mexican subsidiaries and two other entities alleging breach of contract and the misappropriation of trade secrets, and requested damages of \$110 million. On September 11, 2014, Remy announced entry into a Settlement Agreement and Mutual General Release (the "Agreement") to settle all disputes that existed among Remy and Tecnomatic. In addition, Remy entered into a cross licensing arrangement of certain patents with Tecnomatic. The value of the patents received from Tecnomatic is approximately \$14 million. Pursuant to the Agreement and the cross licensing arrangement, Remy paid to Tecnomatic a \$16 million cash payment in September 2014 and will pay a \$16 million cash payment on or before March 15, 2015. Amounts remaining to be paid have been accrued in our legal and regulatory accrual during the quarter.

From time to time we receive inquiries and requests for information from state insurance departments, attorneys general and other regulatory agencies about various matters relating to our business. Sometimes these take the form of civil investigative demands or subpoenas. We cooperate with all such inquiries and we have responded to or are currently responding to inquiries from multiple governmental agencies. Also, regulators and courts have been dealing with issues arising from foreclosures and related processes and documentation. Various governmental entities are studying the title insurance product, market, pricing, and business practices, and potential regulatory and legislative changes, which may materially affect our business and operations. From time to time, we are assessed fines for violations of regulations or other matters or enter into settlements with such authorities which may require us to pay fines or claims or take other actions.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

Operating Leases

Future minimum operating lease payments are as follows (in millions):

2014 (remaining)	\$	137
2015		181
2016		150
2017		125
2018		97
Thereafter		322
Total future minimum operating lease payments	\$	<u>1,012</u>

Note H — Dividends

On October 28, 2014, our Board of Directors declared cash dividends of \$0.19 per share, payable on December 31, 2014, to FNF Group common shareholders of record as of December 17, 2014.

Note I — Segment Information

Summarized financial information concerning our reportable segments is shown in the following tables. During the fourth quarter of 2013, we determined that the Corporate and Other segment would be split in order to differentiate operations and costs related to our FNF Core businesses from those associated with FNFV. As a result, we reorganized our reporting segments to reflect this change. On January 2, 2014, we acquired LPS. As a result we have a new segment, BKFS, which contains the technology, data and analytics operations of the former LPS company. We have combined the acquired transaction services business of LPS with our existing ServiceLink operations which reside in the Title segment. There are several intercompany corporate related arrangements between our various FNF Core businesses. The effects of these arrangements including intercompany notes and related interest and any other non-operational intercompany revenues and expenses have been eliminated in the segment presentations below.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

As of and for the three months ended September 30, 2014:

	Title	BKFS	FNF Core Corporate and Other	Total FNF Core	Remy	Restaurant Group	FNFV Corporate and Other	Total FNFV	Eliminations	Total
(In millions)										
Title premiums	\$ 993	\$ —	\$ —	\$ 993	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 993
Other revenues	491	214	3	708	—	—	27	27	—	735
Auto parts revenues	—	—	—	—	290	—	—	290	—	290
Restaurant revenues	—	—	—	—	—	343	—	343	—	343
Revenues from external customers	1,484	214	3	1,701	290	343	27	660	—	2,361
Interest and investment income (loss), including realized gains and losses	26	—	(1)	25	—	—	(3)	(3)	—	22
Total revenues	1,510	214	2	1,726	290	343	24	657	—	2,383
Depreciation and amortization	35	48	1	84	1	14	3	18	—	102
Interest expense	—	8	24	32	5	2	(2)	5	—	37
Earnings (loss) from continuing operations, before income taxes and equity in earnings (loss) of unconsolidated affiliates	192	24	(35)	181	(18)	(3)	(6)	(27)	—	154
Income tax expense (benefit)	69	—	4	73	(6)	—	(8)	(14)	—	59
Earnings (loss) from continuing operations, before equity in earnings (loss) of unconsolidated affiliates	123	24	(39)	108	(12)	(3)	2	(13)	—	95
Equity in earnings (loss) of unconsolidated affiliates	1	—	—	1	—	—	(8)	(8)	—	(7)
Earnings (loss) from continuing operations	\$ 124	\$ 24	\$ (39)	\$ 109	\$ (12)	\$ (3)	\$ (6)	\$ (21)	\$ —	\$ 88
Assets	\$ 8,393	\$ 3,608	\$ 25	\$ 12,026	\$ 1,297	\$ 682	\$ 799	\$ 2,778	\$ (29)	\$ 14,775
Goodwill	2,253	2,219	2	4,474	262	118	103	483	—	4,957

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

As of and for the three months ended September 30, 2013:

Title	FNF Core Corporate and Other	Total FNF Core	Remy	Restaurant Group	FNFV Corporate and Other	Total FNFV	Eliminations	Total	
(In millions)									
Title premiums	\$ 1,102	\$ —	\$ 1,102	\$ —	\$ —	\$ —	\$ —	\$ 1,102	
Other revenues	409	6	415	—	—	22	22	437	
Auto parts revenues	—	—	—	266	—	—	266	266	
Restaurant revenues	—	—	—	—	336	—	336	336	
Revenues from external customers	1,511	6	1,517	266	336	22	624	2,141	
Interest and investment income (loss), including realized gains and losses	32	1	33	—	2	(2)	—	33	
Total revenues	1,543	7	1,550	266	338	20	624	2,174	
Depreciation and amortization	17	(1)	16	1	13	6	20	36	
Interest expense	—	20	20	6	2	(1)	7	27	
Earnings (loss) from continuing operations, before income taxes and equity in earnings (loss) of unconsolidated affiliates	220	(44)	176	6	—	(20)	(14)	162	
Income tax expense (benefit)	77	(14)	63	1	—	(12)	(11)	52	
Earnings (loss) from continuing operations, before equity in earnings (loss) of unconsolidated affiliates	143	(30)	113	5	—	(8)	(3)	110	
Equity in earnings (loss) of unconsolidated affiliates	1	—	1	(2)	—	(13)	(15)	(14)	
Earnings (loss) from continuing operations	\$ 144	\$ (30)	\$ 114	\$ 3	\$ —	\$ (21)	\$ (18)	\$ 96	
Assets	\$ 6,998	\$ 597	7,595	\$ 1,241	\$ 668	\$ 689	\$ 2,598	\$ (116)	\$ 10,077
Goodwill	1,434	3	1,437	248	118	91	457	—	1,894

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

As of and for the nine months ended September 30, 2014:

Title	BKFS	FNF Core Corporate and Other	Total FNF Core	Remy	Restaurant Group	FNFV Corporate and Other	Total FNFV	Eliminations	Total	
(In millions)										
Title premiums	\$ 2,699	\$ —	\$ —	\$ 2,699	\$ —	\$ —	\$ —	\$ —	\$ 2,699	
Other revenues	1,394	632	(11)	2,015	—	—	82	82	2,097	
Auto parts revenues	—	—	—	—	892	—	—	892	892	
Restaurant revenues	—	—	—	—	—	1,055	—	1,055	1,055	
Revenues from external customers	4,093	632	(11)	4,714	892	1,055	82	2,029	6,743	
Interest and investment income (loss), including realized gains and losses	89	—	(1)	88	1	(1)	—	—	88	
Total revenues	4,182	632	(12)	4,802	893	1,054	82	2,029	6,831	
Depreciation and amortization	109	142	2	253	3	39	10	52	305	
Interest expense	—	23	70	93	16	5	(3)	18	111	
Earnings (loss) from continuing operations, before income taxes and equity in earnings (loss) of unconsolidated affiliates	353	(34)	(90)	229	—	13	(3)	10	239	
Income tax expense (benefit)	129	(11)	(26)	92	—	—	(13)	(13)	79	
Earnings (loss) from continuing operations, before equity in earnings (loss) of unconsolidated affiliates	224	(23)	(64)	137	—	13	10	23	160	
Equity in earnings (loss) of unconsolidated affiliates	3	—	—	3	—	—	(46)	(46)	(43)	
Earnings (loss) from continuing operations	<u>\$ 227</u>	<u>\$ (23)</u>	<u>\$ (64)</u>	<u>\$ 140</u>	<u>\$ —</u>	<u>\$ 13</u>	<u>\$ (36)</u>	<u>\$ (23)</u>	<u>\$ —</u>	<u>\$ 117</u>
Assets	\$ 8,393	\$ 3,608	\$ 25	\$ 12,026	\$ 1,297	\$ 682	\$ 799	\$ 2,778	\$ (29)	\$ 14,775
Goodwill	2,253	2,219	2	4,474	262	118	103	483	—	4,957

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

As of and for the nine months ended September 30, 2013:

	Title	FNF Core Corporate and Other	Total FNF Core	Remy	Restaurant Group	FNFV Corporate and Other	Total FNFV	Eliminations	Total
(In millions)									
Title premiums	\$ 3,156	\$ —	\$ 3,156	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3,156
Other revenues	1,266	33	1,299	—	—	62	62	—	1,361
Auto parts revenues	—	—	—	834	—	—	834	—	834
Restaurant revenues	—	—	—	—	1,037	—	1,037	—	1,037
Revenues from external customers	4,422	33	4,455	834	1,037	62	1,933	—	6,388
Interest and investment income (loss), including realized gains and losses	107	2	109	(3)	—	—	(3)	—	106
Total revenues	4,529	35	4,564	831	1,037	62	1,930	—	6,494
Depreciation and amortization	49	1	50	3	40	11	54	—	104
Interest expense	—	52	52	16	6	(3)	19	—	71
Earnings (loss) from continuing operations, before income taxes and equity in earnings (loss) of unconsolidated affiliates	662	(117)	545	7	5	(35)	(23)	—	522
Income tax expense (benefit)	236	(39)	197	2	(1)	(28)	(27)	—	170
Earnings (loss) from continuing operations, before equity in earnings (loss) of unconsolidated affiliates	426	(78)	348	5	6	(7)	4	—	352
Equity in earnings (loss) of unconsolidated affiliates	4	—	4	—	—	(24)	(24)	—	(20)
Earnings (loss) from continuing operations	\$ 430	\$ (78)	\$ 352	\$ 5	\$ 6	\$ (31)	\$ (20)	\$ —	\$ 332
Assets	\$ 6,998	\$ 597	7,595	\$ 1,241	\$ 668	\$ 689	\$ 2,598	\$ (116)	\$ 10,077
Goodwill	1,434	3	1,437	248	118	91	457	—	1,894

The activities of the reportable segments include the following:

FNF Core Operations

Title

This segment consists of the operations of our title insurance underwriters and related businesses. This segment provides core title insurance and escrow and other title related services including collection and trust activities, trustee sales guarantees, recordings and reconveyances, and home warranty insurance. This segment also includes the transaction services business acquired from LPS, now combined with our ServiceLink business. Transaction services include other title related services used in production and management of mortgage loans, including mortgage loans that go into default.

BKFS

This segment consists of the operations of BKFS. This segment provides core technology and data and analytics services through leading software systems and information solutions that facilitate and automate many of the business processes across the life cycle of a mortgage.

FNF Core Corporate and Other

The FNF Core Corporate and Other segment consists of the operations of the parent holding company, certain other unallocated corporate overhead expenses, and other smaller real estate and insurance related operations.

FNFV

Remy

This segment consists of the operations of Remy, in which we have a 51% ownership interest. Remy is a leading designer, manufacturer, remanufacturer, marketer and distributor of aftermarket and original equipment electrical components for automobiles, light trucks, heavy-duty trucks and other vehicles.

Restaurant Group

The Restaurant Group segment consists of the operations of ABRH, in which we have a 55% ownership interest. ABRH is the owner and operator of the O'Charley's, Ninety Nine Restaurants, Max & Erma's, Village Inn and Bakers Square concepts. This

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) — continued

segment also includes J. Alexander's in which we have an 87% ownership interest, which also includes the Stoney River Steakhouse and Grill concept.

FNFV Corporate and Other

The FNFV Corporate and Other segment primarily consists of our share in the operations of certain equity investments, including Ceridian, Digital Insurance and other smaller operations which are not title related.

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

The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including statements regarding our expectations, hopes, intentions or strategies regarding the future. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. It is important to note that our actual results could vary materially from those forward-looking statements contained herein due to many factors, including, but not limited to: changes in general economic, business and political conditions, including changes in the financial markets; continued weakness or adverse changes in the level of real estate activity, which may be caused by, among other things, high or increasing interest rates, a limited supply of mortgage funding or a weak U.S. economy; our potential inability to find suitable acquisition candidates, acquisitions in lines of business that will not necessarily be limited to our traditional areas of focus, or difficulties in integrating acquisitions; our dependence on distributions from our title insurance underwriters as our main source of cash flow; significant competition that our operating subsidiaries face; compliance with extensive government regulation of our operating subsidiaries and adverse changes in applicable laws or regulations or in their application by regulators; and other risks detailed in the "Statement Regarding Forward-Looking Information," "Risk Factors" and other sections of the Company's Form 10-K for the year ended December 31, 2013 and other filings with the Securities and Exchange Commission.

The following discussion should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2013.

Overview

We have organized our business into two groups, FNF Core Operations and FNF Ventures, known as "FNFV." Through our Core operations, FNF is a leading provider of title insurance, technology and transaction services to the real estate and mortgage industries. FNF is the nation's largest title insurance company through its title insurance underwriters - Fidelity National Title, Chicago Title, Commonwealth Land Title, Alamo Title and National Title of New York - that collectively issue more title insurance policies than any other title company in the United States. FNF also provides industry-leading mortgage technology solutions and transaction services, including MSP®, the leading residential mortgage servicing technology platform in the U.S., through its majority-owned subsidiaries, Black Knight Financial Services, LLC ("BKFS") and ServiceLink Holdings, LLC. In addition, in our FNFV group, we own majority and minority equity investment stakes in a number of entities, including American Blue Ribbon Holdings, LLC ("ABRH"), J. Alexander's, LLC ("J. Alexander's"), Remy International, Inc. ("Remy"), Ceridian HCM, Inc. (collectively "Ceridian") and Digital Insurance, Inc. ("Digital Insurance").

We currently have six reporting segments as follows:

FNF Core Operations

Title

This segment consists of the operations of our title insurance underwriters and related businesses. This segment provides core title insurance and escrow and other title related services including collection and trust activities, trustee sales guarantees, recordings and reconveyances, and home warranty insurance. This segment also includes the transaction services business acquired from LPS, now combined with our ServiceLink business. Transaction services include other title related services used in production and management of mortgage loans, including mortgage loans that go into default.

BKFS

This segment consists of the operations of BKFS. This segment provides core technology and data and analytics services through leading software systems and information solutions that facilitate and automate many of the business processes across the life cycle of a mortgage.

FNF Core Corporate and Other

The FNF Core Corporate and Other segment consists of the operations of the parent holding company, certain other unallocated corporate overhead expenses, and other smaller real estate and insurance related operations.

FNFV

Remy

This segment consists of the operations of Remy, in which we have a 51% ownership interest. Remy is a leading designer, manufacturer, remanufacturer, marketer and distributor of aftermarket and original equipment electrical components for automobiles, light trucks, heavy-duty trucks and other vehicles.

Restaurant Group

The Restaurant Group segment consists of the operations of ABRH, in which we have a 55% ownership interest. ABRH is the owner and operator of the O'Charley's, Ninety Nine Restaurants, Max & Erma's, Village Inn and Bakers Square concepts. This segment also includes J. Alexander's in which we have an 87% ownership interest, which also includes the Stoney River Steakhouse and Grill concept.

FNFV Corporate and Other

The FNFV Corporate and Other segment primarily consists of our share in the operations of certain equity investments, including Ceridian, Digital Insurance and other smaller operations which are not title related.

Recent Developments

On October 28, 2014, our Board of Directors approved a three-year stock purchase program, effective November 6, 2014, under which we can repurchase up to 10 million shares of our FNFV Group common stock through November 30, 2017. We may make repurchases from time to time in the open market, in block purchases or in privately negotiated transactions, depending on market conditions and other factors. We did not repurchase any FNFV Group shares from November 6, 2014 through market close on November 7, 2014.

On September 9, 2014, we filed a draft registration statement with the Securities and Exchange Commission ("SEC") relating to a proposed initial public offering of J. Alexander's common stock. J. Alexander's is currently presented as part of the Restaurant Group segment. The number of shares to be offered and the price range for the proposed offering have not yet been determined. The registration statement has not yet become effective. As a result shares to be registered may not be sold nor may offers to buy be accepted prior to the time when the registration statement becomes effective.

On September 7, 2014, we entered into an agreement with Remy for a transaction (the "Spin-off"). Under the Spin-off, FNFV will combine all of the 16,342,508 shares of Remy common stock that FNFV owns and a small company called Fidelity National Technology Imaging, LLC ("Imaging") into a newly-formed subsidiary ("New Remy"). New Remy will then be distributed to FNFV shareholders. Immediately following the distribution of New Remy to FNFV shareholders, New Remy and Remy will engage in a series of stock-for-stock transactions ending with a new publicly-traded holding company, New Remy Holdco ("New Holdco"). In the Spin-off, FNFV shareholders will receive an estimated total of 16,615,359 shares of New Holdco common stock, or approximately 0.18117 shares for each share of FNFV tracking stock owned. The remaining shareholders of Remy (other than New Remy) will receive an estimated total of 15,652,824 shares, or one share of New Holdco for each share of Remy owned. Remy currently has approximately 32 million shares of common stock outstanding and at the conclusion of the Spin-off, New Holdco will have approximately 32 million shares of common stock outstanding. The Spin-off should be tax-free to all existing Remy and FNFV shareholders. This structure will result in New Holdco becoming the new public parent of Remy. Under the organizational documents of New Holdco, the rights of the holders of the common stock of New Holdco will be the same as the rights of holders of Remy common stock. The Spin-off is subject to customary closing conditions, including Remy shareholder approval, which based on FNFV's ownership of Remy is assured. On October 6, 2014, New Holdco filed an initial Form S-4 registration statement with the SEC, which includes a preliminary proxy statement with respect to the foregoing shareholder vote. In addition, on October 10, 2014, New Remy filed a Form S-1 registration statement with the SEC with regard to the Spin-off. Both of these filings are subject to SEC review and comment before the Remy shareholder meeting can be set. The Spin-off is expected to close in December 2014 or in the first quarter of 2015.

On August 25, 2014, we acquired a 70% ownership interest in LandCastle Title ("LandCastle"), in exchange for our agreement to fund escrow shortfalls in LandCastle's escrow accounts. At the time of the acquisition, LandCastle was a large third-party agent of FNF, operating primarily in the State of Georgia. To date, FNF's total cash contribution to LandCastle is approximately \$19 million and based on our current understanding of the business could increase by approximately \$0 - \$10 million.

On August 19, 2014, ABRH completed a recapitalization whereby they entered into a new credit agreement for \$210 million. As part of the recapitalization, ABRH's parent paid a special dividend to its members, totaling \$75 million. Of this special dividend, FNFV received \$41 million. ABRH's parent also distributed its 28% ownership interest in J. Alexander's to FNFV, resulting in FNFV now directly owning 87% of J. Alexander's. See Note F for further discussion of the new credit agreement.

On August 12, 2014, we announced that Ceridian reached an agreement to exchange its subsidiary Comdata Inc. ("Comdata") with FleetCor Technologies Inc. ("FleetCor") stock in a transaction valued at approximately \$3.45 billion. After repayment of existing Comdata indebtedness and transaction related expenses, total consideration received by Ceridian will be approximately \$950 million, which will be paid in approximately 7 million shares of FleetCor common stock. FNFV owns approximately 32% of Ceridian. Approximately \$250 million of the common stock of FleetCor will be placed in an escrow account to cover potential indemnity claims as set forth in the merger agreement. The escrowed shares will be released over a three-year period. The actual number of shares of FleetCor common stock received by Ceridian will be subject to adjustment based on the amounts of indebtedness and working capital outstanding at Comdata at the closing of the transaction as set forth in the merger agreement. The shares of FleetCor common stock that Ceridian will receive will be subject to a six-month lockup period after closing of the transaction. At

the expiration of the six-month lockup period, Ceridian will be entitled to demand registration rights on all shares of FleetCor common stock, subject to customary limitations. At closing of the Comdata merger FNFV will indirectly own approximately 3% of the outstanding shares of FleetCor. The stock-for-stock transaction is expected to be tax-free for Ceridian and its shareholders. The transaction is subject to customary closing conditions and is expected to close in the fourth quarter of 2014.

On June 30, 2014, we completed the recapitalization of FNF common stock into two tracking stocks, FNF Group common stock and FNFV Group common stock. Each share of the previously outstanding FNF Class A common stock ("Old FNF common stock") was converted into one share of FNF Group common stock, which now trades on the New York Stock Exchange under the current trading symbol "FNF," and 0.3333 of a share of FNFV Group common stock, which now trades on the New York Stock Exchange under the trading symbol "FNFV." Both FNF and FNFV began regular trading on July 1, 2014.

Effective June 1, 2014, we completed an internal reorganization to contribute our subsidiary Property Insight, a company which provides information used by title insurance underwriters, title agents and closing attorneys to underwrite title insurance policies for real property sales and transfer, from our Title segment to BKFS. As a result of this transfer, our ownership percentage in BKFS increased to 67%. Our results for periods since June 1, 2014, reflect our now 67% ownership interest in BKFS.

On January 13, 2014, Remy acquired substantially all of the assets of United Starters and Alternators Industries, Inc. ("USA Industries"). USA Industries is a leading North American distributor of premium quality remanufactured and new alternators, starters, constant velocity axles and disc brake calipers for the light-duty aftermarket. Total consideration paid was \$40 million, net of cash acquired.

On January 2, 2014, we completed the purchase of Lender Processing Services, Inc. ("LPS"). The purchase consideration paid was \$37.14 per share, of which \$28.10 per share was paid in cash and the remaining \$9.04 was paid in FNF common shares. The purchase consideration represented an exchange ratio of 0.28742 Old FNF common shares per share of LPS common stock. Total consideration paid for LPS was \$3.4 billion, which consisted of \$2,535 million in cash and \$839 million in Old FNF common stock. In order to pay the stock component of the consideration, we issued 25,920,078 Old FNF shares to the former LPS shareholders. See Note B for further discussion.

Discontinued Operations

In April 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*. This ASU raises the threshold for a disposal to qualify as a discontinued operation and requires new disclosures of both discontinued operations and certain other disposals that do not meet the definition of a discontinued operation. This ASU is effective for annual periods beginning after December 15, 2014, and interim periods within annual periods beginning on or after December 15, 2015, with early adoption permitted. We have adopted this ASU for the interim period beginning July 1, 2014 and this update did not have a material impact on our financial statements.

The results from a small software company, which we acquired with LPS and which was sold during the second quarter of 2014, are included in the Condensed Consolidated Statements of Earnings as discontinued operations for all periods presented. Total revenues included in discontinued operations \$2 million for the nine months ending September 30, 2014. Pre-tax earnings included in discontinued operations are \$1 million for the nine months ending September 30, 2014.

The results from two closed J. Alexander's locations and a settlement services company closed in the second quarter of 2013 are reflected in the Condensed Consolidated Statements of Earnings as discontinued operations for all periods presented. There were no revenues included in discontinued operations for the three months ending September 30, 2013, and \$8 million for the nine months ending September 30, 2013. Pre-tax loss included in discontinued operations was \$3 million for the nine months ending September 30, 2013.

Transactions with Related Parties

Our financial statements for the three and nine months ended September 30, 2013, reflect related party transactions with Fidelity National Information Services, Inc. ("FIS"), which was considered a related party until December 31, 2013. See Note A of the Notes to Condensed Consolidated Financial Statements for further details on our transactions with related parties.

Business Trends and Conditions

FNF Core Operations

Our FNF core revenue is closely related to the level of real estate activity which includes sales, mortgage financing and mortgage refinancing. The levels of real estate activity are primarily affected by the average price of real estate sales, the availability of funds to finance purchases, mortgage interest rates and the strength of the United States economy, including employment levels. Declines in the level of real estate activity or the average price of real estate sales will adversely affect our title insurance revenues.

Since December 2008, the Federal Reserve has held the federal funds rate at 0.0%-0.25%, and has recently indicated that rates will stay at this level for a "considerable time," although there is no assurance as to how long that will be. Mortgage interest rates were at historically low levels through the beginning of 2013. During the last half of 2013, however, interest rates rose to their highest level since 2011. Through the first nine months of 2014, mortgage interest rates have declined moderately. In early October, however, interest rates dropped below 4%.

As of September 17, 2014, the Mortgage Bankers Association ("MBA") estimated the size of the U.S. mortgage originations market as shown in the following table for 2012 - 2015 in their "Mortgage Finance Forecast" (in trillions):

	2015	2014	2013	2012
Purchase transactions	\$ 0.7	\$ 0.6	\$ 0.7	\$ 0.5
Refinance transactions	0.4	0.4	1.1	1.2
Total U.S. mortgage originations forecast	\$ 1.1	\$ 1.0	\$ 1.8	\$ 1.7

As shown above, the originations in 2013 and 2012 were driven primarily by refinance transactions, which coincides with the historically low interest rates experienced during those years. In 2014, the MBA predicts a 44.4% decrease in the total market, primarily due to a 63.6% decrease in refinance transactions in 2014. Total projected originations in 2015 remain relatively consistent with those in 2014. During 2013 and through 2014, we experienced a moderate increase in existing home sales and we have also seen a decline in total housing inventory. However, we have experienced significant declines in refinance activity starting in the fourth quarter of 2013.

Because commercial real estate transactions tend to be driven more by supply and demand for commercial space and occupancy rates in a particular area rather than by macroeconomic events, we believe that our commercial real estate title insurance business is less dependent on the industry cycles discussed above than our residential real estate title business. Commercial real estate transaction volume is also often linked to the availability of financing. For the past several years, including 2014, we have experienced an increase in volume and fee per file of commercial transactions from the previous years, indicating strong commercial markets.

Several pieces of legislation were enacted to address the struggling mortgage market and the current economic and financial environment. On October 24, 2011, the Federal Housing Finance Agency ("FHFA") announced a series of changes to the Home Affordable Refinance Program ("HARP") that would make it easier for certain borrowers who owe more than their home is worth and who are current on their mortgage payments to refinance their mortgages at lower interest rates. The program reduces or eliminates the risk-based fees Fannie Mae and Freddie Mac charge on many loans, raises the loan-to-home value ratio requirement for refinancing, and streamlines the underwriting process. According to the Federal Housing Authority ("FHA"), lenders began taking refinancing applications on December 1, 2011 under the modified HARP. On April 11, 2013, the FHFA announced that the modified HARP program had been extended through December 2015. We believe the modified HARP program had a positive effect on our results during 2013 and 2012, but are uncertain to what degree the program has impacted our results in 2014 or may impact our results in the future.

During 2010, a number of lenders imposed freezes on foreclosures in some or all states as they reviewed their foreclosure practices. In response to these freezes, the Office of the Comptroller of the Currency ("OCC") reviewed the foreclosure practices in the residential mortgage loan servicing industry. On April 13, 2011, the OCC and other federal regulators (collectively the "banking agencies") announced formal consent orders against several national bank mortgage servicers and third-party service providers for inappropriate practices related to residential mortgage loan servicing and foreclosure processing. The consent orders require the servicers to promptly correct deficiencies and make improvements in practices for residential mortgage loan servicing and foreclosure processing, including improvements to future communications with borrowers and a comprehensive "look back" to assess whether foreclosures complied with federal and state laws and whether any deficiencies in the process or related documentation resulted in financial injury to borrowers. Our title insurance underwriters were not involved in these enforcement actions and we do not believe that our title insurance underwriters are exposed to significant losses resulting from faulty foreclosure practices. Our title insurance underwriters issue title policies on real estate owned properties to new purchasers and lenders to those purchasers. We believe that these policies will not result in significant additional claims exposure to us because even if a court sets aside a foreclosure due to a defect in documentation, the foreclosing lender would be required to return to our insureds all funds obtained from them, resulting in reduced exposure under the title insurance policy. Further, we believe that under current law and the rights we have under our title insurance policies, we would have the right to seek recovery from the foreclosing lender in the event of a failure to comply with state laws or local practices in connection with a foreclosure. The former LPS and certain of its subsidiaries entered into a consent order with the banking agencies in relation to its default operations, now part of the Title segment. As part of the consent order, LPS agreed to further study the issues identified in the review and enhance its compliance, internal audit, risk management and board oversight plans with respect to the related businesses, among additional agreed undertakings. In January 2013, ten large mortgage servicers concluded the reviews required by the 2011 consent orders and agreed to monetary settlements. In April 2013, these mortgage servicers began making restitution under these settlements. LPS also entered

into settlement agreements in January 2013 with 49 States and the District of Columbia relating to certain practices within its default operations and in February 2014, we also settled with the State of Nevada and the Federal Deposit Insurance Corporation. We cannot predict whether these settlements may result in more normalized foreclosure timelines in the future. Moreover, we cannot predict whether any additional legislative or regulatory changes will be implemented as a result of the findings of the banking agencies or whether the U.S. federal government may take additional action to address the current housing market and economic uncertainty. Some states have enacted or are considering adopting legislation, such as the California Homeowner Bill of Rights, that places additional responsibilities and restrictions on servicers with respect to the foreclosure process. Any such actions could further extend foreclosure timelines. Moreover, as the processing of foreclosures in accordance with applicable law becomes more onerous, many lenders are addressing loans in default through other means, such as short sales, in order to avoid the risks and liability now associated with the foreclosure process. If foreclosure timelines continue to be extended and servicers address delinquent loans through other processes, the results of our default operations within the Title segment may be adversely affected.

In addition to state-level regulation, segments of our FNF core businesses are subject to regulation by federal agencies, including the Consumer Financial Protection Bureau ("CFPB"). The Dodd-Frank Wall Street Reform ("Dodd-Frank") and Consumer Protection Act of 2010 established the CFPB, and in January 2012, President Obama appointed its first director. The CFPB has been given broad authority to regulate, among other areas, the mortgage and real estate markets in matters pertaining to consumers. This authority includes the enforcement of the Real Estate Settlement Procedures Act formerly placed with the Department of Housing and Urban Development. On July 9, 2012, the CFPB introduced a number of proposed rules related to the enforcement of the Real Estate Settlement Procedures Act and the Truth in Lending Act, including, among others, measures designed to (i) simplify financing documentation and (ii) require lenders to deliver to consumers a statement of final financing charges (and the related annual percentage rate) at least three business days prior to the closing. These rules became effective on January 10, 2014. Dodd-Frank also included regulation over financial services and other lending related businesses including our newly acquired BKFS business. On November 20, 2013, the CFPB issued additional rules regarding mortgage forms and other mortgage related disclosures with the intent to provide "easier-to-use" mortgage disclosure forms for the consumer. The additional disclosure requirements are effective August 1, 2015. We have reviewed the new requirements and are reviewing and updating our policies, procedures and technology resources as appropriate. We cannot be certain what impact, if any, these new rules, or the CFPB generally, will have on our core businesses.

Historically, real estate transactions have produced seasonal revenue levels for the real estate industry including title insurers. The first calendar quarter is typically the weakest quarter in terms of revenue due to the generally low volume of home sales during January and February. The third calendar quarter has been typically the strongest in terms of revenue primarily due to a higher volume of home sales in the summer months and the fourth quarter is usually also strong due to commercial entities desiring to complete transactions by year-end. We have noted short term fluctuations through recent years in resale and refinance transactions as a result of changes in interest rates and the implementation and subsequent expiration of government programs designed to stimulate the real estate market. In 2013 and in 2014, we have seen seasonality trends return to historical patterns.

FNFV

Remy

Remy manufactures and sells auto parts, principally starter motors and alternators, as well as hybrid electric motors and multi-line products, including steering gear, constant velocity axles, and brake calipers, for sale to original equipment manufacturers (OEM) and aftermarket customers. Remy manufactures products for automobiles as well as light and heavy duty commercial vehicles. The OEM market for auto parts is dependent on levels of new vehicle production, which in turn, is affected by the overall economy, consumer confidence, discounts and incentives offered by automakers and the availability of funds to finance purchases.

In the aftermarket, Remy's results are affected by the strength of the economy and by gas prices, but do not follow the same cycles as original equipment market sales. In a weaker economy, drivers tend to keep their vehicles and repair them rather than buying new vehicles. Lower gas prices have historically tended to result in more miles driven, which increases the frequency with which auto repairs are needed. Nevertheless, a weak economy also may reduce miles driven. Over the long term, improvements in the durability of original equipment and aftermarket parts has reduced, and is expected to further reduce, the number of units sold in the aftermarket. Aftermarket revenues are also affected by other factors, including severe weather (which tends to lead to increased sales) and competitive pressures. Many parts retailers and warehouse distributors purchase starters and alternators from only one or two suppliers, under contracts that run for five years or less.

Pressure from customers to reduce prices is characteristic of the automotive supply industry. Due to the competitive nature of the business, revised terms with customers may impact Remy's ongoing profitability. Remy anticipates the impact of pricing to be in the range of 1% to 3%, consistent with prior years. Remy has taken and expect to continue to take steps to improve operating efficiencies and minimize or resist price reductions. Remy intends to maintain a disciplined approach to customer program pricing and may choose to exit programs with certain customers to protect margins and cash flow. As a result, Remy may choose to no longer continue programs with certain customers due to unacceptable competitive pricing or terms. To this end, Remy has chosen

not to meet the demands of a major aftermarket customer due to the negative pricing and working capital impact. The customer has notified Remy of their intent to re-source the business at the end of its current contract, which expires in January 2015. While these decisions impact net sales and operating income in the short term, Remy believes this operating discipline will help to maximize its long-term profitability. Sales to this customer were \$80 million in 2013 and \$68 million for the nine months ended September 30, 2014. Any loss of sales to this customer in 2015 will be partially offset, upon termination of the contract, by the sale of cores currently reflected in Prepaid expenses and other assets. Despite this likely reduction of 2015 revenues, this action will have a positive impact on Remy's net income and cash next year due to the unfavorable terms of the previous contract.

Restaurant Group

The restaurant industry is highly competitive and is often affected by changes in consumer tastes and discretionary spending patterns; changes in general economic conditions; public safety conditions or concerns; demographic trends; weather conditions; the cost of food products, labor, energy and other operating costs; and governmental regulations. The restaurant industry is also characterized by high capital investments for new restaurants and relatively high fixed or semi-variable restaurant operating expenses. Because of the high fixed and semi-variable expenses, changes in sales in existing restaurants are generally expected to significantly affect restaurant profitability because many restaurant costs and expenses are not expected to change at the same rate as sales. Restaurant profitability can also be negatively affected by inflationary and regulatory increases in operating costs and other factors. The most significant commodities that may affect our cost of food and beverage are beef, seafood, poultry, and dairy, which accounted for almost 49 percent of our overall cost of food and beverage in the past. Generally, temporary increases in these costs are not passed on to guests; however, in the past, we have adjusted menu prices to compensate for increased costs of a more permanent nature.

Average weekly sales per restaurant are typically higher in the first and fourth quarters than in other quarters, and we typically generate a disproportionate share of our earnings from operations in the first and fourth quarters. Holidays, severe weather and other disruptive conditions may impact sales volumes seasonally in some operating regions.

Our revenues in future periods will continue to be subject to these and other factors that are beyond our control and, as a result, are likely to fluctuate.

Results of Operations

Consolidated Results of Operations

Net Earnings. The following table presents certain financial data for the periods indicated:

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
(Dollars in millions)				
Revenues:				
Direct title insurance premiums	465	472	1,249	1,377
Agency title insurance premiums	528	630	1,450	1,779
Escrow, title-related and other fees	735	437	2,097	1,361
Restaurant revenue	343	336	1,055	1,037
Auto parts revenue	290	266	892	834
Interest and investment income	29	29	94	99
Realized gains and losses, net	(7)	4	(6)	7
Total revenues	2,383	2,174	6,831	6,494
Expenses:				
Personnel costs	645	546	1,950	1,611
Agent commissions	396	482	1,098	1,352
Other operating expenses	428	329	1,289	1,020
Cost of auto parts revenue, includes \$19, \$19, \$51, \$55 of depreciation and amortization in the three months ended September 30, 2014 and 2013 and the nine months ended September 30, 2014 2014 and 2013, respectively	266	223	771	704
Cost of restaurant revenue	296	292	899	889
Depreciation and amortization	102	36	305	104
Provision for title claim losses	59	77	169	221
Interest expense	37	27	111	71
Total expenses	2,229	2,012	6,592	5,972
Earnings from continuing operations before income taxes and equity in losses of unconsolidated affiliates	154	162	239	522
Income tax expense	59	52	79	170
Equity in losses of unconsolidated affiliates	(7)	(14)	(43)	(20)
Net earnings from continuing operations	\$ 88	\$ 96	\$ 117	\$ 332

Revenues.

Total revenues increased \$209 million in the three months ended September 30, 2014, compared to the 2013 period. The increase consisted of a \$176 million increase at FNF Core and a \$33 million increase at FNFV. Total revenues increased \$337 million in the nine months ended September 30, 2014, compared to the 2013 period. The increase consisted of a \$238 million increase at FNF Core and a \$99 million increase at FNFV.

Total net earnings from continuing operations decreased \$8 million in the three months ended September 30, 2014, compared to the 2013 period. The decrease consisted of a \$5 million decrease at FNF Core and \$3 million decrease at FNFV. Total net earnings from continuing operations decreased \$215 million in the nine months ended September 30, 2014, compared to the 2013 period, due to a \$212 million decrease at FNF Core and a \$3 million decrease at FNFV.

FNF Core includes the results of operations of our Title segment and our recently acquired BKFS segment as well as the FNF Core Corporate and Other segment which includes the operations of the parent holding company, certain other unallocated corporate overhead expenses, and other smaller real estate and insurance related operations.

FNFV includes our share in the operations of certain equity investments, including Ceridian, as well as the results of operations of our portfolio companies including restaurant revenue from ABRH and J. Alexander's, auto parts revenue from Remy, and within FNFV corporate and other, the results of Digital Insurance and other smaller operations which are not title related.

The change in revenue from the FNF Core segments and FNFV segments is discussed in further detail at the segment level below.

Expenses.

Our operating expenses consist primarily of personnel costs and other operating expenses, which in our FNF Core businesses are incurred as orders are received and processed, and agent commissions, which are incurred as revenue is recognized, as well as cost of auto parts revenue and cost of restaurant revenue. Title insurance premiums, escrow and title-related fees are generally recognized as income at the time the underlying transaction closes or other service is provided. Direct title operations revenue often lags approximately 45-60 days behind expenses and therefore gross margins may fluctuate. The changes in the market environment, mix of business between direct and agency operations and the contributions from our various business units have historically impacted margins and net earnings. We have implemented programs and have taken necessary actions to maintain expense levels consistent with revenue streams. However, a short time lag exists in reducing variable costs and certain fixed costs are incurred regardless of revenue levels.

Personnel costs include base salaries, commissions, benefits, stock-based compensation and bonuses paid to employees, and are one of our most significant operating expenses. Personnel costs that are directly attributable to the operations of Remy and the Restaurant Group are included in Cost of auto parts revenue and Cost of restaurant revenue, respectively.

Agent commissions represent the portion of premiums retained by our third-party agents pursuant to the terms of their respective agency contracts.

Other operating expenses consist primarily of facilities expenses, title plant maintenance, premium taxes (which insurance underwriters are required to pay on title premiums in lieu of franchise and other state taxes), appraisal fees and other cost of sales on ServiceLink product offerings and other title related products, postage and courier services, computer services, professional services, travel expenses, general insurance, and bad debt expense on our trade and notes receivable.

Cost of auto parts revenue includes cost of raw materials, payroll and related costs and expenses directly related to manufacturing, and overhead expenses allocated to the costs of production such as depreciation and amortization at Remy.

Cost of restaurant revenue includes cost of food and beverage, primarily the costs of beef, groceries, produce, seafood, poultry and alcoholic and non-alcoholic beverages net of vendor discounts and rebates, payroll and related costs and expenses directly relating to restaurant level activities, and restaurant operating costs including occupancy and other operating expenses at the restaurant level.

The provision for title claim losses includes an estimate of anticipated title and title-related claims, and escrow losses.

The change in expenses from the FNF Core segments and FNFV segments is discussed in further detail at the segment level below.

Income tax expense was \$59 million and \$52 million in the three-month periods ended September 30, 2014 and 2013, respectively, and \$79 million and \$170 million in the nine-month periods ended September 30, 2014 and 2013, respectively. Income tax expense as a percentage of earnings before income taxes was 38% and 32% for the three-month periods ended September 30, 2014 and 2013, respectively, and 33% for both the nine-month periods ended September 30, 2014 and 2013. Income taxes as a percentage of earnings before income taxes fluctuates depending on our estimate of ultimate income tax liability and changes in the characteristics of net earnings, such as the weighting of operating income versus investment income. Included in income tax expense in the nine-months ending September 30, 2014 is a \$12 million income tax benefit related to our portion of \$35 million equity in losses recorded during the period related to our minority investment in Ceridian.

Equity in losses of unconsolidated affiliates was \$7 million and \$14 million for the three-month periods ended September 30, 2014 and 2013, respectively, and \$43 million and \$20 million for the nine-month periods ended September 30, 2014 and 2013, respectively. The equity in losses in 2014 and 2013 consisted primarily of net losses related to our investment in Ceridian, which is described further at the segment level below.

FNF Core
Title

Beginning January 2, 2014, the Title segment includes the results of the transaction services business acquired with LPS.

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
(In millions)				
Revenues:				
Direct title insurance premiums	\$ 465	\$ 472	\$ 1,249	\$ 1,377
Agency title insurance premiums	528	630	1,450	1,779
Escrow, title related and other fees	491	409	1,394	1,266
Interest and investment income	28	29	89	97
Realized gains and losses, net	(2)	3	—	10
Total revenues	1,510	1,543	4,182	4,529
Expenses:				
Personnel costs	479	471	1,413	1,400
Agent commissions	396	482	1,098	1,352
Other operating expenses	349	276	1,040	845
Depreciation and amortization	35	17	109	49
Provision for title claim losses	59	77	169	221
Total expenses	1,318	1,323	3,829	3,867
Earnings from continuing operations before income taxes and equity in earnings of unconsolidated affiliates	\$ 192	\$ 220	\$ 353	\$ 662
Orders opened by direct title operations	481,000	474,000	1,463,000	1,789,000
Orders closed by direct title operations	348,000	410,000	985,000	1,401,000
Fee per file	\$ 2,066	\$ 1,807	\$ 1,974	\$ 1,568

Total revenues for the Title segment decreased \$33 million, or 2%, in the three months ended September 30, 2014 from the 2013 period. Total revenues for the Title segment decreased \$347 million, or 8%, in the nine months ended September 30, 2014 from the 2013 period.

The following table presents the percentages of title insurance premiums generated by our direct and agency operations:

	Three months ended September 30,				Nine months ended September 30,			
	2014	% of Total	2013	% of Total	2014	% of Total	2013	% of Total
(Dollars in millions)								
Title premiums from direct operations	\$ 465	47%	\$ 472	43%	\$ 1,249	46%	\$ 1,377	44%
Title premiums from agency operations	528	53	630	57	1,450	54	1,779	56
Total title premiums	\$ 993	100%	\$ 1,102	100%	\$ 2,699	100%	\$ 3,156	100%

Title premiums decreased 10% in the three months ended September 30, 2014 as compared to the 2013 period. The decrease was made up of a decrease in premiums from direct operations of \$7 million, or 1%, and a decrease in premiums from agency operations of \$102 million, or 16% in the three months ended September 30, 2014. Title premiums decreased 14% in the nine months ended September 30, 2014 as compared to the 2013 period. The decrease was made up of a decrease in premiums from direct operations of \$128 million, or 9%, and a decrease in premiums from agency operations of \$329 million, or 18% in the nine months ended September 30, 2014.

The following table presents the percentages of closed title insurance orders generated by purchase and refinance transactions by our direct operations:

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
Opened title insurance orders from purchase transactions (1)	59.7%	56.3%	58.2%	44.3%
Opened title insurance orders from refinance transactions (1)	40.3	43.7	41.8	55.7
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>
Closed title insurance orders from purchase transactions (1)	61.6%	49.7%	58.6%	39.7%
Closed title insurance orders from refinance transactions (1)	38.4	50.3	41.4	60.3
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

(1) Percentages exclude consideration of an immaterial number of non-purchase and non-refinance orders.

Title premiums from direct operations decreased in 2014, primarily due to a decrease in closed order volumes as compared to the prior quarter, partially offset by an increase of \$21 million and \$62 million in the three and nine months ended September 30, 2014, respectively, related to the transaction services business acquired from LPS on January 2, 2014. Also offsetting the decline in orders was an increase in commercial revenue from the 2013 period and increase in the commercial fee per file. The decrease in order volumes was primarily related to a significant decrease in refinance transactions since the fourth quarter of 2013. In 2013, refinance transactions represented more than 60% of our total closed orders versus approximately 40% in 2014. Closed order volumes were 348,000 in the three months ended September 30, 2014 compared with 410,000 in the three months ended September 30, 2013 and were 985,000 in the nine months ended September 30, 2014 compared with 1,401,000 in the nine months ended September 30, 2013. Although there was a decrease in closed order volumes in 2014, this was partially offset by a 14% increase in the fee per file in the three month period and a 26% increase in the fee per file in the nine month period. The average fee per file in our direct operations was \$2,066 and \$1,974 in the three and nine months ended September 30, 2014, respectively, compared to \$1,807 and \$1,568 in the three and nine months ended September 30, 2013, respectively, with the increase reflecting a higher volume of purchase transactions, which have a higher fee per file. The fee per file tends to change as the mix of refinance and purchase transactions changes, because purchase transactions involve the issuance of both a lender's policy and an owner's policy, resulting in higher fees, whereas refinance transactions only require a lender's policy, resulting in lower fees. Also, commercial transactions typically have a higher fee per file.

The decrease in title premiums from agency operations is primarily the result of the overall decline in real estate activity since the prior quarter. The decrease was consistent with the decrease in direct operations, except that the direct operations benefited from the addition of the transaction services business acquired from LPS on January 2, 2014, as discussed above.

Escrow, title related and other fees increased by \$82 million, or 20% in the three months ending September 30, 2014 from 2013 and increased by \$128 million, or 10% in the nine months ending September 30, 2014 from 2013. Escrow fees, which are more directly related to our direct operations, decreased \$20 million, or 11%, in the three months ended September 30, 2014 compared to the 2013 period and decreased \$121 million, or 22%, in the nine months ended September 30, 2014 compared to the 2013 period. In both periods the decrease is consistent with the decrease in direct title premiums. The decrease in Escrow fees was offset by the addition of \$12 million and \$35 million in the three and nine months ended September 30, 2014, respectively, related to the transaction services business acquired from LPS on January 2, 2014. Other fees in the Title segment, excluding escrow fees, increased \$102 million, or 44%, in the three months ended September 30, 2014 compared to the 2013 period and increased \$249 million, or 35%, in the nine months ended September 30, 2014 compared to the 2013 period. The increase in other fees was primarily due to the addition of \$129 million and \$378 million in the three and nine months ended September 30, 2014, respectively, related to the transaction services business acquired from LPS on January 2, 2014. The increase in other fees was offset by decreases in direct operations.

Interest and investment income levels are primarily a function of securities markets, interest rates and the amount of cash available for investment. Interest and investment income remained flat in the three months ended September 30, 2014 compared to the 2013 period and decreased \$8 million in the nine months ended September 30, 2014 compared to the 2013 period. The decrease is due primarily to decreases in market interest rates and in turn lower bond yields during the nine months ended September 30, 2014 from the 2013 period.

Personnel costs include base salaries, commissions, benefits, stock-based compensation and bonuses paid to employees, and are one of our most significant operating expenses. The \$8 million, or 2% increase in the three-month period ended September 30, 2014 compared to the 2013 period is due to additional expense related to the Transaction Services business acquired from LPS in January 2014, severance expense of \$2 million and an accrual for expected bonuses to be paid on our synergy bonus program of

\$3 million recorded in the quarter. These increases were offset by lower personnel costs in the remainder of our Title segment due to lower revenues and order volumes. The \$13 million or 1% increase recorded during the nine-month period ended September 30, 2014 related to severance expense of \$18 million and an accrual for expected bonuses to be paid on our synergy bonus program of \$28 million, offset by decreases in personnel costs due to decreased staffing levels consistent with the change in order volumes. Personnel costs as a percentage of total revenues from direct title premiums and escrow, title-related and other fees were 50% and 53% for the three and nine-month periods ended September 30, 2014 and 53% for both the three and nine-month periods ended September 30, 2013. Average employee count in the Title segment was 19,550 and 20,190 in the three-month periods ended September 30, 2014 and 2013, respectively, and 18,928 and 19,722 in the nine-month periods ended September 30, 2014 and 2013, respectively. The decrease in both the three and nine months during the 2014 period includes reductions in headcount as a result of synergies realized with the merger of the LPS transaction services business with the historical title business, offset by an increase of 2,668 employees from the LPS acquisition in January 2014. The reduction in personnel during 2014 also relate to decreases in orders and revenues.

Other operating expenses consist primarily of facilities expenses, title plant maintenance, premium taxes (which insurance underwriters are required to pay on title premiums in lieu of franchise and other state taxes), postage and courier services, computer services, professional services, travel expenses, general insurance, and bad debt expense on our trade and notes receivable. Other operating expenses increased \$73 million, or 26% in the three months ending September 30, 2014 from 2013 and increased by \$195 million, or 23% in the nine months ending September 30, 2014 from 2013. Other operating expenses increased in both periods due to the addition of the transaction services business acquired from LPS. Also affecting the nine-month period ended September 30, 2014 were \$39 million of transaction costs related to the LPS acquisition offset by an \$8 million reduction to our accrual for premium taxes due to a statutory contingency resolved during the period.

Agent commissions represent the portion of premiums retained by agents pursuant to the terms of their respective agency contracts. Agent commissions and the resulting percentage of agent premiums we retain vary according to regional differences in real estate closing practices and state regulations.

The following table illustrates the relationship of agent premiums and agent commissions, which have remained consistent since 2013:

	Three months ended September 30,				Nine months ended September 30,			
	2014	%	2013	%	2014	%	2013	%
	(Dollars in millions)							
Agent premiums	528	100%	630	100%	\$ 1,450	100%	\$ 1,779	100%
Agent commissions	396	75%	482	77%	1,098	76%	1,352	76%
Net retained agent premiums	\$ 132	25%	\$ 148	23%	\$ 352	24%	\$ 427	24%

Depreciation and amortization increased \$18 million and \$60 million in the three and nine months ended September 30, 2014 from the 2013 periods, respectively. The increases in both periods are mainly due to additional amortization related to the LPS acquisition. In the three and nine months ended September 30, 2014, \$21 million and \$64 million of incremental depreciation and amortization was recorded on assets acquired as a result of being marked to estimated fair value in purchase accounting.

The provision for title claim losses includes an estimate of anticipated title and title-related claims and escrow losses. The estimate of anticipated title and title-related claims is accrued as a percentage of title premium revenue based on our historical loss experience and other relevant factors. Any significant adjustments to strengthen or release loss reserves resulting from the comparison with our actuarial analysis are made in addition to this loss provision rate. After considering historical claim losses, reporting patterns and current market information, and analyzing quantitative and qualitative data provided by our legal, claims and underwriting departments, we determine a loss provision rate, which is recorded as a percentage of current title premiums. This loss provision rate is set to provide for losses on current year policies, but due to development of prior years and our long claim duration, it periodically includes amounts of estimated adverse or positive development on prior years' policies. Effective April 1, 2014, we revised our loss provision rate to 6% from 7% primarily due to favorable development on more recent policy year claims.

The claim loss provision for title insurance was \$59 million and \$77 million for the three-month periods ended September 30, 2014 and 2013, respectively, and reflects an average provision rate of 6% and 7% of title premiums, respectively. The claim loss provision for title insurance was \$169 million and \$221 million for the nine-month periods ended September 30, 2014 and 2013, respectively, and reflects an average provision rate of 6.3% and 7% of title premiums, respectively. We will continue to monitor and evaluate our loss provision level, actual claims paid, and the loss reserve position each quarter.

BKFS

The results of this segment reflected in the three and nine months ended September 30, 2014, reflect results of BKFS and subsidiaries, which were initially consolidated on January 2, 2014, the date on which we acquired LPS.

	Three months ended September 30, 2014	Nine months ended September 30, 2014
	(In millions)	
Revenues:		
Total revenues	\$ 214	632
Expenses:		
Personnel costs	96	342
Other operating expenses	38	159
Depreciation and amortization	48	142
Interest expense	8	23
Total expenses	190	666
Earnings (loss) from continuing operations before income taxes	\$ 24	\$ (34)

The results of the BKFS segment were negatively affected by costs related to the acquisition and integration of LPS by FNF since January 2, 2014. During the three months ending September 30, 2014, the results of BKFS contain \$3 million of transaction expenses and a \$3 million accrual for merger related litigation, which were included in other operating expenses. Included within personnel costs in the three months ending September 30, 2014 were \$1 million in severance expenses relating to the acquisition and a \$3 million expense to accrue for expected bonuses under our synergy bonus program. Depreciation and amortization for the three months ending September 30, 2014 includes \$25 million in incremental purchase price amortization related to assets acquired with LPS and marked to estimated fair value in purchase accounting.

During the nine months ending September 30, 2014, the results of BKFS contain \$40 million of transaction expenses and \$11 million for merger related litigation, which were included in other operating expenses. Included within personnel costs in the nine months ending September 30, 2014 were \$27 million in severance expenses relating to the acquisition and \$28 million expense to accrue for expected bonuses under our synergy bonus program. Depreciation and amortization for the nine months ending September 30, 2014 includes \$73 million related to assets acquired with LPS and marked to fair value in purchase accounting.

Excluding these merger related costs, earnings from continuing operations before income taxes in the three and nine months ending September 30, 2014 was \$59 million and \$145 million, respectively, for the BKFS segment.

FNF Core Corporate and Other

The FNF Core Corporate and Other segment consists of the operations of the parent holding company, certain other unallocated corporate overhead expenses, and other smaller real estate and insurance related operations.

The FNF Core Corporate and Other segment generated revenues of \$2 million and \$7 million for the three months ended September 30, 2014 and 2013, respectively, and \$(12) million and \$35 million for the nine months ended September 30, 2014 and 2013, respectively. The decrease in both periods is due to the elimination of software license fees between our BKFS segment and our Title segment, which we began eliminating upon the acquisition of LPS in 2014.

Other operating expenses in the FNF Core Corporate and Other segment were \$3 million and \$24 million for the three months ended September 30, 2014 and 2013, respectively, and \$(13) million and \$77 million for the nine months ended September 30, 2014 and 2013, respectively. The decrease in the three month period is due to a \$20 million accrual related to an employment litigation matter and \$3 million in transaction costs related to the LPS acquisition in the 2013 period. The decrease in the nine month period includes a \$29 million allocation of transaction costs from the FNF Core Corporate segment to BKFS. The decrease in both periods is also due to the elimination of software license fees between our BKFS segment and our Title segment, which we began eliminating upon the acquisition of LPS in 2014.

Interest expense was \$24 million and \$20 million for the three months ended September 30, 2014 and 2013, respectively, and \$70 million and \$52 million for the nine months ended September 30, 2014 and 2013, respectively. The increase in both 2014 periods is due to additional borrowings in January 2014 to finance the acquisition of LPS.

This segment generated pretax losses of \$35 million and \$44 million for the three months ended September 30, 2014 and 2013, respectively, and \$90 million and \$117 million for the nine months ended September 30, 2014 and 2013, respectively, with the change due to the reasons discussed above, primarily the change in Other operating expenses.

Remy

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
(In millions)				
Revenues:				
Auto parts revenue	\$ 290	\$ 266	\$ 892	\$ 834
Interest and investment income	—	1	1	1
Realized gains and losses, net	—	(1)	—	(4)
Total revenues	290	266	893	831
Expenses:				
Personnel costs	20	19	63	65
Cost of auto parts revenue, includes \$19, \$19, \$51, \$55 of depreciation and amortization in the three months ended September 30, 2014 and 2013 and the nine months ended September 30, 2014 2014 and 2013, respectively	266	223	771	704
Other operating expenses	16	11	40	36
Depreciation and amortization	1	1	3	3
Interest expense	5	6	16	16
Total expenses	308	260	893	824
Earnings from continuing operations before income taxes	\$ (18)	\$ 6	\$ —	\$ 7

Auto parts revenues increased \$24 million, or 9% in the three months ending September 30, 2014, from 2013, due to increased volume of \$28 million, including an additional \$8 million in revenues from the newly acquired USA Industries as well as \$3 million in favorable foreign currency translation effect; these increases were partially offset by negative pricing impact of \$7 million. Auto parts revenues increased \$58 million, or 7% in the nine months ending September 30, 2014, from 2013, due primarily to increased volume of \$69 million including an additional \$24 million in revenues from the newly acquired USA Industries as well as \$8 million in favorable foreign currency translation effect, offset by negative pricing impact of \$17 million.

Cost of auto parts revenue increased \$43 million, or 19%, in the three months ending September 30, 2014, from 2013, and increased \$67 million, or 10%, in the nine months ending September 30, 2014, from 2013, due to higher sales volumes related to the acquisition of USA Industries. Remy also incurred \$19 million in other costs related to a litigation settlement of the Tecnomatic matter during the three months ended September 30, 2014. Remy recorded a step-up on finished goods inventory relating to the acquisition of USA Industries of \$4 million in the nine months ending September 30, 2014.

Also affecting the nine months ending September 30, 2013 was a \$7 million charge to Personnel costs during the first quarter of 2013 for a one-time executive separation payment made to Remy's former Chief Executive Officer and President pursuant to the terms of a Transition, Noncompetition and Release Agreement, effective February 28, 2013.

Restaurant Group

	Three months ended September 30,		Nine months ended September 30,	
	2014	2013	2014	2013
(In millions)				
Revenues:				
Restaurant revenue	\$ 343	\$ 336	\$ 1,055	\$ 1,037
Realized gains and losses, net	—	2	(1)	—
Total revenues	343	338	1,054	1,037
Expenses:				
Personnel costs	19	16	52	47
Cost of restaurant revenue	296	292	899	889
Other operating expenses	15	15	46	50
Depreciation and amortization	14	13	39	40
Interest expense	2	2	5	6
Total expenses	346	338	1,041	1,032
Earnings from continuing operations before income taxes	\$ (3)	\$ —	\$ 13	\$ 5

Total revenues for the Restaurant group segment increased \$5 million, or 1%, in the three months ended September 30, 2014, from the 2013 period and increased \$17 million, or 2% in the nine months ended September 30, 2014, from the 2013 period.

Earnings from continuing operations before income taxes decreased \$3 million in the three months ending September 30, 2014, from the 2013 period. Earnings from continuing operations before income taxes increased \$8 million in the nine months ending September 30, 2014 from the 2013 period mainly due to the results of the Restaurant group segment in 2013 being negatively affected by a \$2 million impairment charge related to the closing of one J. Alexander's location and one Max & Erma's location, which was included in Realized gains and losses, net and \$10 million in transaction and integration costs included in Other operating expenses in the 2013 period.

FNFV Corporate and Other

The FNFV Corporate and Other segment includes our share in the operations of certain equity investments, including Ceridian, Digital Insurance, Cascade Timberlands and other smaller operations. This segment also includes our Long Term Incentive Plan ("LTIP") established during 2012 which is tied to the fair value of certain of our FNFV investments.

The FNFV Corporate and Other segment generated revenues of \$24 million and \$20 million for the three months ending September 30, 2014 and 2013, respectively, and generated revenues of \$82 million and \$62 million for the nine months ending September 30, 2014 and 2013, respectively.

Revenues increased \$4 million, or 20% in the three months ending September 30, 2014 from 2013, and \$20 million, or 32% in the nine months ending September 30, 2014 from 2013, which includes an increase of \$6 million and \$13 million in the three and nine months ending September 30, 2014 from 2013 at Digital Insurance. Digital Insurance made several acquisitions during 2013 and 2014, which account for this growth in revenue.

Personnel costs were \$22 million and \$32 million, for the three months ended September 30, 2014 and 2013, respectively, and were \$61 million and \$77 million, for the nine months ended September 30, 2014 and 2013, respectively. The decrease in both periods is primarily due to 2013 including \$8 million and \$16 million of additional expense recorded in the three and nine months ended September 30, 2013, respectively, related to the accrual for our LTIP, offset by slight increases in personnel costs at Digital Insurance.

This segment generated pretax losses of \$6 million and \$20 million for the three months ended September 30, 2014 and 2013, respectively, with the change due to the increase in revenues and decrease in personnel costs as described above. This segment generated pretax losses of \$3 million and \$35 million for the nine months ended September 30, 2014 and 2013, respectively, with the change due to the increase in revenues and decrease in personnel costs as described above.

Equity in losses in unconsolidated affiliates was \$8 million and \$13 million for the three months ended September 30, 2014 and 2013, respectively and was \$46 million and \$24 million for the nine months ended September 30, 2014 and 2013, respectively. The equity in losses of unconsolidated affiliates for the nine-months ending September 30, 2014 includes twelve months of Ceridian's results, as in the first quarter of 2014 we transitioned Ceridian to a real-time financial reporting schedule as opposed to the historical one-quarter lag. As a result, the results for the nine month period ending September 30, 2014 includes \$34 million in losses, which represents our portion of Ceridian's net losses for the twelve month period ending September 30, 2014. Included in our results for the nine-month period ended September 30, 2014 are losses of \$21 million, net of taxes, primarily related to the settlement of Ceridian's U.S. Fueling Merchants lawsuit. The nine months ending September 30, 2013 includes our 32% share of a \$10 million, net of tax, charge to write off a deferred tax asset at Ceridian.

Liquidity and Capital Resources

Cash Requirements. Our current cash requirements include personnel costs, operating expenses, claim payments, taxes, payments of interest and principal on our debt, capital expenditures, business acquisitions, stock repurchases, and dividends on our common stock. We paid dividends of \$0.18 per share for the third quarter of 2014, or approximately \$50 million to our FNF Group common shareholders. On October 28, 2014, our Board of Directors declared cash dividends of \$0.19 per share, payable on December 31, 2014, to FNF Group common shareholders of record as of December 17, 2014. There are no restrictions on our retained earnings regarding our ability to pay dividends to our shareholders, although there are limits on the ability of certain subsidiaries to pay dividends to us, as described below. The declaration of any future dividends is at the discretion of our Board of Directors. Additional uses of cash flow are expected to include acquisitions, stock repurchases, and debt repayments.

We continually assess our capital allocation strategy, including decisions relating to the amount of our dividend, reducing debt, repurchasing our stock, and/or conserving cash. We believe that all anticipated cash requirements for current operations will be met from internally generated funds, through cash dividends from subsidiaries, cash generated by investment securities, potential sales of non-strategic assets, and borrowings on existing credit facilities. Our short-term and long-term liquidity requirements are monitored regularly to ensure that we can meet our cash requirements. We forecast the needs of all of our subsidiaries and periodically review their short-term and long-term projected sources and uses of funds, as well as the asset, liability, investment and cash flow assumptions underlying such forecasts.

Our insurance subsidiaries generate cash from premiums earned and their respective investment portfolios and these funds are adequate to satisfy the payments of claims and other liabilities. Due to the magnitude of our investment portfolio in relation to our title claim loss reserves, we do not specifically match durations of our investments to the cash outflows required to pay claims, but do manage outflows on a shorter time frame.

Our two significant sources of internally generated funds are dividends and other payments from our subsidiaries. As a holding company, we receive cash from our subsidiaries in the form of dividends and as reimbursement for operating and other administrative expenses we incur. The reimbursements are paid within the guidelines of management agreements among us and our subsidiaries. Our insurance subsidiaries are restricted by state regulation in their ability to pay dividends and make distributions. Each state of domicile regulates the extent to which our title underwriters can pay dividends or make other distributions. As of December 31, 2013, \$1,909 million of our net assets were restricted from dividend payments without prior approval from the relevant departments of insurance. As of September 30, 2014, our title subsidiaries could pay or make distributions to us of approximately \$114 million without prior approval. Our underwritten title companies and non-insurance subsidiaries collect revenue and pay operating expenses. However, they are not regulated to the same extent as our insurance subsidiaries.

The maximum dividend permitted by law is not necessarily indicative of an insurer's actual ability to pay dividends, which may be constrained by business and regulatory considerations, such as the impact of dividends on surplus, which could affect an insurer's ratings or competitive position, the amount of premiums that can be written and the ability to pay future dividends. Further, depending on business and regulatory conditions, we may in the future need to retain cash in our underwriters or even contribute cash to one or more of them in order to maintain their ratings or their statutory capital position. Such a requirement could be the result of investment losses, reserve charges, adverse operating conditions in the current economic environment or changes in statutory accounting requirements by regulators.

On June 30, 2014, we completed the creation of a tracking stock for our portfolio company investments, now known as FNFV. The primary FNFV investments include our equity interests in Remy, ABRH, J. Alexander's, Ceridian, and Digital Insurance. We provided \$200 million in financial support to FNFV comprised of \$100 million in cash and \$100 million in a line of credit, upon formation of the tracking stock. The \$100 million in cash and the \$100 million line of credit will be used for investment purposes, repurchasing FNFV stock or other general corporate purposes. From time to time, we may also provide additional loans to FNFV to cover corporate expenses and working capital. All additional investments in existing FNFV owned companies and any new FNFV company investments will be funded and managed by FNFV.

Cash flow from FNF's core operations will be used for general corporate purposes including to reinvest in core operations, repay debt, pay dividends, repurchase stock, other strategic initiatives and/or conserving cash.

Our cash flows provided by operations for the nine months ended September 30, 2014 and 2013 totaled \$284 million and \$344 million, respectively. The decrease of \$60 million is primarily due to the payment of \$45 million in transaction costs relating to the acquisition of LPS, bonus payments of \$88 million relating to payments under our LTIP and our synergy bonus program, \$42 million in severance payments relating to the LPS acquisition and \$48 million in payments made for certain legal matters relating to historic LPS matters. These cash outflows were offset by tax refunds of \$62 million on LPS acquisition costs and incremental cash flows from the operations of LPS.

Capital Expenditures. Total capital expenditures for property and equipment and capitalized software were \$144 million and \$116 million for the nine-month periods ended September 30, 2014 and 2013, respectively, with the increase related to expenditures on capitalized software at BKFS, acquired with LPS on January 2, 2014.

Financing. For a description of our financing arrangements see Note F included in Item 1 of Part 1 of this Report, which is incorporated by reference into this Part I Item 2.

Seasonality. Historically, real estate transactions have produced seasonal revenue levels for the real estate industry including title insurers. The first calendar quarter is typically the weakest quarter in terms of revenue due to the generally low volume of home sales during January and February. The third calendar quarter has been typically the strongest in terms of revenue primarily due to a higher volume of home sales in the summer months and the fourth quarter is usually also strong due to commercial entities desiring to complete transactions by year-end. We have noted short term fluctuations through recent years in resale and refinance transactions as a result of changes in interest rates and the implementation and subsequent expiration of government programs designed to stimulate the real estate market. In 2013, we saw seasonality trends return to historical patterns. During 2013 and 2014, we experienced a moderate increase in existing home sales and we have also seen a decline in total housing inventory. However, we have experienced significant declines in refinance activity starting in the fourth quarter of 2013.

In our Restaurant Group, average weekly sales per restaurant are typically higher in the first and fourth quarters, and we typically generate a disproportionate share of our earnings from operations in the first and fourth quarters. Holidays, severe weather and other disruptive conditions may impact sales volumes seasonally in some operating regions.

Contractual Obligations. There have been no significant changes to our long term contractual obligations since the 10-Q filed on May 8, 2014, other than as described below.

During the second quarter of 2014, we entered into an investment commitment for \$40 million; as of September 30, 2014, we have invested \$16 million, with the remaining \$24 million to be made in the future.

Capital Stock Transactions. On October 28, 2014, our Board of Directors approved a three-year stock purchase program, effective November 6, 2014, under which we can repurchase up to 10 million shares of our FNFV Group common stock through November 30, 2017. We may make repurchases from time to time in the open market, in block purchases or in privately negotiated transactions, depending on market conditions and other factors. We did not repurchase any FNFV Group shares from November 6, 2014 through market close on November 7, 2014.

On June 30, 2014, we completed the recapitalization of Old FNF common stock into two tracking stocks, FNF Group common stock and FNFV Group common stock. We issued 277,462,875 shares of FNF Group common stock and 91,711,237 shares of FNFV Group common stock. See Note A for further discussion on the recapitalization of FNF common stock.

On January 2, 2014, we completed the purchase of LPS. As part of the consideration, \$839 million or 25,920,078 shares of Old FNF common stock was issued to LPS stockholders. See Note B for further information on the acquisition of LPS.

On October 24, 2013, we offered 17,250,000 shares of our Old FNF common stock at an offering price of \$26.75 per share, pursuant to an effective registration statement previously filed with the Securities and Exchange Commission. We granted the underwriters a 30-day option to purchase 2,587,500 additional shares at the offering price, which was subsequently exercised in full. A total of 19,837,500 shares were issued on October 30, 2013, for net proceeds of approximately \$511 million. The net proceeds from this offering were used to pay a portion of the cash consideration for the LPS acquisition on January 2, 2014.

On July 21, 2012, our Board of Directors approved a three-year stock purchase program, effective August 1, 2012, under which we can repurchase up to 15 million shares of our common stock through July 31, 2015. We may make repurchases from time to time in the open market, in block purchases or in privately negotiated transactions, depending on market conditions and other factors. We did not repurchase any shares during the three or nine months ended September 30, 2014. Subsequent to September 30, 2014 through market close on November 7, 2014, we did not purchase any additional shares. Since the original commencement of the plan on August 1, 2012, we have repurchased a total of 2,080,000 shares for \$50 million, or an average of \$23.90 per share, and there are 12,920,000 shares available to be repurchased under this program.

Equity Security and Preferred Stock Investments. Our equity security and preferred stock investments may be subject to significant volatility. Should the fair value of these investments fall below our cost basis and/or the financial condition or prospects of these companies deteriorate, we may determine in a future period that this decline in fair value is other-than-temporary, requiring that an impairment loss be recognized in the period such a determination is made.

Off-Balance Sheet Arrangements. We do not engage in off-balance sheet activities other than facility and equipment leasing arrangements. On June 29, 2004 we entered into an off-balance sheet financing arrangement (commonly referred to as a “synthetic lease”). The owner/lessor in this arrangement acquired land and various real property improvements associated with new construction of an office building in Jacksonville, Florida, at our corporate campus and headquarters. The lessor financed the acquisition of the facilities through funding provided by third-party financial institutions. On June 27, 2011, we renewed and amended the synthetic lease for the facilities. The amended synthetic lease provides for a five year term ending June 27, 2016 and had an outstanding balance as of September 30, 2014 of \$71 million. The amended lease includes guarantees by us of up to 83% of the outstanding lease balance, and options to purchase the facilities at the outstanding lease balance. The guarantee becomes effective if we decline to purchase the facilities or renew the lease at the end of its term. The lessor is a third-party company and we have no affiliation or relationship with the lessor or any of its employees, directors or affiliates, and transactions with the lessor are limited to the operating lease agreements and the associated rent expense that have been included in other operating expenses in the Condensed Consolidated Statements of Earnings. We do not believe the lessor is a variable interest entity, as defined in the FASB standard on consolidation of variable interest entities.

Critical Accounting Policies

See Note B for a discussion of the changes to our critical accounting policies described in our Annual Report on Form 10-K for our fiscal year ended December 31, 2013.

Item 3. Quantitative and Qualitative Disclosure about Market Risk

There have been no material changes in the market risks described in our Annual Report on Form 10-K for the year ended December 31, 2013.

Item 4. Controls and Procedures

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports that we file or submit under the Securities Exchange Act of 1934 is: (a) recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms; and (b) accumulated and communicated to management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2014 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II: OTHER INFORMATION

Item 1. Legal Proceedings

See discussion of legal proceedings in Note G to the Condensed Consolidated Financial Statements included in Item 1 of Part I of this Report, which is incorporated by reference into this Part II, Item 1, as well as Item 3. Legal Proceedings, in our Annual Report on Form 10-K for the year ended December 31, 2013.

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

There were no unregistered sales of equity securities during the quarter ended September 30, 2014.

Item 6. Exhibits

(a) Exhibits:

- 10.1 Form of Notice of Long-Term Investment Success Performance Award Agreement under Amended and Restated Fidelity National Financial, Inc. 2005 Omnibus Incentive Plan.
- 10.2 Form of Notice of Restricted Stock Grant and Restricted Stock Award Agreement Under Amended and Restated Fidelity National Financial, Inc. 2005 Omnibus Incentive Plan for September 2014.
- 10.3 Term Loan Credit Agreement, dated as of August 19, 2013, among ABRH ,LLC, the lenders party thereto, Wells Fargo Bank N.A., as administrative agent, and the other agents party thereto.
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification by Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
- 32.2 Certification by Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
- 101 The following materials from Fidelity National Financial's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Earnings, (iii) the Condensed Consolidated Statements of Comprehensive Earnings, (iv) the Condensed Consolidated Statements of Stockholders' Equity, (v) the Condensed Consolidated Statements of Cash Flows, and (vi) the Notes to the Consolidated Financial Statements.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 10, 2014

FIDELITY NATIONAL FINANCIAL, INC.
(registrant)

By: /s/ Anthony J. Park

Anthony J. Park

Chief Financial Officer

(Principal Financial and Accounting Officer)

EXHIBIT INDEX

Exhibit No.	Description
10.1	Form of Notice of Long-Term Investment Success Performance Award Agreement under Amended and Restated Fidelity National Financial, Inc. 2005 Omnibus Incentive Plan
10.2	Form of Notice of Restricted Stock Grant and Restricted Stock Award Agreement Under Amended and Restated Fidelity National Financial, Inc. 2005 Omnibus Incentive Plan for September 2014.
10.3	Term Loan Credit Agreement, dated as of August 19, 2013, among ABRH ,LLC, the lenders party thereto, Wells Fargo Bank N.A., as administrative agent, and the other agents party thereto.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification by Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
32.2	Certification by Chief Financial Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.
101	The following materials from Fidelity National Financial's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Earnings, (iii) the Condensed Consolidated Statements of Comprehensive Earnings, (iv) the Condensed Consolidated Statements of Stockholders' Equity, (v) the Condensed Consolidated Statements of Cash Flows, and (vi) the Notes to the Consolidated Financial Statements.

**Fidelity National Financial, Inc.
Amended and Restated
2005 Omnibus Incentive Plan**

Notice of Restricted Stock Grant

You (the "Grantee") have been granted the following award of restricted shares of FNFV Group Common Stock (the "Restricted Stock"), par value \$0.0001 per share (the "Shares"), by Fidelity National Financial, Inc. (the "Company") pursuant to the Fidelity National Financial, Inc. Amended and Restated 2005 Omnibus Incentive Plan (the "Plan") and the terms set forth in the attached Restricted Stock Award Agreement:

Name of Grantee:	
Number of Shares of Restricted Stock Granted:	
Effective Date of Grant:	September 22, 2014
Vesting and Period of Restriction:	Subject to the terms of the Plan and the Restricted Stock Award Agreement attached hereto, the Period of Restriction shall lapse, and the Shares shall vest and become free of the forfeiture provisions contained in the Restricted Stock Award Agreement, with respect to one third of the shares on each anniversary of the Effective Date of Grant.

By your electronic acceptance/signature below, you agree and acknowledge that the Restricted Stock is granted under and governed by the terms and conditions of the Plan and the attached Restricted Stock Award Agreement, which are incorporated herein by reference, and that you have been provided with a copy of the Plan and Restricted Stock Award Agreement.

Fidelity National Financial, Inc.
Amended and Restated 2005 Omnibus Incentive Plan

Restricted Stock Award Agreement

Section 1. GRANT OF RESTRICTED STOCK

(a) **Restricted Stock.** On the terms and conditions set forth in the Notice of Restricted Stock Grant and this Restricted Stock Award Agreement (the “Agreement”), the Company grants to the Grantee on the Effective Date of Grant the Shares of Restricted Stock (the “Restricted Stock”) set forth in the Notice of Restricted Stock Grant.

(b) **Plan and Defined Terms.** The Restricted Stock is granted pursuant to the Plan. All terms, provisions, and conditions applicable to the Restricted Stock set forth in the Plan and not set forth herein are hereby incorporated by reference herein. To the extent any provision hereof is inconsistent with a provision of the Plan, the provisions of the Plan will govern. All capitalized terms that are used in the Notice of Restricted Stock Grant or this Agreement and not otherwise defined therein or herein shall have the meanings ascribed to them in the Plan.

Section 2. FORFEITURE AND TRANSFER RESTRICTIONS

(a) **Forfeiture.** Except as otherwise provided in Grantee’s employment, director services or similar agreement in effect at the time of the employment termination:

(i) If the Grantee’s employment or service as a Director or Consultant is terminated for any reason other than death, or Disability (as defined below), the Grantee shall, for no consideration, forfeit to the Company the Shares of Restricted Stock to the extent such Shares are subject to a Period of Restriction at the time of such termination.

(ii) If the Grantee’s employment or service as a Director or Consultant is terminated due to the Grantee’s death or Disability, a portion of the Shares which on the date of termination of employment remain subject to a Time-Based Restriction (as defined in Exhibit A) shall vest and become free of the forfeiture and transfer restrictions contained in the Agreement (except as otherwise provided in Section 2(b) of this Agreement). The portion which shall vest shall be determined by the following formula (rounded to the nearest whole Share):

(A x B) - C, where

A = the total number of Shares granted under this Agreement,

B = the number of completed months to the date of termination of employment since the Effective Date of Grant divided by 36, and

C = the number of Shares granted under this Agreement which vested on or prior to the date of termination of employment.

All Shares that are subject to a Period of Restriction on the date of termination of employment or service as a Director or Consultant and which will not be vested pursuant to Section 2(a)(ii) above, shall be forfeited to the Company, for no consideration.

(iii) The term “Disability” shall have the meaning ascribed to such term in the Grantee’s employment, director services or similar agreement with the Company. If the Grantee’s employment, director services or similar agreement does not define the term “Disability,” or if the Grantee has not entered into an employment, director services or similar agreement with the Company or any Subsidiary, the term “Disability” shall mean the Grantee’s entitlement to long-term disability benefits pursuant to the long-term disability plan maintained by the Company or in which the Company’s employees participate.

(iv) If the Performance Restriction is not satisfied during the Measurement Period, all of the Shares that do not satisfy the performance criteria for the applicable Performance Period, shall be forfeited to the Company, for no consideration.

(b) **Transfer Restrictions.** During the Period of Restriction, the Restricted Stock may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of, to the extent such Shares are subject to a Period of Restriction. If and when the Grantee is an Officer (as defined in Rule 16a-1(f) of the Exchange Act) or holds the title of President - Eastern Operations, President - Western Operations, President - Agency Operations, or Chief Legal Officer, during the six (6) month period which begins the first day following the date a Period of Restriction lapses, (50%) of the Shares to which the Period of Restrictions has lapsed on such date may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of; provided however that this sentence shall not prohibit the Grantee from exchanging or otherwise

disposing of Shares in connection with a Change of Control or other transaction in which Shares held by other Company shareholders are required to be exchanged or otherwise disposed.

(c) **Lapse of Restrictions.** The Period of Restriction shall lapse as to the Restricted Stock in accordance with the Notice of Restricted Stock Grant and the terms of this Agreement. Subject to the terms of the Plan and Section 6(a) hereof, upon lapse of the Period of Restriction, the Grantee shall own the Shares that are subject to this Agreement free of all restrictions other than the six (6) month holding period following the Period of Restriction as provided in Section 2(b) of this Agreement otherwise imposed by this Agreement. Upon the occurrence of a Change in Control, unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges, any Period of Restriction or other restriction imposed on the Restricted Stock that has not previously been forfeited shall lapse.

Section 3. **STOCK CERTIFICATES**

As soon as practicable following the grant of Restricted Stock, the Shares of Restricted Stock shall be registered in the Grantee's name in certificate or book-entry form. If a certificate is issued, it shall bear an appropriate legend referring to the restrictions and it shall be held by the Company, or its agent, on behalf of the Grantee until the Period of Restriction has lapsed. If the Shares are registered in book-entry form, the restrictions shall be placed on the book-entry registration. The Grantee may be required to execute and return to the Company a blank stock power for each Restricted Stock certificate (or instruction letter, with respect to Shares registered in book-entry form), which will permit transfer to the Company, without further action, of all or any portion of the Restricted Stock that is forfeited in accordance with this Agreement.

Section 4. **SHAREHOLDER RIGHTS**

Except for the transfer and dividend restrictions, and subject to such other restrictions, if any, as determined by the Committee, the Grantee shall have all other rights of a holder of Shares, including the right to vote (or to execute proxies for voting) such Shares. Unless otherwise determined by the Committee, if all or part of a dividend in respect of the Restricted Stock is paid in Shares or any other security issued by the Company, such Shares or other securities shall be held by the Company subject to the same restrictions as the Restricted Stock in respect of which the dividend was paid.

Section 5. **DIVIDENDS**

- (a) Any dividends paid with respect to Shares which remain subject to a Period of Restriction shall not be paid to the Grantee but shall be held by the Company.
- (b) Such held dividends shall be subject to the same Period of Restriction as the Shares to which they relate.
- (c) Any dividends held pursuant to this Section 5 which are attributable to Shares which vest pursuant to this Agreement shall be paid to the Grantee within 30 days of the applicable vesting date.
- (d) Dividends attributable to Shares forfeited pursuant to Section 2 of this Agreement shall be forfeited to the Company on the date such Shares are forfeited.

Section 6. **MISCELLANEOUS PROVISIONS**

(a) **Tax Withholding.** Pursuant to Article 20 of the Plan, the Committee shall have the power and right to deduct or withhold, or require the Grantee to remit to the Company, an amount sufficient to satisfy any federal, state and local taxes (including the Grantee's FICA obligations) required by law to be withheld with respect to this Award. The Committee may condition the delivery of Shares upon the Grantee's satisfaction of such withholding obligations. The Grantee may elect to satisfy all or part of such withholding requirement by tendering previously-owned Shares or by having the Company withhold Shares having a Fair Market Value equal to the minimum statutory withholding (based on minimum statutory withholding rates for federal, state and local tax purposes, as applicable, including payroll taxes) that could be imposed on the transaction, and, to the extent the Committee so permits, amounts in excess of the minimum statutory withholding to the extent it would not result in additional accounting expense. Such election shall be irrevocable, made in writing, signed by the Grantee, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

(b) **Ratification of Actions.** By accepting this Agreement, the Grantee and each person claiming under or through the Grantee shall be conclusively deemed to have indicated the Grantee's acceptance and ratification of, and consent to, any action taken under the Plan or this Agreement and Notice of Restricted Stock Grant by the Company, the Board or the Committee.

(c) **Notice.** Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effective upon personal delivery or upon deposit with the United States Postal Service, by registered or certified mail, with postage and fees

prepaid. Notice shall be addressed to the Company at its principal executive office and to the Grantee at the address that he or she most recently provided in writing to the Company.

(d) **Choice of Law.** This Agreement and the Notice of Restricted Stock Grant shall be governed by, and construed in accordance with, the laws of Florida, without regard to any conflicts of law or choice of law rule or principle that might otherwise cause the Plan, this Agreement or the Notice of Restricted Stock Grant to be governed by or construed in accordance with the substantive law of another jurisdiction.

(e) **Arbitration.** Subject to, and in accordance with the provisions of Article 3 of the Plan, any dispute or claim arising out of or relating to the Plan, this Agreement or the Notice of Restricted Stock Grant shall be settled by binding arbitration before a single arbitrator in Jacksonville, Florida and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Plan, this Agreement and the Notice of Restricted Stock Grant, provided that all substantive questions of law shall be determined in accordance with the state and federal laws applicable in Indiana, without regard to internal principles relating to conflict of laws.

(f) **Modification or Amendment.** This Agreement may only be modified or amended by written agreement executed by the parties hereto; provided, however, that the adjustments permitted pursuant to Section 4.3 of the Plan may be made without such written agreement.

(g) **Severability.** In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been included.

(h) **References to Plan.** All references to the Plan shall be deemed references to the Plan as may be amended from time to time.

(i) **Section 409A Compliance.** To the extent applicable, it is intended that the Plan and this Agreement comply with the requirements of Code Section 409A and any related regulations or other guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service and the Plan and the Award Agreement shall be interpreted accordingly.

EXHIBIT A

Vesting and Restrictions

This grant is subject to a Time-Based Restriction, as described below (collectively, the “Period of Restriction”).

Time-Based Restrictions

Anniversary Date	% of Restricted Stock
First (1 st) anniversary of the Effective Date of Grant	33.33%
Second (2 nd) anniversary of the Effective Date of Grant	33.33%
Third (3 rd) anniversary of the Effective Date of Grant	33.34%

Vesting

If the Performance Restriction has been achieved as of an Anniversary Date, the percentage of the Restricted Stock indicated next to such Anniversary Date shall vest on such indicated Anniversary Date (such three year vesting schedule referred to as the “Time-Based Restrictions”). If the Performance Restriction is not achieved during the Measurement Period, none of the Restricted Stock granted hereunder shall vest and, for no consideration, will be automatically forfeited to the Company.

Fidelity National Financial Ventures
Notice of Investment Success Incentive Award

You (the “Grantee”) have been granted the following Fidelity National Financial Ventures Investment Success Incentive Award (the “Award”) pursuant to the Amended and Restated Fidelity National Financial, Inc. 2005 Omnibus Incentive Plan (the “Plan”):

Name of Grantee:	
Effective Date of Grant:	July 21, 2014
Liquidity Events:	See Appendix A
Share of ROI Incentive Pool	[•]%

By your signature and the signature of the Company’s representative below, you and Fidelity National Financial, Inc. (the “Company”) agree and acknowledge that the Award is granted under and governed by the terms and conditions of the Plan, this Notice of Investment Success Incentive Award (including Appendix A, the “Notice”) and the Investment Success Incentive Award Agreement (the “Award Agreement”), which are incorporated herein by reference, and that you have been provided a copy of the Plan, the Notice and the Award Agreement.

Grantee: **Fidelity National Financial, Inc.**

By: _____ By: _____
 Print Name: [•] Print Name: [•]
 Date: September [•], 2014 Its: [•]
 Address: [•]

Appendix A

Overview and Purpose

of the Award

The Award is a performance-based, cash incentive award that provides the Grantee the opportunity to share in the Company's "ROI" (as defined below) with respect to its interests in the following entities:

- Remy International, Inc. ("Remy")
- American Blue Ribbon Holdings, LLC ("ABRH")
- J. Alexander's Holdings LLC ("J. Alexander's")
- Ceridian HCM, Inc. ("Ceridian")
- Comdata Inc. ("Comdata") and
- Digital Insurance, Inc. ("Digital Insurance").

Each of the foregoing entities is referred to herein as a "Portfolio Company" and, together, they are referred to as the "Portfolio Companies." The shares or membership interests (as applicable) held by the Company in the Portfolio Companies (and any securities into which or in exchange for which such shares or membership interests are converted or exchanged in connection with a recapitalization, share exchange, merger, reorganization, equity restructuring or other similar transaction, as well as any additional securities issued to the Company in respect of such shares or membership interests (including, by way of example, stock dividends or shares of a Portfolio company's subsidiary issued to the Company in a spin off)) are referred to herein as the "Securities".

To the extent a "Liquidity Event" (defined below) occurs with respect to a Portfolio Company between July 1, 2014 and December 31, 2018 (the "Performance Period"), ten (10%) percent of any ROI relating to such Liquidity Event (calculated as described below) will be credited to a notional incentive pool established for purposes of this program (the "ROI Incentive Pool"), and, to the extent the other "Payment Conditions" (described below) are satisfied, the Grantee will be entitled to receive a payment based on the Grantee's Share of the ROI Incentive Pool (as reflect on the first page of the Notice).

The purpose of the Award is to help the Company maximize its ROI with respect to the Portfolio Companies by aligning a portion of the Grantee's long-term incentive compensation with the Company's ROI relating to each Portfolio Company. The Award is also designed to aid in retention of the Grantee by imposing service-based vesting conditions on payments under the Award.

Liquidity Events

Payments will only be made under the Award if a "Liquidity Event" occurs during the Performance Period (and the other conditions described herein are satisfied). For purposes of the Award, a "Liquidity Event" means (a) a Public Offering (defined below) of the Securities of a Portfolio Company, (b) a sale or other disposition of the Securities of a Portfolio Company (whether pursuant to a merger or other transaction) in connection with which consideration (whether cash or securities) is received or receivable by the Company, (c) a spin off, split off or similar transaction in connection with which the Company's stockholders receive Securities of a Portfolio Company, (d) a disposition of all or substantially all of the assets of a Portfolio Company in connection with which proceeds from such sale or disposition are paid or payable to the Company, (e) a recapitalization of a Portfolio Company in connection with which an extraordinary dividend or return of capital is paid to the Company (provided the amount of such extraordinary dividend or return of capital exceeds the "Base Value" (as defined below) of the Securities), (f) any other transaction or event (other payment of ordinary dividends) in connection with which the ROI on the Portfolio Company investment can be determined by third party observable measures (such as a public stock price) or (g) a Change in Control that occurs on or after July 1, 2015.

For purposes of the Award, the term "Public Offering" means an initial public offering or any subsequent public offering of the Securities of a Portfolio Company pursuant to a registration statement under the Securities Act of 1933, as amended, which public offering has been declared effective by the Securities and Exchange Commission (or, in the case of an Up-C or similar structure, such an initial public offering of the securities of an affiliate of the Portfolio Company). If the Company retains any Securities in a Portfolio Company following a Public Offering of such Portfolio Company's Securities, a subsequent Liquidity Event may occur with respect to such retained Securities; provided, however, that the Base Amount of such retained Securities shall be increased at the time of the Public Offering to equal the value of the Securities at the time of the Public Offering (with such value determined as described below under "ROI"), so that no amount is credited or paid twice on the same ROI.

For the avoidance of doubt, a Liquidity Event described above shall be deemed to occur whether or not (i) the Company has disposed of its Securities in connection with such Liquidity Event (ii) the Company is subject to a lockup or other restriction on transfer or disposition of the Securities (provided that such restriction on transfer or disposition is temporary) and/or (iii) the

consideration (or part of the consideration) payable to the Company is subject to contingencies (including, by way of example, a transaction in which part of the transaction consideration is contingent upon an earnout and/or held in escrow to satisfy indemnity claims).

ROI

For purposes of the Award, “ROI” means the excess, if any, of “A” over “B,”

- where “A” equals, as the case may be, (i) the amount of cash (or Fair Market Value of security or other property) received or receivable by the Company in connection with a Liquidity Event (other than a Public Offering, a spin off, split off or similar transaction in connection with which the Company’s stockholders receive Securities of a Portfolio Company, or a Change in Control), (ii) in the case of a Public Offering, the fair market value (determined as described below) of the Securities of the Portfolio Company with respect to which the Public Offering is occurring that are held (directly or indirectly) by the Company immediately before the Public Offering, (iii) in the case of a spin off, split off or similar transaction in connection with which the Company’s stockholders receive Securities of a Portfolio Company, the fair market value (determined as described below) of the Securities of the Portfolio Company with respect to which the spin off, split off or similar transaction is occurring that are held (directly or indirectly) by the Company immediately before the spin off, split off or similar transaction (regardless of the number of such Securities actually distributed to the Company’s stockholders), and (iv) in the case of a Change in Control that constitutes a Liquidity Event, the fair market value (determined as of immediately before the Change in Control) of the aggregate of the Company’s investments in the Portfolio Companies held (directly or indirectly) by the Company immediately before the Change in Control, in each case, together with the amount of cash (other than ordinary dividends) and the Fair Market Value of securities or other property received during the Performance Period and prior to the Liquidity Event (to the extent not previously taken into account under the Award) for or with respect to the Securities of the Portfolio Company with respect to which the Liquidity Event occurs, including, by way of example, extraordinary dividends or returns of capital that do not constitute Liquidity Events, and
- “B” equals the Base Amount (as defined below) of the Securities with respect to which the Liquidity Event occurs.

Except as otherwise provided below in this paragraph, to the extent a sale occurs with respect to less than all of the Securities of a Portfolio Company then held (directly or indirectly) by the Company, ROI shall be measured solely with respect to the Securities that are sold. For example, if the Company sells 50% of the total Securities it holds in a Portfolio Company, ROI shall be based on the excess, if any, of the consideration received or receivable with respect to the sold Securities, over the portion of the Base Amount allocable to such sold Securities. In the case of a Public Offering or a spin off, split off or similar transaction, the Liquidity Event shall be treated as occurring with respect to all of the Securities of the Portfolio Company held by the Company immediately before such event or transaction. In the case of a Change in Control that occurs on or after July 1, 2015, the Liquidity Event shall be treated as occurring with respect to the aggregate of the Company’s investments in the Portfolio Companies held by the Company immediately before the Change in Control.

To the extent any consideration receivable by the Company for or in respect of Securities in connection with a Liquidity Event is subject to contingencies or the payment of such consideration is delayed (including, by way of example, pursuant to an earnout or indemnity escrow), the maximum amount that could be received by the Company shall be treated as received or receivable when calculating ROI; provided, however, that the Committee may, through its exercise of negative discretion, determine whether and to what extent such consideration should not be so taken into account when calculating ROI (or, alternatively, the extent to which any crediting of the ROI Incentive Pool and/or the Grantee’s Award Account should, instead, be banked (as described below)), taking into account, among other factors, the likelihood that such amounts will be realized by the Company.

Fair Market Value

In the case of a Public Offering, the fair market value of the Securities of the Portfolio Company with respect to which the Public Offering is occurring shall be based on the implied value of the Portfolio Company’s Securities held by the Company immediately before the Public Offering (based on the volume weighted average trading price of the securities offered in the Public Offering over the first three trading days following the Public Offering) and shall include the aggregate fair market value of all of the Securities of the applicable Portfolio Company then held (directly or indirectly) by the Company, regardless of whether and when the Company sells such Securities in the Public Offering and regardless of whether the Company is subject to a lockup or other restriction on transfer or disposition of the Securities (provided that such restriction on transfer or disposition is temporary); provided, however, that the Committee may, through its exercise of negative discretion, determine whether and to what extent such a lockup or other restriction on transfer or disposition should reduce the amount taken into account when calculating ROI (or, alternatively, the extent to which any crediting of the ROI Incentive Pool and/or the Grantee’s Award Account should, instead,

be banked (as described below)). For example, if (x) the Portfolio Company has 10 million shares of common stock outstanding immediately following the Public Offering, (y) the Company owns 4 million shares (40%) immediately prior to the Public Offering, with a Base Amount of \$100 million, and (z) the volume weighted average trading price of the Portfolio Company's securities offered in the Public Offering over the first three trading days following the Public Offering is \$35.00, the implied fair market value of the Portfolio Company would be \$350 million and the resulting ROI would be \$40 million (\$140 million (40% of \$350 million), less the \$100 million Base Amount), subject to the Committee's authority to reduce such ROI in its sole discretion.

In the case of a spin off, split off or similar transaction in connection with which the Company's stockholders receive Securities of a Portfolio Company, the fair market value (determined as described below) of the Securities of the Portfolio Company with respect to which the spin off, split off or similar transaction is occurring will be based on the implied value of all of the Portfolio Company's Securities held by the Company immediately before the spin off, split off or similar transaction (based on the volume weighted average trading price of the Portfolio Company's Securities over the first three trading days following the spin off, split off or similar transaction).

In the case of a Change in Control that constitutes a Liquidity Event, the fair market value (determined as of immediately before the Change in Control) of the aggregate of the Company's investments in the Portfolio Companies held (directly or indirectly) by the Company immediately before the Change in Control will be determined in the case of (x) publicly-traded Securities, based on the volume weighted average trading price of the Securities over the first three trading days preceding the Change in Control and (y) Investments or Securities that are not publicly traded, based on the Fair Market Value of such Securities as determined in good faith by the Committee before the Change in Control.

Without limiting the foregoing, the Committee may, in its sole and absolute discretion, exclude from any ROI calculation any amounts to the extent it determines that inclusion of such amounts would be inconsistent with the spirit and intent of the Award or for any other reason. The Committee's determination of ROI shall be final and binding.

Base Amounts

For purposes of the Award, the values of the Securities held by the Company in each of the Portfolio Companies as of July 1, 2014 (the "Base Amounts") are as follows:

- Remy: \$374,300,000
- ABRH: \$314,300,000
- J. Alexander's: \$115,400,000
- Ceridian: \$329,800,000
- Comdata: \$160,200,000
- Digital Insurance: \$70,800,000

Crediting of ROI Incentive Pool

Promptly following each Liquidity Event that occurs during the Performance Period, ten (10%) percent of any ROI attributable to the Liquidity Event will be credited to the ROI Incentive Pool, subject to the Committee's discretion to reduce, eliminate or bank (as described below) such amounts.

Crediting of Grantee's Award Account

Simultaneous with the crediting of the ROI Incentive Pool, the Company will also credit (separately with respect to each Liquidity Event) to a bookkeeping account in the Grantee's name (the "Grantee's Award Account") an amount equal to (i) [INSERT SHARE OF ROI INCENTIVE POOL] of the amount credited to the ROI Incentive Pool with respect to the Liquidity Event; provided, however, that pursuant to Section 4.2 of the Plan, no more than \$25,000,000 will be credited to the Grantee's Award Account pursuant to the Award. Unless otherwise determined by the Committee, if, after the Effective Date of Grant, the Grantee receives any additional Investment Success Incentive Awards relating to one or more of the Portfolio Companies and measuring ROI over one or more overlapping time periods, to avoid duplication, the amount(s) that would otherwise be credited with respect to such Portfolio Company or Portfolio Companies to the Grantee's award account under such additional award(s) will be reduced so that the Grantee does not receive a credit under more than one award for the same ROI. For purposes of the prior sentence, to the extent a measurement period in a subsequent award includes some, but not all, of the same days included in a Measurement Period under the Award (any such days not covered by both measurement periods, a "Non-Overlapping Period"), no reduction to the amount credited under a subsequent award shall be made with respect to ROI attributable to the Non-Overlapping Period.

The ROI Incentive Pool and the Grantee's Award Account are notional bookkeeping accounts only and are used solely to determine the amounts that may become payable to the Grantee and, in the case of the ROI Incentive Pool, all participating employees. Any

rights arising under the Award are unfunded and unsecured and may not be transferred, alienated, assigned, pledged, hypothecated or encumbered, in any way. At any time prior to a Change in Control, the Committee may, in its discretion, reduce the amounts credited to the ROI Incentive Pool and/or the Grantee's Award Account. Reasons for such reduction may include, without limitation, realization upon the sale of a Portfolio Company of gain that is less than the ROI upon which a prior credit or payment was made under the Award.

Banked Amounts

To the extent the Committee, through its exercise of negative discretion, chooses to reduce or eliminate any amount that would otherwise be contributed to the ROI Incentive Pool and/or the Grantee's Award Account, the Committee may either declare that the amount not contributed or paid due to such exercise of negative discretion shall be (a) forfeited and no longer available for future crediting to the Grantee's Award Account (in which case such amount (and the ROI to which it relates) shall be treated as if credited, and the amount that would have been paid with respect thereto shall be treated as if paid, for purposes of determining the amount to be credited upon a future Liquidity Event relating to the same Portfolio Company)), or (b) credited to the Grantee's Award Account, but not paid when it otherwise would have been paid (any such credited, but not paid amount, a "Banked Amount"), in which case, except as provided in Section 3 of the Award Agreement, such Banked Amount shall remain in the Grantee's Award Account until the Committee determines in its sole discretion that the Banked Amount will be forfeited or paid to the Grantee, which may include a subsequent Liquidity Event or such other date or event selected by the Committee. Except as otherwise provided in Section 3 of the Award Agreement, upon a termination of the Grantee's employment for any reason, any Banked Amounts in the Grantee's Award Account shall immediately be forfeited and the Grantee shall no longer have any rights with respect thereto. Banked amounts shall not accrue interest or other earnings. At any time prior to a Change in Control, the Committee may, in its discretion, reduce or eliminate a Grantee's Banked Amount.

Payment

Except as provided above with respect to payment of Banked Amounts, to become entitled to a payment under the Award, (a) a Liquidity Event must occur, (b) ROI must be generated by the Liquidity Event, and (c), except as otherwise provided in Section 3 of the Award Agreement, the Grantee must have remained continuously employed with the Company or a Subsidiary through the payment date (together, the "Payment Conditions").

If all of the Payment Conditions are satisfied, then, subject to any exercise of negative discretion by the Committee to reduce, eliminate or bank the amounts otherwise payable with respect to such Liquidity Event, as soon as practicable following the Committee's determination (and in the case of an Award intended to qualify as performance-based compensation for purposes of Code Section 162(m), following the Committee's written certification) of the ROI, the amount credited to the Grantee's Award Account with respect to such Liquidity Event shall be paid to the Grantee in a lump sum cash payment, less applicable tax withholdings.

Annual Incentives

USE THE FOLLOWING EXCEPT FOR FOLEY AGREEMENT:

If the sum of the amounts paid to the Grantee in a calendar year pursuant to the Award and any other Investment Success Incentive Awards granted after the Effective Date of Grant is greater than fifty (50%) percent of the Grantee's regular annual cash incentive relating to the same calendar year (payable in the following calendar year), then, unless otherwise determined by the Committee, the Grantee's regular annual cash incentive shall be reduced by fifty (50%) percent. Notwithstanding anything contained in any other plan or agreement to the contrary, the Grantee shall not be permitted to defer under any elective nonqualified deferred compensation plan any regular annual cash incentive that could be reduced pursuant to the preceding sentence.

USE THE FOLLOWING FOR FOLEY AGREEMENT:

If the sum of the amounts paid to the Grantee in a calendar year pursuant to the Award and any other Investment Success Incentive Awards granted after the Effective Date of Grant is greater than the Grantee's regular annual cash incentives provided by the Company and Fidelity National Financial Ventures, LLC with respect to the same calendar year (payable in the following calendar year), then, unless otherwise determined by the Committee, such regular annual cash incentives shall not be paid. Notwithstanding anything contained in any other plan or agreement to the contrary, the Grantee shall not be permitted to defer under any elective nonqualified deferred compensation plan any regular annual cash incentive that could be eliminated pursuant to the preceding sentence.

Fidelity National Financial, Inc.

Investment Success Incentive Award Agreement

SECTION 1. GRANT OF AWARD

(a) **Award.** On the terms and conditions set forth in the Notice of Investment Success Incentive Award (including Appendix A, the “Notice”) and this Investment Success Incentive Award Agreement (the “Award Agreement”), the Company grants to the Grantee on the Effective Date of Grant the Award set forth in the Notice. The Award represents the right to receive one or more cash payments in accordance with Appendix A if the conditions set forth in Appendix A and the Award Agreement are satisfied.

(b) **Plan and Defined Terms.** The Award is granted pursuant to the Plan, and shall be considered an “Other Award” for purposes of the Plan. Except as expressly provided otherwise herein, all applicable terms, provisions, and conditions set forth in the Plan and not set forth herein are hereby incorporated by reference herein. All capitalized terms that are used in the Notice or the Award Agreement and not otherwise defined therein or herein shall have the meanings ascribed to them in the Plan.

SECTION 2. TERMINATION OF EMPLOYMENT

If the Grantee’s employment with the Company and all Subsidiaries is terminated for any reason, including death or Disability, the Award shall immediately be forfeited and the Grantee shall not be entitled to any further payments with respect to the Award. For purposes of the Award, references to employment shall be read to mean employment and/or provision of substantial services as a member of a board of directors or board of managers of the Company or a Subsidiary, and termination of employment (and similar terms) shall mean termination of employment and service in all such capacities. Transitioning from an employment to a board of directors or board of managers position, or from a board of directors or board of managers position to an employment position, shall not constitute a termination of employment provided the Grantee is providing substantial services in all such capacities.

SECTION 3. CHANGE IN CONTROL

If a Change in Control occurs on or after July 1, 2015, and the Grantee has remained continuously employed with the Company or a Subsidiary through the date of the Change in Control, a Liquidity Event shall be deemed to have occurred as of the date of the Change in Control and ROI shall be calculated with respect to the aggregate of the Company’s investments in the Portfolio Companies held by the Company as of immediately before the Change in Control, with such ROI calculation to be made in accordance with Appendix A (without regard to the provisions in Appendix A that authorize the Committee to reduce, eliminate or bank amounts in determining ROI). To the extent there is any such ROI recognized in connection with the Change in Control, the Grantee shall be entitled to receive a lump sum cash payment if the Grantee either remains employed with the Company or a Subsidiary through the payment date or is terminated without “Cause” (as defined below) on or before the payment date. The amount of the payment shall equal the sum of the amount determined in accordance with Appendix A as a result of the Change in Control, together with any Banked Amounts that were unpaid as of the date of the Change in Control, less applicable tax withholdings. The payment shall occur at, or promptly (and in all events within 10 days) following, the closing of the Change in Control. Notwithstanding anything to contrary in the Plan, the Notice or the Award Agreement, if a Change in Control occurs on or after July 1, 2015, the Committee may not reduce or eliminate (through the exercise of negative discretion or otherwise) any amounts that are determined to be payable pursuant to the terms of Appendix A (without regard to the provisions in Appendix A that authorize the Committee to reduce, eliminate or bank amounts in determining ROI) in connection with the Change in Control or any Banked Amounts. A Change in Control occurring before July 1, 2015 will not constitute a Liquidity Event.

For purposes hereof, the term “Cause” shall have the meaning set forth in the Grantee’s employment or similar agreement with the Company or a Subsidiary or, in the absence thereof, shall mean a termination by the Company or a Subsidiary based upon the Grantee’s: (i) persistent failure to perform duties consistent with a commercially reasonable standard of care (other than due to a physical or mental impairment or due to an action or inaction directed by the Company or a Subsidiary); (ii) willful neglect of duties (other than due to a physical or mental impairment or due to an action or inaction directed by the Company); (iii) conviction of, or pleading nolo contendere to, criminal or other illegal activities involving dishonesty; (iv) material breach of a material agreement with the Company or a Subsidiary; or (v) failure to materially cooperate with or impeding an investigation authorized by the Board.

MISCELLANEOUS PROVISIONS

(a) **Tax Withholding.** The Company or any Subsidiary of the Company shall have the power and right to deduct or withhold, or require the Grantee to remit to the Company, an amount sufficient to satisfy any federal, state and local taxes (including the Grantee's FICA obligations) required by law to be withheld with respect to the Award.

(a) **Ratification of Actions.** By accepting the Award Agreement, the Grantee and each person claiming under or through the Grantee shall be conclusively deemed to have indicated the Grantee's acceptance and ratification of, and consent to, any action taken under the Plan, the Notice or the Award Agreement by the Company, the Board or the Committee.

(a) **Notice.** Any notice required by the terms of the Award Agreement shall be given in writing and shall be deemed effective upon personal delivery or upon deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid. Notice shall be addressed to the Company at its principal executive office and to the Grantee at the address that he or she most recently provided in writing to the Company.

(b) **Choice of Law.** The Award Agreement and the Notice shall be governed by, and construed in accordance with, the laws of Florida, without regard to any conflicts of law or choice of law rule or principle that might otherwise cause the Plan, the Award Agreement or the Notice to be governed by or construed in accordance with the substantive law of another jurisdiction.

(c) **Modification or Amendment.** Except as otherwise provided in Section 4(k) of the Award Agreement, the Notice and the Award Agreement may only be modified or amended by written agreement executed by the parties hereto.

(d) **Severability.** In the event any provision of the Award Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of the Award Agreement, and the Award Agreement shall be construed and enforced as if such illegal or invalid provision had not been included.

(e) **Compensation under Other Arrangements.** Amounts earned with respect to the Award shall not be included in any calculation of severance or change in control benefits or payments under any employment agreement or other compensatory arrangement.

(f) **References to Plan and Headings.** All references to the Plan shall be deemed references to the Plan as may be amended from time to time. Headings in the Notice and Award Agreement are for convenience and shall not in any way affect the meaning or interpretation of any of the provisions hereof.

(g) **Entire Agreement.** The Notice (including Appendix A) and the Award Agreement are the entire agreement between the Company and the Grantee relating to the subject matter thereof and hereof and supersede all prior agreements and understandings (including verbal agreements) between the Company and the Grantee relating to such subject matter.

(h) **Clawback.** All amounts paid under the Award shall be subject to the Company's policy regarding clawback of incentive compensation, as such policy may be amended from time to time.

(i) **Section 409A Compliance.** It is intended that the Award qualify as a "short-term deferral" for purposes of Section 409A and shall be interpreted accordingly; provided, however, that (i) to the extent it is determined that the Award is subject to Section 409A, it is intended that the Award comply with the requirements of Section 409A, and the Plan, the Notice and the Award Agreement shall be interpreted accordingly and any provision thereof or hereof that would cause the Award to fail to comply with Section 409A will have no force or effect until amended to comply therewith (which amendment may be made without the Grantee's consent and may be retroactive to the extent permitted by Section 409A) and (ii) the Company will consult with the Grantee in good faith regarding the implementation of the provisions of this Section 4(k). The Grantee shall not be entitled to indemnification or other reimbursement for any taxes or other expenses incurred as a result of the applicability of Section 409A to the Award and neither the Company nor any of its employees or representatives shall have any liability to Grantee with respect to Section 409A.

Published CUSIP Number: 00090UAA2 Revolving Credit CUSIP Number:
00090UAB08 Term Loan A CUSIP Number: 00090UAB80

\$210,000,000

CREDIT AGREEMENT

dated as of August 19, 2014, by and among

FIDELITY NEWPORT HOLDINGS, LLC,
as Holdings,

ABRH, LLC,
as Borrower,

the Lenders referred to herein, as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, Swingline Lender and Issuing Lender

BANK OF AMERICA, N.A.,
as Syndication Agent

**CITIZENS BANK, NATIONAL ASSOCIATION, COOPERATIEVE CENTRALE RAIFFEISEN- BOERENLEENBANK B.A. "RABOBANK
NEDERLAND", NEW YORK BRANCH and REGIONS BANK,**
as Co-Documentation Agents

WELLS FARGO SECURITIES, LLC,
and
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arrangers and Joint Bookrunners

Obligor Name: ABRH, LLC Reference No.: CID 26184

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	6
SECTION 1.1 Definitions	6
SECTION 1.2 Other Definitions and Provisions	32
SECTION 1.3 Accounting Terms.	32
SECTION 1.4 UCC Terms.	32
SECTION 1.5 Rounding.	32
SECTION 1.6 References to Agreement and Laws.	32
SECTION 1.7 Times of Day	32
SECTION 1.8 Letter of Credit Amounts.	32
SECTION 1.9 Guarantees.	33
SECTION 1.10 Covenant Compliance Generally	33
ARTICLE II REVOLVING CREDIT FACILITY	33
SECTION 2.1 Revolving Credit Loans.	33
SECTION 2.2 Swingline Loans.	33
SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.	34
SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.	35
SECTION 2.5 Permanent Reduction of the Revolving Credit Commitment.	36
SECTION 2.6 Termination of Revolving Credit Facility.	36
ARTICLE III LETTER OF CREDIT FACILITY	36
SECTION 3.1 L/C Facility	36
SECTION 3.2 Procedure for Issuance of Letters of Credit.	37
SECTION 3.3 Commissions and Other Charges.	37
SECTION 3.4 L/C Participations.	37
SECTION 3.5 Reimbursement Obligation of the Borrower.	38
SECTION 3.6 Obligations Absolute.	38
SECTION 3.7 Effect of Letter of Credit Application.	39
SECTION 3.8 Resignation of Issuing Lenders.	39
SECTION 3.9 Reporting of Letter of Credit Information and L/C Commitment.	39
SECTION 3.10 Letters of Credit Issued for Subsidiaries	39
ARTICLE IV TERM LOAN FACILITY	39
SECTION 4.1 Initial Term Loan.	40
SECTION 4.2 Procedure for Advance of Term Loan.	40
SECTION 4.3 Incremental Term Loans.	40
SECTION 4.4 Repayment of Term Loans.	40
SECTION 4.5 Prepayments of Term Loans.	41
ARTICLE V GENERAL LOAN PROVISIONS	43
SECTION 5.1 Interest.	43
SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans.	44
SECTION 5.3 Fees.	44
SECTION 5.4 Manner of Payment.	44
SECTION 5.5 Evidence of Indebtedness.	45
SECTION 5.6 Sharing of Payments by Lenders.	45
SECTION 5.7 Administrative Agent's Clawback.	46
SECTION 5.8 Changed Circumstances.	46

SECTION 5.9	Indemnity	47
SECTION 5.10	Increased Costs.	47
SECTION 5.11	Taxes.	48
SECTION 5.12	Mitigation Obligations; Replacement of Lenders	51
SECTION 5.13	Incremental Loans.	51
SECTION 5.14	Cash Collateral.	54
SECTION 5.15	Defaulting Lenders.	55
ARTICLE VI	CONDITIONS OF CLOSING AND BORROWING	56
SECTION 6.1	Conditions to Closing and Initial Extensions of Credit	56
SECTION 6.2	Conditions to All Extensions of Credit.	59
ARTICLE VII	REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES	60
SECTION 7.1	Organization; Power; Qualification.	60
SECTION 7.2	Ownership.	60
SECTION 7.3	Authorization; Enforceability.	60
SECTION 7.4	Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc.	60
SECTION 7.5	Compliance with Law; Governmental Approvals.	61
SECTION 7.6	Tax Returns and Payments.	61
SECTION 7.7	Intellectual Property Matters.	61
SECTION 7.8	Environmental Matters.	61
SECTION 7.9	Employee Benefit Matters.	62
SECTION 7.10	Margin Stock.	63
SECTION 7.11	Government Regulation.	63
SECTION 7.12	Material Contracts.	63
SECTION 7.13	Employee Relations.	63
SECTION 7.14	Burdensome Provisions.	63
SECTION 7.15	Financial Statements.	63
SECTION 7.16	No Material Adverse Change.	63
SECTION 7.17	Solvency	63
SECTION 7.18	Title to Properties.	64
SECTION 7.19	Litigation.	64
SECTION 7.20	Anti-Terrorism; Anti-Money Laundering.	64
SECTION 7.21	Absence of Defaults.	64
SECTION 7.22	Senior Indebtedness Status.	64
SECTION 7.23	Disclosure.	64
SECTION 7.24	Flood Hazard Insurance.	64
ARTICLE VIII	AFFIRMATIVE COVENANTS	65
SECTION 8.1	Financial Statements and Budgets.	65
SECTION 8.2	Certificates; Other Reports	65
SECTION 8.3	Notice of Litigation and Other Matters.	67
SECTION 8.4	Preservation of Corporate Existence and Related Matters.	67
SECTION 8.5	Maintenance of Property and Licenses.	67
SECTION 8.6	Insurance.	68
SECTION 8.7	Accounting Methods and Financial Records.	68
SECTION 8.8	Payment of Taxes and Other Obligations.	68
SECTION 8.9	Compliance with Laws and Approvals.	68
SECTION 8.10	Environmental Laws.	68

SECTION 8.11	Compliance with ERISA.	69
SECTION 8.12	Visits and Inspections.	69
SECTION 8.13	Additional Subsidiaries and Real Property.	69
SECTION 8.14	Hedge Agreement.	70
SECTION 8.15	Use of Proceeds.	70
SECTION 8.16	Corporate Governance.	70
SECTION 8.17	Further Assurances.	70
SECTION 8.18	Post-Closing Matters.	70
ARTICLE IX	NEGATIVE COVENANTS	71
SECTION 9.1	Indebtedness	71
SECTION 9.2	Liens.	76
SECTION 9.3	Investments.	76
SECTION 9.4	Fundamental Changes.	76
SECTION 9.5	Asset Dispositions.	77
SECTION 9.6	Restricted Payments.	78
SECTION 9.7	Transactions with Affiliates.	78
SECTION 9.8	Accounting Changes; Organizational Documents.	79
SECTION 9.9	Payments and Modifications of Subordinated Indebtedness.	79
SECTION 9.10	No Further Negative Pledges; Restrictive Agreements.	79
SECTION 9.11	Nature of Business.	80
SECTION 9.12	Sale Leasebacks.	80
SECTION 9.13	Capital Expenditures.	80
SECTION 9.14	Financial Covenants.	80
SECTION 9.15	Limitations on Holdings. Permit Holdings to:	81
SECTION 9.16	Disposal of Subsidiary Interests.	81
ARTICLE X	DEFAULT AND REMEDIES	82
SECTION 10.1	Events of Default.	82
SECTION 10.2	Remedies.	83
SECTION 10.3	Rights and Remedies Cumulative; Non-Waiver; etc.	84
SECTION 10.4	Crediting of Payments and Proceeds.	84
SECTION 10.5	Administrative Agent May File Proofs of Claim.	85
SECTION 10.6	Credit Bidding.	85
ARTICLE XI	THE ADMINISTRATIVE AGENT	85
SECTION 11.1	Appointment and Authority.	85
SECTION 11.2	Rights as a Lender.	85
SECTION 11.3	Exculpatory Provisions.	86
SECTION 11.4	Reliance by the Administrative Agent.	87
SECTION 11.5	Delegation of Duties.	87
SECTION 11.6	Resignation of Administrative Agent.	87
SECTION 11.7	Non-Reliance on Administrative Agent and Other Lenders.	88
SECTION 11.8	No Other Duties, Etc.	88
SECTION 11.9	Collateral and Guaranty Matters.	88
SECTION 11.10	Secured Hedge Agreements and Secured Cash Management Agreements.	89
ARTICLE XII	MISCELLANEOUS	89
SECTION 12.1	Notices.	89
SECTION 12.2	Amendments, Waivers and Consents.	91

SECTION 12.3	Expenses; Indemnity	92
SECTION 12.4	Right of Setoff	93
SECTION 12.5	Governing Law; Jurisdiction, Etc.	94
SECTION 12.6	Waiver of Jury Trial.	95
SECTION 12.7	Reversal of Payments.	95
SECTION 12.8	Injunctive Relief.	95
SECTION 12.9	Successors and Assigns; Participations.	95
SECTION 12.10	Treatment of Certain Information; Confidentiality	98
SECTION 12.11	Performance of Duties	99
SECTION 12.12	All Powers Coupled with Interest.	99
SECTION 12.13	Survival.	99
SECTION 12.14	Titles and Captions.	99
SECTION 12.15	Severability of Provisions.	99
SECTION 12.16	Counterparts; Integration; Effectiveness; Electronic Execution.	99
SECTION 12.17	Term of Agreement.	100
SECTION 12.18	USA PATRIOT Act.	100
SECTION 12.19	Independent Effect of Covenants.	100
SECTION 12.20	No Advisory or Fiduciary Responsibility.	100
SECTION 12.21	Inconsistencies with Other Documents.	101

EXHIBITS

Exhibit A-1	- Form of Revolving Credit Note
Exhibit A-2	- Form of Swingline Note
Exhibit A-3	- Form of Term Loan Note
Exhibit B	- Form of Notice of Borrowing
Exhibit C	- Form of Notice of Account Designation
Exhibit D	- Form of Notice of Prepayment
Exhibit E	- Form of Notice of Conversion/Continuation
Exhibit F	- Form of Officer's Compliance Certificate
Exhibit G	- Form of Assignment and Assumption
Exhibit H-1	- Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Lenders)
Exhibit H-2	- Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Participants)
Exhibit H-3	- Form of U.S. Tax Compliance Certificate (Foreign Participant Partnerships)
Exhibit H-4	- Form of U.S. Tax Compliance Certificate (Foreign Lender Partnerships)
Exhibit I	- Funding Indemnity Letter

SCHEDULES

Schedule 1.1(a)	- Existing Letters of Credit
Schedule 1.1(b)	- Commitments and Commitment Percentages
Schedule 8.18	- Post-Closing Matters

CREDIT AGREEMENT, dated as of August 19, 2014, by and among FIDELITY NEWPORT HOLDINGS, LLC, a Delaware limited liability company, as Holdings, ABRH, LLC, a Delaware limited liability company, as Borrower, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

STATEMENT OF PURPOSE

The Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed to extend, certain credit facilities to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

“Administrative Agent” means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 11.6.

“Administrative Agent’s Office” means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 12.1(c).

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” means this Credit Agreement.

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means the corresponding percentages per annum as set forth below based on the Total Lease Adjusted Leverage Ratio:

Pricing Level	Total Lease Adjusted Leverage Ratio	Commitment Fee	Revolving Credit Loans		Term Loans	
			LIBOR +	Base Rate +	LIBOR +	Base Rate +
IV	Less than 4.00 to 1.00	0.325%	2.25%	1.25%	2.25%	1.25%
III	Greater than or equal to 4.00 to 1.00, but less than 4.50 to 1.00	0.350%	2.50%	1.50%	2.50%	1.50%

II			2.75%		2.75%	
I	Greater than or equal to 5.00 to 1.00	0.400%	3.00%	2.00%	3.00%	2.00%

The Applicable Margin shall be determined and adjusted quarterly on the date five (5) Business Days after the day on which the Borrower provides an Officer's Compliance Certificate pursuant to Section 8.2(a) for the most recently ended fiscal quarter of the Borrower (each such date, a "Calculation Date"); provided that (a) the Applicable Margin shall be based on Pricing Level II until the first Calculation Date occurring after the Closing Date and, thereafter the Pricing Level shall be determined by reference to the Total Lease Adjusted Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide an Officer's Compliance Certificate when due as required by Section 8.2(a) for the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Officer's Compliance Certificate was required to have been delivered shall be based on Pricing Level I until such time as such Officer's Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Total Lease Adjusted Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any financial statement or Officer's Compliance Certificate delivered pursuant to Section 8.1 or 8.2(a) is shown to be inaccurate (regardless of whether

(i) this Agreement is in effect, (ii) any Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Officer's Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Officer's Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Total Lease Adjusted Leverage Ratio in the corrected Officer's Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall be obligated to pay to the Administrative Agent within three (3) Business Days the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 5.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 5.1(b) and 10.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

The Applicable Margins set forth above shall be increased as, and to the extent, required by Section 5.13.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" means Wells Fargo Securities, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated in their capacities as joint lead arranger and joint bookrunner.

"Asset Disposition" means the sale, transfer, license, lease or other disposition of any Property (including any disposition of owned Equity Interests) by any Credit Party or any Subsidiary thereof (or the granting of any option or other right to do any of the foregoing), and any issuance of Equity Interests by any Subsidiary of Holdings to any Person that is not a Credit Party or any Subsidiary thereof. The term "Asset Disposition" shall not include (a) the sale of inventory in the ordinary course of business or obsolete assets, (b) the transfer of assets to the Borrower or any Subsidiary Guarantor pursuant to any other transaction permitted pursuant to Section 9.4, (c) the write-off, discount, sale or other disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction, (d) the disposition of any Hedge Agreement, (e) dispositions of Investments in cash and Cash Equivalents, (f) the transfer by any Credit Party of its assets to any other Credit Party or any Domestic Subsidiary, (g) the transfer by any Non-Guarantor Subsidiary of its assets to any Credit Party (provided that in connection with any new transfer, such Credit Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith by such Credit Party at the time of such transfer) and (h) the transfer by any Non-Guarantor Subsidiary of its assets to any other Non-Guarantor Subsidiary.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.9), and accepted by the Administrative Agent, in substantially the form attached as **Exhibit G** or any other form approved by the Administrative Agent.

“Assumed Tax Benefit” means, for each member of Holdings in any year, an amount equal to the result of multiplying (a) the aggregate of all items of taxable net loss or deduction allocated to such member for such year by (b) the Member Tax Rate.

“Assumed Tax Liability” means, for each member of Holdings in any year, an amount equal to the result of multiplying (a) the aggregate of all items of taxable income or gain allocated to such member for such year by (b) the Member Tax Rate.

“Attributable Indebtedness” means, on any date of determination, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) LIBOR for an Interest Period of one month plus 1%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or LIBOR (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable as described in Section 5.8).

“Base Rate Loan” means any Loan that bears interest based on the Base Rate.

“Borrower” means ABRH, LLC, a Delaware limited liability company.

“Borrower Materials” has the meaning assigned thereto in Section 8.2.

“Business Day” means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or legal holiday on which banks in Boston, Massachusetts and New York,

New York, are open for the conduct of their commercial banking business and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Rate Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a London Banking Day.

“Calculation Date” has the meaning assigned thereto in the definition of Applicable Margin.

“Capital Expenditures” means, with respect to Holdings and its Subsidiaries on a Consolidated basis, for any period, (a) the additions to property, plant and equipment and other capital expenditures that are (or would be) set forth in a consolidated statement of cash flows of such Person for such period prepared in accordance with GAAP and (b) the incurrence of Capital Lease Obligations during such period, but excluding expenditures for the restoration, repair or replacement of any fixed or capital asset which was destroyed or damaged, in whole or in part, to the extent financed by the proceeds of an insurance policy maintained by such Person.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” means, to deposit in a Controlled Account or to pledge and deposit with, or deliver to the Administrative Agent, or directly to the applicable Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of one or more of the Issuing Lenders, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or letters of credit from financial institutions reasonably acceptable to the Administrative Agent (and the applicable Issuing Lender or Swingline Lender), or, if the Administrative Agent and the applicable Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the

Administrative Agent, such Issuing Lender and the Swingline Lender, as applicable. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one (1) year from the date of acquisition thereof, (b) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody’s,

(a) certificates of deposit maturing no more than one (1) year from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having either (i) combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency or (ii) membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables), electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that, (a) at the time it enters into a Cash Management Agreement with a Credit Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Cash Management Agreement with a Credit Party, in each case in its capacity as a party to such Cash Management Agreement.

“Change in Control” means an event or series of events by which:

(a) at any time, Holdings shall fail to own one hundred percent (100%) of the Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower; or

(b) prior to an IPO, the Permitted Investors shall fail to collectively own the Equity Interests of Holdings representing 50.1% of (i) the economic interest of Holdings and (ii) the voting power of Holdings entitled to vote in the election of members of the board of directors (or equivalent governing body) of Holdings; or

(c) after an IPO, (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Investors becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than thirty-five percent (35%) of the Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower or (ii) a majority of the members of the board of directors (or other equivalent governing body) of Holdings shall not constitute Continuing Directors.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith 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 Law”, regardless of the date enacted, adopted or issued; provided further, that solely for the purposes of Section 5.10, any increased costs associated with a Change in Law based on the foregoing clauses (i) and (ii) may only be imposed to the extent the applicable Lender or Recipient is generally seeking such costs from other similarly situated borrowers that are similarly affected by the circumstances giving rise to such costs under credit facilities that such Lender or Recipient reasonably deems to afford such Lender or Recipient the legal right to impose such costs, but no such Lender or Recipient shall be required to disclose any proprietary or confidential information in exercising its rights under Section 5.10.

“Class” means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Swingline Loan or Term Loan and, when used in reference to any Commitment, whether such Commitment is a Revolving Credit Commitment or a Term Loan Commitment.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

“Collateral” means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents.

“Collateral Agreement” means the Guaranty and Security Agreement of even date herewith executed by the Credit Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties.

“Commitment Fee” has the meaning assigned thereto in Section 5.3(a).

“Commitment Percentage” means, as to any Lender, such Lender’s Revolving Credit Commitment Percentage or Term Loan Percentage, as applicable.

“Commitments” means, collectively, as to all Lenders, the Revolving Credit Commitments and the Term Loan Commitments of such Lenders.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Competitor” means (a) any full service restaurant company having annual sales of \$100,000,000 or more and operating in the same territory as the Borrower and its Subsidiaries or (b) any Person owning more than 15% of the issued and outstanding Equity Interests of any such company; provided, however, any Person that is an investment bank, commercial bank, finance company, fund or other commercial lender shall not be deemed to be a Competitor.

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

“Consolidated” means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“Consolidated Assets” shall mean, as of any date of determination, the Consolidated assets of Holdings and its Subsidiaries at such date, as determined in accordance with GAAP.

“Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for Holdings and its Subsidiaries in accordance with GAAP:

(a) Consolidated Net Income for such period plus (b) the sum of the following, without duplication, to the extent deducted in determining Consolidated Net Income for such period: (i) income and franchise taxes,

(ii) Consolidated Interest Expense, (iii) amortization and depreciation, (iv) any extraordinary, unusual, non-recurring or non-cash charges (except for non-cash charges that are reserved for cash charges to be taken in the future), including losses from discontinued operations, (v) severance amounts paid or accrued (to the extent not added back in a prior period) and charges incurred during such period in connection with the redemption or repurchase of options or shares of former employees of Holdings and its Subsidiaries in an aggregate amount not to exceed \$2,000,000 during any four (4) consecutive fiscal quarter period, (vi) Transaction Costs; provided that the aggregate amount of Transaction Costs related to Permitted Acquisitions added back under this clause (vi) shall not exceed \$3,000,000 (unless otherwise agreed to by the Administrative Agent in its reasonable discretion) for similar acquisitions during any four (4) consecutive fiscal quarter period (which amount shall not include the O’Charley’s Bonus

Payment), (vii) Permitted Management Fees paid or accrued during such period (to the extent not added back in a prior period), (viii) the amount by which Rental Expense paid or accrued (to the extent not added back in a prior period) under GAAP during such period exceeds actual cash Rental Expense during such period, (ix) any losses on sales of property, plants and equipment, and (x) Pre-Opening Costs for such period in an aggregate amount not to exceed \$300,000 per unit, less (c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period: (i) interest income, (ii) any extraordinary gains (including income from discontinued operations), (iii) non-cash gains or non-cash items increasing Consolidated Net Income, (iv) the amount by which cash Rental Expense exceeds the Rental Expense paid or accrued (to the extent not added back in a prior period) under GAAP, and (v) any gains on sales of property, plant and equipment. For purposes of this Agreement, Consolidated EBITDA shall be adjusted on a Pro Forma Basis.

“Consolidated EBITDAR” means, for any period, in each case determined on a Consolidated basis, without duplication, for Holdings and its Subsidiaries in accordance with GAAP, the sum of (a) Consolidated EBITDA for such period plus (b) Rental Expense paid or accrued (to the extent not added back in a prior period) in cash for such period.

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated EBITDAR for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date minus (ii) Maintenance Capital Expenditures for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date minus (iii) cash taxes and any Tax Distributions paid in cash for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to the extent permitted hereunder to (b) Consolidated Fixed Charges for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

“Consolidated Fixed Charges” means, for any period, the sum of the following determined on a Consolidated basis for such period, without duplication, for Holdings and its Subsidiaries in accordance with GAAP: (a) Consolidated Interest Expense paid in cash, (b) scheduled principal payments with respect to Indebtedness, and (c) Rental Expense paid in cash.

“Consolidated Interest Expense” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for Holdings and its Subsidiaries in accordance with GAAP, interest expense (including, without limitation, interest expense attributable to Capital Lease Obligations and all net payment obligations pursuant to Hedge Agreements) for such period.

“Consolidated Net Income” means, for any period, the net income (or loss) of Holdings and its Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of Holdings and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which Holdings or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to Holdings or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or any of its Subsidiaries or is merged into or consolidated with Holdings or any of its Subsidiaries or that Person’s assets are acquired by Holdings or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a), and (c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to Holdings or any of its Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such

Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes.

“Consolidated Total Indebtedness” means, as of any date of determination with respect to Holdings and its Subsidiaries on a Consolidated basis without duplication, the sum of all Indebtedness (excluding standby Letters of Credit issued for the purpose of obtaining insurance) of Holdings and its Subsidiaries.

“Continuing Directors” means the directors of Holdings on the Closing Date and each other director of Holdings, if, in each case, such other director’s nomination for election to the board of directors (or equivalent governing body) of Holdings is recommended by at least 51% of the then Continuing Directors.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlled Account” means each deposit account and securities account that is subject to an account control agreement in form and substance reasonably satisfactory to the Administrative Agent at the time such control agreement is executed.

“Credit Facility” means, collectively, the Revolving Credit Facility, the Term Loan Facility, the Swingline Facility and the L/C Facility.

“Credit Parties” means, collectively, the Borrower and the Guarantors.

“Debt Issuance” means the issuance of any Indebtedness for borrowed money by any Credit Party or any of its

Subsidiaries.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any of the events specified in Section 10.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

“Defaulting Lender” means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, the Term Loan, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding

(which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through

(d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender, the Swingline Lender and each Lender.

“Disclosure Letter” shall mean that certain side letter dated as of the date hereof between the Borrower and the Administrative Agent, for the benefit of the Lenders, pursuant to which the Borrower has attached (a) as Schedule 1 thereto, the jurisdictions in which each Credit Party and each Subsidiary thereof are organized as of the Closing Date, (b) as Schedule 2 thereto, the subsidiary and capitalization information for each Credit Party (other than the capitalization information for Holdings) as of the Closing Date, (c) as Schedule 3 thereto, any ongoing audit or examination or, to the knowledge of any Responsible Officer, other investigation by any Governmental Authority of the tax liability of any Credit Party or any Subsidiary thereof, (d) as Schedule 4 thereto, the ERISA plans of the Credit Parties and their Subsidiaries as of the Closing Date, (e) as Schedule 5 thereto, the Material Contracts of the Credit Parties and their Subsidiaries existing as of the Closing Date, (f) as Schedule 6 thereto, the labor and collective bargaining agreements of the Credit Parties and their Subsidiaries existing as of the Closing Date, (g) as Schedule 7 thereto, all real property owned by the Credit Parties and their Subsidiaries existing as of the Closing Date, (h) as Schedule 8 thereto, the material litigation of the Credit Parties and their Subsidiaries existing as of the Closing Date, (i) as Schedule 9 thereto, the Indebtedness of the Credit Parties and their Subsidiaries existing as of the Closing Date, (j) as Schedule 10 thereto, the Liens of the Credit Parties and their Subsidiaries existing as of the Closing Date, (k) as Schedule 11 thereto, the loans, advances and Investments of the Credit Parties and their Subsidiaries existing as of the Closing Date, (l) as Schedule 12 thereto, transactions with Affiliates of the Credit Parties and their Subsidiaries existing as of the Closing Date, and (m) as Schedule 13, a description of the Profits Interest Program.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other

Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be (i) subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments or (ii) otherwise consented to by the Required Lenders), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so

long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be (i) subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments or (ii) otherwise consented to by the Required Lenders), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Term Loan Maturity Date; provided that if such Equity Interests is issued pursuant to a plan for the benefit of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by Holdings or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Dollars” or “\$” means, unless otherwise qualified, dollars in lawful currency of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of any political subdivision of the United States.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 12.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 12.9(b)(iii)).

“Employee Benefit Plan” means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Credit Party or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliate.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment.

“Environmental Laws” means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

“Equity Interests” means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing.

“Equity Issuance” means (a) any issuance by Holdings of shares of its Equity Interests to any Person that is not a Credit Party (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Credit Party into any Credit Party or any Subsidiary thereof. The term “Equity Issuance” shall not include (A) any Asset Disposition or (B) any Debt Issuance.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

“ERISA Affiliate” means any Person who together with any Credit Party or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“Eurodollar Reserve Percentage” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“Event of Default” means any of the events specified in Section 10.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

“Excess Cash Flow” means, for Holdings and its Subsidiaries on a Consolidated basis, in accordance with GAAP for any Fiscal Year:

(a) the sum, without duplication, of (i) Consolidated Net Income for such Fiscal Year, and
(ii) an amount equal to the amount of all non-cash charges to the extent deducted in determining Consolidated Net Income for such Fiscal Year, minus

(b) the sum, without duplication, of (i) the aggregate amount of (A) Capital Expenditures and cash actually paid by Holdings and its Subsidiaries during such Fiscal Year on account of Permitted Acquisitions (other than any amounts that were committed during a prior Fiscal Year to the extent such amounts reduced Excess Cash Flow in such prior Fiscal Year per clause (b)(i)(B) below) and (B) if elected by the Borrower to be included in the calculation of Excess Cash Flow prior to the actual cash expenditure thereof, the amount committed during such Fiscal Year to be used to make Capital Expenditures or Permitted Acquisitions which in either case have been actually made or consummated or for which a binding agreement exists as of the time of determination of Excess Cash Flow for such Fiscal Year (in each case under this clause (i) other than to the extent any such Capital Expenditure or Permitted Acquisition is made or is expected to be made with the proceeds of Indebtedness, any Equity Issuance, casualty proceeds, condemnation proceeds or other proceeds that would not be included in Consolidated Net Income), (ii) the aggregate amount of all scheduled principal payments, cash interest payments or repayments of Indebtedness (other than mandatory prepayments of Loans) made by Holdings and its Subsidiaries during such Fiscal Year, but only to the extent that such payments or repayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness, (iii) an amount equal to the amount of all non-cash credits to the extent included in determining Consolidated Net Income for such Fiscal Year, (iv) Tax Distributions to the extent permitted hereunder and paid in cash and (v) the aggregate amount of gains or losses from Asset Dispositions and Insurance and Condemnation Events during such Fiscal Year to the extent such gains or losses are included in the determination of Consolidated Net Income for such Fiscal Year.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Credit Party for or the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Credit Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Credit Party, including under **[Section 2.12]** of the Guaranty Agreement). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an

applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.11, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.11(g), (d) any United States federal withholding Taxes imposed under FATCA, and (e) all liabilities, penalties and interest with respect to any of the foregoing.

"Existing Letters of Credit" means those letters of credit existing on the Closing Date and identified on Schedule 1.1.

"Extensions of Credit" means, as to any Lender at any time, (a) an amount equal to the sum of

- (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding,
- (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding,
- (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding and (iv) the aggregate principal amount of the Term Loans made by such Lender then outstanding, or
- (a) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

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

"FDIC" means the Federal Deposit Insurance Corporation.

"Federal Funds Rate" means, for any day, the rate per annum 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 (or, if such day is not a Business Day, for the immediately preceding Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent.

"Fee Letters" means (a) that certain fee letter agreement dated July 21, 2014 among the Borrower, Wells Fargo, and Wells Fargo Securities, LLC, (b) that certain fee letter agreement dated July 21, 2014 among the Borrower, Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and (c) any letter between the Borrower and any Issuing Lender (other than Wells Fargo) relating to certain fees payable to such Issuing Lender in its capacity as such.

"First Tier Foreign Subsidiary" means any Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Credit Party.

"Fiscal Period" means each period of 4 weeks, commencing on the first day of Holdings' Fiscal Year.

"Fiscal Quarter" means each fiscal quarter ending on the Sunday that is 12, 24, 36 and 52 weeks in each Fiscal Year (or 53 weeks in a Fiscal year containing 53 weeks)

"Fiscal Year" means the fiscal year of Holdings and its Subsidiaries ending on the last Sunday of December.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender, other than such L/C Obligations as to which such Defaulting Lender's participation

obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders, repaid by the Borrower or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural Person) 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 its activities.

“GAAP” means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Growth Capital Expenditures” means Capital Expenditures in connection with (a) the purchase or construction of new stores or restaurants (including in connection with franchise buybacks and purchases of competitor restaurants), (b) the major or substantial remodeling of existing Restaurants, or (b) the major or substantial expansion of capacity at Borrower's bakery manufacturing facilities.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuming in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (whether in whole or in part).

“Guarantors” means, collectively, Holdings and each Subsidiary Guarantor.

“Guaranty Agreement” means, the unconditional guaranty agreement of even date herewith executed by the Guarantors in favor of the Administrative Agent, for the ratable benefit of the Secured Parties.

“Hazardous Materials” means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law or common law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed by a Governmental Authority to constitute a nuisance or a trespass which pose a health or safety hazard to Persons or neighboring properties, or (f) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

“Hedge Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions,

interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

“Hedge Bank” means any Person that, (a) at the time it enters into a Hedge Agreement with a Credit Party permitted under Article IX, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Hedge Agreement with a Credit Party, in each case in its capacity as a party to such Hedge Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“Holdings” means Fidelity Newport Holdings, LLC a Delaware limited liability company.

“Holdings JAX Guaranty Obligations” means the obligations of Holdings to guaranty the obligations of J. Alexander’s Corporation (now known as J. Alexander’s, LLC) under those certain salary continuation agreements dated December 26, 2008 made between J. Alexander’s Corporation and certain of its executives, which guaranty obligations arise under those certain letter agreements dated July 30, 2012 among J. Alexander’s Corporation, Holdings, Fidelity National Financial, Inc., American Blue Ribbon Holdings, Inc., and the applicable executives of J. Alexander’s Corporation (which letter agreements modify certain other letter agreements dated June 12, 2012), in each case, as such agreements are in effect as of the Closing Date.

“Increased Amount Date” has the meaning assigned thereto in Section 5.13(a).

“Incremental Lender” has the meaning assigned thereto in Section 5.13(a).

“Incremental Loan Commitments” has the meaning assigned thereto in Section 5.13(a)(ii).

“Incremental Loans” has the meaning assigned thereto in Section 5.13(a)(ii).

“Incremental Revolving Credit Commitment” has the meaning assigned thereto in Section 5.13(a)(ii).

“Incremental Revolving Credit Increase” has the meaning assigned thereto in Section 5.13(a)(ii).

“Incremental Term Loan” has the meaning assigned thereto in Section 5.13(a)(i).

“Incremental Term Loan Commitment” has the meaning assigned thereto in Section 5.13(a)(i).

“Indebtedness” means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including, without limitation, all obligations under non-competition agreements (other than pursuant to employment or severance agreements), earn-out agreements or similar agreements), except trade payables arising in the ordinary course of business not more than ninety

(90) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person and, for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of non-exclusive licenses or Permitted Exclusive Licenses;

(c) the Attributable Indebtedness of such Person with respect to such Person's Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(e) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all obligations of any such Person in respect of Disqualified Equity Interests;

(h) all net obligations of such Person under any Hedge Agreements; and

(i) all Guarantees of any such Person with respect to any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date. Notwithstanding anything to the contrary in any Loan Document, "Indebtedness" shall be expressly deemed to exclude (i) the Holdings JAX Guaranty Obligations, (ii) obligations under the Profits Interest Program or the Restricted Stock Program, (iii) any accruals with respect to the Phantom Equity Agreement or any payment to be made in connection with the termination thereof and (iv) the Specified Dividend.

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

"Initial Term Loan" means the term loan made, or to be made, to the Borrower by the Term Loan Lenders pursuant to Section 4.1.

"Insurance and Condemnation Event" means the receipt by any Credit Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective Property.

"Interest Period" means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one (1), three (3), or six (6) months or, if agreed by all of the relevant Lenders twelve (12) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion to any LIBOR Rate Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period with respect to a LIBOR Rate

Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period with respect to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period;

(d) no Interest Period shall extend beyond the Revolving Credit Maturity Date or the Term Loan Maturity Date, as applicable, and Interest Periods shall be selected by the Borrower so as to permit the Borrower to make the quarterly principal installment payments pursuant to Section 4.3 without payment of any amounts pursuant to Section 5.9; and

(e) there shall be no more than six (6) Interest Periods in effect at any time.

“IPO” means an initial public offering of Equity Interests by Holdings registered with the Securities Exchange Commission under the Securities Act of 1933.

“IRS” means the United States Internal Revenue Service.

“ISP98” means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

“Issuing Lender” means (a) with respect to Letters of Credit issued hereunder on or after the Closing Date, Wells Fargo or any other Lender that may issue a Letter of Credit to Borrower or a Subsidiary of Borrower pursuant to Article III, and (b) with respect to the Existing Letters of Credit, Wells Fargo Capital Finance, LLC, in its capacity as issuer thereof.

“L/C Commitment” means, as to any Issuing Lender, the obligation of such Issuing Lender to issue Letters of Credit for the account of the Borrower from time to time in an aggregate amount equal to the amount set forth opposite the name of each Issuing Lender on Schedule 1.1(b), any such amount may be changed after the Closing Date in a written agreement between the Borrower and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution); provided that the L/C Commitment with respect to any Person that ceases to be an Issuing Lender for any reason pursuant to the terms hereof shall be \$0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

“L/C Facility” means the letter of credit facility established pursuant to Article III.

“L/C Obligations” means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

“L/C Participants” means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the applicable Issuing Lender.

“L/C Sublimit” means the lesser of (a) Forty Million Dollars (\$40,000,000) and (b) the Revolving Credit Commitment.

“Lender” means the Persons listed on Schedule 1.1(a) and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to Section 5.13, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Lender Joinder Agreement” means a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent delivered in connection with Section 5.13.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit.

“Letter of Credit Application” means an application, in the form specified by the applicable Issuing Lender from time to time, requesting such Issuing Lender to issue a Letter of Credit.

“Letters of Credit” means the collective reference to letters of credit issued pursuant to Section 3.1 and the Existing Letters of Credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by any Issuing Lender (other than Wells Fargo at any time it is also acting as Administrative Agent) shall not be a “Letter of Credit” for purposes of the Loan Documents until such time as the Administrative Agent has been notified in writing of the issuance thereof by the applicable Issuing Lender.

“LIBOR” means,

(1) for any interest rate calculation with respect to a LIBOR Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then “LIBOR” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period.

(2) for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) which appears on the Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day. If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page) then “LIBOR” for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error.

“LIBOR Rate” means a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“LIBOR Rate Loan” means any Loan bearing interest at a rate based upon the LIBOR Rate as provided in Section 5.1(a).

“Lien” means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person 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.

“Liquidity” means, as of any date of determination, the sum of amount of availability under the Revolving Credit Facility plus Qualified Cash.

“Loan Documents” means, collectively, this Agreement, each Note, the Letter of Credit Applications, the Security Documents, the Guaranty Agreement, the Fee Letters, the Management Fee Subordination Agreement and each other document, instrument, certificate and agreement executed and delivered by the Credit Parties or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Secured Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

“Loans” means the collective reference to the Revolving Credit Loans, the Term Loan and the Swingline Loans, and

“Loan” means any of such Loans.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

“Maintenance Capital Expenditures” means Capital Expenditures other than Growth Capital Expenditures.

“Management Agreement” means that certain Amended and Restated Limited Liability Company Agreement dated as of May 11, 2012 among Holdings and the Borrower, as the same may have been amended prior to the date of this Agreement.

“Management Fee Subordination Agreement” means a management fee subordination agreement, dated as of even date with this Agreement, among the Sponsor, Holdings, Borrower and Administrative Agent.

“Material Adverse Effect” means, with respect to Holdings and its Subsidiaries, (a) a material adverse effect on the operations, business, assets, liabilities or financial condition of such Persons, taken as a whole, (b) a material impairment of the ability of any Credit Party to perform its obligations under the Loan Documents to which it is a party, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

“Material Contract” means any written contract or agreement of any Credit Party or any of its Subsidiaries, the breach, non-performance, or cancellation of which could reasonably be expected to have a Material Adverse Effect.

“Material Domestic Subsidiary” shall mean any Domestic Subsidiary of Holdings that, together with its Subsidiaries, (a) generates more than 5% of Consolidated EBITDA attributable to Credit Parties (excluding the financial performance of all Foreign Subsidiaries) on a Pro Forma Basis for the four (4) fiscal quarter period most recently ended or (b) owns more than 5% of the Consolidated Assets attributable to the Credit Parties (excluding the financial performance of all Foreign Subsidiaries) as of the last day of the most recently ended fiscal quarter of the Borrower; provided, however, that if at any time there are Domestic Subsidiaries which are not classified as “Material Domestic Subsidiaries” but which collectively (i) generate more than 5% of Consolidated EBITDA attributable to the Credit Parties (excluding the financial performance of all Foreign Subsidiaries) on a Pro Forma Basis or (ii) own more than 5% of the Consolidated Assets attributable to the Credit Parties (excluding the financial performance of all Foreign Subsidiaries) as of the last day of the most recently ended fiscal quarter of the Borrower, then the Borrower shall within thirty (30) days after the end of such fiscal quarter designate one or more

of such Domestic Subsidiaries as Material Domestic Subsidiaries and cause any such Domestic Subsidiaries to comply with the provisions of Section 8.13 such that, after such Domestic Subsidiaries become Guarantors hereunder, the Domestic Subsidiaries that are not Guarantors shall (iii) generate 5% or less of Consolidated EBITDA attributable to the Credit Parties (excluding the financial performance of all Foreign Subsidiaries) and (iv) own 5% or less of the Consolidated Assets attributable to Credit Parties (excluding the financial performance of all Foreign Subsidiaries).

“Material Subsidiary” shall mean any Subsidiary of Holdings that, together with its Subsidiaries,
(a) generates more than 5% of Consolidated EBITDA on a Pro Forma Basis for the four (4) fiscal quarter period most recently ended or (b) owns more than 5% of the Consolidated Assets as of the last day of the most recently ended fiscal quarter of the Borrower.

“Member Tax Rate” means the effective tax rate utilizing the (a) highest potential marginal tax rate applicable to an individual under federal law and (b) highest potential marginal tax rate applicable to an individual under the tax law of the state within the United States that has the then highest marginal tax rate (and assuming that any state taxes due are deductible for federal income tax purposes). If Parent is treated as a disregarded entity or partnership for state tax purposes but not treated as a disregarded entity or partnership for federal tax purposes for any tax period, then subclause (a) of the immediately preceding sentence will be disregarded in the calculation of the Member Tax Rate for purposes of Section 9.6(d)(iv) of the Agreement. If Parent is treated as a disregarded entity or partnership for federal tax purposes but is not treated as a disregarded entity or partnership for state tax purposes for any tax period, then subclause (b) of the first sentence of this definition will be disregarded in the calculation of the Member Tax Rate for purposes of Section 9.6(d)(iv) of the Agreement. If Parent is not treated as a disregarded entity or partnership for both federal and state tax purposes for any tax period, the Member Tax Rate for purposes of Section 9.6(d)(iv) of the Agreement for such tax period shall be zero.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 102% of the sum of (i) the Fronting Exposure of the Issuing Lender with respect to Letters

of Credit issued and outstanding at such time and (ii) the Fronting Exposure of the Swingline Lender with respect to all Swingline Loans outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at such time in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgages” means the collective reference to each mortgage, deed of trust or other real property security document, encumbering any real property now or hereafter owned by any Credit Party, in each case, in form and substance reasonably satisfactory to the Administrative Agent and executed by such Credit Party in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as any such document may be amended, restated, supplemented or otherwise modified from time to time.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Credit Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding seven (7) years.

“Net Cash Proceeds” means, as applicable, (a) with respect to any Asset Disposition or Insurance and Condemnation Event, the gross proceeds received in cash or Cash Equivalents by any Credit Party or any of its Subsidiaries therefrom less the sum of (i) in the case of an Asset Disposition, all income taxes and other taxes assessed by, or reasonably estimated to be payable to, a Governmental Authority as a result of such transaction (provided that if such estimated taxes exceed the amount of actual taxes required to be paid in cash in respect of such Asset Disposition, the amount of such excess shall constitute Net Cash Proceeds), (ii) all reasonable and customary out-of-pocket fees and expenses incurred in connection with such transaction or event and (iii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or a portion thereof) disposed of, which Indebtedness is required to be repaid in connection with such transaction or event, and (b) with respect to any Equity Issuance or Debt Issuance, the gross cash proceeds received by any Credit Party or any of its Subsidiaries therefrom less all reasonable and customary out-of-pocket legal, underwriting and other fees and expenses incurred in connection therewith.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.2 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Guarantor Subsidiary” means any Subsidiary of Holdings (other than the Borrower) that is not a Subsidiary Guarantor.

“Notes” means the collective reference to the Revolving Credit Notes, the Swingline Note and the Term Loan Notes.

“Notice of Account Designation” has the meaning assigned thereto in Section 2.3(b).

“Notice of Borrowing” has the meaning assigned thereto in Section 2.3(a).

“Notice of Conversion/Continuation” has the meaning assigned thereto in Section 5.2.

“Notice of Prepayment” has the meaning assigned thereto in Section 2.4(c).

“O’Charley’s Bonus Payment” means the final O’Charley’s Inc. synergy bonus payment that is payable by December 31, 2014, to be reflected in the period(s) designated by Borrower in an aggregate amount not to exceed \$1,225,000.

“Obligations” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties and each of their respective Subsidiaries to the Lenders, any Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of

Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party or any Subsidiary thereof of any proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

“Officer’s Compliance Certificate” means a certificate of the chief financial officer or the treasurer of Holdings substantially in the form attached as *Exhibit F*.

“Operating Lease” means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

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

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.12).

“Participant” has the meaning assigned thereto in Section 12.9(d).

“Participant Register” has the meaning assigned thereto in Section 12.9(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor agency.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of any Credit Party or any ERISA Affiliate or (b) has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliates.

“Permitted Acquisition” means any acquisition by the Borrower or any Subsidiary Guarantor in the form of the acquisition of all or substantially all of the assets, business or a line of business, or at least a majority of the outstanding Equity Interests which have the ordinary voting power for the election of directors of the board of directors (or equivalent governing body) (whether through purchase, merger or otherwise), of any other Person that is incorporated, formed or organized in the United States or Canada if each such acquisition meets all of the following requirements:

- (a) no less than five (5) Business Days prior to the proposed closing date of such acquisition (or such shorter period of time as the Administrative Agent may agree, in its sole discretion), the Borrower shall have delivered written notice of such acquisition to the Administrative Agent and the Lenders, which notice shall include the proposed closing date of such acquisition;
- (b) such acquisition has been approved by the board of directors (or equivalent governing body) of the Person to be acquired;
- (c) the Person or business to be acquired shall be in a Permitted Business;
- (d) if such transaction is a merger or consolidation, the Borrower or a Subsidiary Guarantor shall be the surviving Person and no Change in Control shall have been effected thereby;

(e) the Borrower shall have delivered to the Administrative Agent all documents required to be delivered pursuant to, and in accordance with, Section 8.14;

(f) no later than five (5) Business Days prior to the proposed closing date of such acquisition (or such shorter period of time as the Administrative Agent may agree, in its sole discretion), the Borrower shall have delivered to the Administrative Agent an Officer's Compliance Certificate for the most recent fiscal quarter end preceding such acquisition for which financial statements are available demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, (i) that the Borrower is in compliance on a Pro Forma Basis (as of the date of the acquisition and immediately after giving effect thereto and any Indebtedness incurred in connection therewith) with each covenant contained in Section 9.14 and (ii) that the Total Lease Adjusted Leverage Ratio calculated on a Pro Forma Basis (as of the proposed closing date of the acquisition and immediately after giving effect thereto and any Indebtedness incurred in connection therewith) shall be at least 0.25 below the applicable ratio set forth in Section 9.14(a);

(g) no later than five (5) Business Days prior to the proposed closing date of such acquisition (or such shorter period of time as the Administrative Agent may agree, in its sole discretion) the Borrower, to the extent requested by the Administrative Agent, (i) shall have delivered to the Administrative Agent copies of substantially final Permitted Acquisition Documents, and (ii) shall have delivered to, or made available for inspection by, the Administrative Agent substantially complete Permitted Acquisition Diligence Information;

(h) no Default or Event of Default shall have occurred and be continuing both before and after giving effect to such acquisition and any Indebtedness incurred in connection therewith;

(i) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative earnings before interest, taxes, depreciation and amortization (adjusted on a Pro Forma Basis; such adjustments to be mutually and reasonably agreed upon by Holdings and the Administrative Agent) during the four (4) consecutive fiscal quarter period most recently concluded prior to the date of the proposed acquisition;

(j) after giving effect to the acquisition, Liquidity shall be at least \$25,000,000; and

(k) the Borrower shall have (i) delivered to the Administrative Agent a certificate of a Responsible Officer certifying that all of the requirements set forth above have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition and (ii) provided such other documents and other information as may be reasonably requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) in connection with such purchase or other acquisition.

"Permitted Acquisition Diligence Information" means with respect to any acquisition proposed by the Borrower or any Subsidiary Guarantor, to the extent applicable, all material financial information (including projections), copies of all material contracts, and all other material information, in each case, reasonably requested to be delivered to the Administrative Agent in connection with such acquisition (except to the extent that any such information is (a) subject to any confidentiality agreement, unless mutually agreeable arrangements can be made to preserve such information as confidential, (b) classified or (c) subject to any attorney-client privilege).

"Permitted Acquisition Documents" means with respect to any acquisition proposed by the Borrower or any Subsidiary Guarantor, final copies or substantially final drafts if not executed at the required time of delivery of the purchase agreement, sale agreement, merger agreement or other agreement evidencing such acquisition, including, without limitation, any legal opinions and each other material document executed, delivered, contemplated by or prepared in connection therewith and any amendment, modification or supplement to any of the foregoing.

"Permitted Business" means full service, family, casual and other dining establishments, commercial bakery facilities, and any business activities reasonably related or ancillary to any of the foregoing or that are reasonable extensions thereof.

"Permitted Exclusive License" means a licensing arrangement entered into by Holdings or any of its Subsidiaries, in the ordinary course of business and on commercially reasonable terms (but that would not result in a legal or effective transfer of Holdings' or such Subsidiary's title, as applicable, in the licensed trademarks), pursuant to which the licensee is granted the exclusive right with limited duration with a commercially reasonable term to use one or more of the licensor's trademarks to manufacture, distribute, market, promote, offer for sale, sell, use, or otherwise exploit the trademarks in connection with food products, merchandise or other goods.

“Permitted Investors” means, collectively, the Sponsor and any fund or other Person Controlled directly or indirectly by Sponsor or any of its Affiliates (other than portfolio companies).

“Permitted Liens” means the Liens permitted pursuant to Section 9.2.

“Permitted Management Fees” means management fees permitted pursuant to Section 9.6(d)(iii) of this Agreement.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Phantom Equity Agreement” means that certain letter agreement dated June 1, 2010 between Holdings and Hazem Ouf (as amended by that certain First Amendment dated as of August 5, 2014 and modified by the Termination Agreement), as in effect on the Closing Date pursuant to which certain phantom equity interests in Holdings were granted by Holdings to Hazem Ouf.

“Platform” has the meaning assigned thereto in Section 8.2.

“Pre-Opening Costs” means “start-up costs” (such term used herein as defined in SOP 98-5 published by the American Institute of Certified Public Accountants) related to the acquisition, opening and organizing of new or remodeled restaurants, including, without limitation, the cost of feasibility studies, staff-training, recruiting, travel costs for employees engaged in such start-up activities, advertising and rent accrued prior to opening.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Profits Interest Program” means an equity incentive plan pursuant to which Holdings shall issue profits interests to management and certain other Persons, as more particularly described in Schedule 13 to the Disclosure Letter.

“Pro Forma Basis” means, for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occurs, that such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement and:

(a) all income statement items (whether positive or negative) attributable to the Property or Person disposed of in a Specified Disposition shall be excluded and all income statement items (whether positive or negative) attributable to the Property or Person acquired in a Permitted Acquisition shall be included (provided that such income statement items to be included are reflected in financial statements or other financial data reasonably acceptable to the Administrative Agent and based upon reasonable assumptions and calculations which are expected to have a continuous impact); and

(b) non-recurring costs, extraordinary expenses and other pro forma adjustments attributable to such Specified Transaction may be included to the extent that such costs, expenses or adjustments:

(i) are reasonably expected to be realized within twelve (12) months of such Specified Transaction as set forth in reasonable detail on a certificate of a Responsible Officer delivered to the Administrative Agent;

(ii) are calculated on a basis consistent with GAAP and Regulation S-X of the Exchange Act are, in each case, reasonably identifiable, factually supportable, and expected to have a continuing impact on the operations of Holdings and its Subsidiaries; or

(iii) are approved by the Administrative Agent;

provided that the foregoing costs, expenses and adjustments shall be without duplication of any costs, expenses or adjustments that are already included in the calculation of Consolidated EBITDA or clause

(a) above.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

“Public Lenders” has the meaning assigned thereto in Section 8.2.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted cash, Cash Equivalents, and credit and debit card receivables of Holdings and its Subsidiaries maintained in deposit accounts in any financial institutions located within the United States.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Lender, as applicable.

“Refranchising Sale” means any sale by Holdings or any of its Subsidiaries of a Restaurant operated by Holdings or its Subsidiaries to either an existing or new franchisee.

“Register” has the meaning assigned thereto in Section 12.9(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse any Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Rental Expense” means, with respect to Holdings and its Subsidiaries for any period, all rental expenses with respect to long-term real property leases and operating leases of Holdings and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP. For the purposes of calculating Rental Expense for any period of consecutive 13 Fiscal Periods (each, a “Reference Period”), if at any time during such Reference Period (and after the Closing Date), Holdings or any of its Subsidiaries shall have made a Permitted Acquisition or an Asset Disposition permitted pursuant to Section 9.5, Rental Expense for such Reference Period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition or such Asset Disposition, as applicable, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Holdings and the Administrative Agent) or in such other manner reasonably acceptable to the Administrative Agent as if any such Permitted Acquisition, Asset Disposition, or adjustment occurred on the first day of such Reference Period.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Revolving Credit Lenders” means, at any date, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the sum of the aggregate amount of the Revolving Credit Commitment or, if the Revolving Credit Commitment has been terminated, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit under the Revolving Credit Facility; provided that the Revolving Credit Commitment of, and the portion of the Extensions of Credit under the Revolving Credit Facility, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person designated in writing by the Borrower and reasonably acceptable to the Administrative Agent. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person. Unless and except to the extent expressly stated to the contrary herein in a particular context, “Responsible Officer” means a Responsible Officer of Borrower.

“Restaurant” means a full service restaurant owned or leased and operated by Borrower or one of its Subsidiaries.

“Restricted Payment” has the meaning assigned thereto in Section 9.6.

“Restricted Stock Program” means the issuance by Parent of its membership interest units to certain of its directors, officers and employees on a restricted basis pursuant to the omnibus equity incentive plan of Parent as in effect on the Closing Date.

“Revolving Credit Commitment” means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender’s name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be One Hundred Million Dollars (\$100,000,000). The initial Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1(b).

“Revolving Credit Commitment Percentage” means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The initial Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1(b).

“Revolving Credit Exposure” means, as to any Revolving Credit Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Revolving Credit Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Credit Facility” means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 5.13).

“Revolving Credit Lenders” means, collectively, all of the Lenders with a Revolving Credit Commitment.

“Revolving Credit Loan” means any revolving credit loan made to the Borrower pursuant to Section 2.1, and all such revolving credit loans collectively as the context requires.

“Revolving Credit Maturity Date” means the earliest to occur of (a) the fifth anniversary of the Closing Date, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 10.2(a).

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as **Exhibit A-1**, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Revolving Credit Outstandings” means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“S&P” means Standard & Poor’s Financial Services LLC, a part of McGraw-Hill Financial and any successor thereto.

“Sanctioned Country” means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, or as otherwise published from time to time.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time, (b) a Person named on the lists maintained by the United Nations Security Council available at http://www.un.org/sc/committees/list_compend.shtml, or as otherwise published from time to time, (c) a Person named on the lists maintained by the European Union available at http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm, or as otherwise published from time to time, (d) a Person named on the lists maintained by Her Majesty’s Treasury available at http://www.hm-treasury.gov.uk/fin_sanctions_index.htm, or as otherwise published from time to time, or (e) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement between or among any Credit Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Hedge Agreement between or among any Credit Party and any Hedge Bank.

“Secured Obligations” means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Credit Party under (i) any Secured Hedge Agreement (other than an Excluded Swap Obligation) and (ii) any Secured Cash Management Agreement.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

“Security Documents” means the collective reference to the Collateral Agreement, the Mortgages, and each other agreement or writing pursuant to which any Credit Party pledges or grants a security interest in any Property or assets securing the Secured Obligations.

“Social Club Entities” means Blue Dress Social Club, Inc., an Arkansas corporation, and any entity formed after the Closing Date and designated as a “Social Club Entity” by the Borrower in writing to Administrative Agent, so long as such entity (i) is formed for the sole purpose of facilitating the sale of alcoholic beverages at a single Restaurant location in compliance with state, city or county laws and regulations that require the formation of such entity and (ii) does not hold any assets other than assets that

are required in order to comply with such laws and regulations at such Restaurant location, provided that the aggregate Store Operating Cash Flow for such Restaurants for any period shall not exceed 2.5% of the aggregate Store Operating Cash Flow for all Restaurants operated by Holdings and its Subsidiaries.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Disposition” means any disposition of all or substantially all of the assets or Equity Interests of any Subsidiary of the Borrower or any division, business unit, product line or line of business.

“Specified Dividend” means a one-time dividend to the Permitted Investors on or within 90 days after the Closing Date in an aggregate amount not to exceed \$75,000,000; provided, however, that an aggregate amount not to exceed \$1,500,000 shall be permitted to be paid after the date which is 90 days after the Closing Date to the extent paid on or before June 15, 2016.

“Specified Transactions” means (a) any Specified Disposition, (b) any Permitted Acquisition and (c) the Transactions.

“Sponsor” means a collective reference to Newport Global Opportunities Fund LP, a Delaware limited partnership and Fidelity National Financial Ventures, LLC, a Delaware limited liability company.

“Store Operating Cash Flow” means, with respect to any Restaurant and for any fiscal period, the net revenue generated by such Restaurant during such fiscal period *minus* the aggregate amount of the cash operating expenses of such Restaurant during such fiscal period, in each case calculated in a manner consistent with the historical calculation of Store Operating Cash Flow by Holdings and its Subsidiaries.

“Subordinated Indebtedness” means the collective reference to any Indebtedness incurred by Holdings or any of its Subsidiaries that is subordinated in right and time of payment to the Obligations on terms and conditions satisfactory to the Administrative Agent.

“Subsidiary” means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of Holdings. Notwithstanding anything to the contrary

contained herein, none of the Social Club Entities shall constitute “Subsidiaries” of Holdings or Borrower for any purpose under this Agreement or any of the other Loan Documents.

“Subsidiary Guarantors” means, collectively, all direct and indirect Subsidiaries of Holdings (other than the Borrower and Foreign Subsidiaries to the extent that and for so long as the guaranty of such Foreign Subsidiary would have adverse tax consequences for the Borrower or any other Credit Party or result in a violation of Applicable Laws) that are parties to the Subsidiary Guaranty Agreement on the Closing Date or which become a party to the Subsidiary Guaranty Agreement thereafter pursuant to Section 8.14.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swingline Commitment” means the lesser of (a) Twenty Million Dollars (\$20,000,000) and (b) the Revolving Credit Commitment.

“Swingline Facility” means the swingline facility established pursuant to Section 2.2.

“Swingline Lender” means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

“Swingline Loan” means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

“Swingline Note” means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as **Exhibit A-2**, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified

as an Operating Lease in accordance with GAAP.

“Tax Distribution” has the meaning set forth in Section 9.6(d).

“Tax Liability Account” means a memorandum account maintained by Holdings for each of its members. The initial balance of the Tax Liability Account for each such member is zero. At the end of each Fiscal Year, the Tax Liability Account is increased by the amount of the Assumed Tax Liability of such member for such year and decreased in the amount of the Assumed Tax Benefit of such member for the year. The Tax liability Account will also be decreased by any Tax Distributions to such member.

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

“Termination Agreement” means that certain Termination Agreement to Phantom Equity Agreement dated as of August 5, 2014 by and among Holdings, the Borrower and Hazem Ouf.

“Term Loan Commitment” means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make a portion of the Initial Term Loan and/or Incremental Term Loans, as applicable, to the account of the Borrower hereunder on the Closing Date (in the case of the Initial Term Loan) or the applicable borrowing date (in the case of any Incremental Term Loan) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 1.1(b), as such amount may be increased, reduced or otherwise modified at any time or from time to time pursuant to the terms hereof and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make such Term Loans. The aggregate Term Loan Commitment with respect to the Initial Term Loan of all Term Loan Lenders on the Closing Date shall be One Hundred Ten Million Dollars (\$110,000,000). The Term Loan Commitment of each Term Loan Lender as of the Closing Date is set forth opposite the name of such Term Loan Lender on Schedule 1.1(b).

“Term Loan Facility” means the term loan facility established pursuant to Article IV (including any new term loan facility established pursuant to Section 5.13).

“Term Loan Lender” means any Lender with a Term Loan Commitment and/or outstanding Term Loans.

“Term Loan Maturity Date” means the first to occur of (a) the fifth anniversary of the Closing Date, and (b) the date of acceleration of the Term Loans pursuant to Section 10.2(a).

“Term Loan Note” means a promissory note made by the Borrower in favor of a Term Loan Lender evidencing the portion of the Term Loans made by such Term Loan Lender, substantially in the form attached as **Exhibit A-3**, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Term Loan Percentage” means, with respect to any Term Loan Lender at any time, the percentage of the total outstanding principal balance of the Term Loans represented by the outstanding principal balance of such Term Loan Lender’s Term Loans. The Term Loan Percentage of each Term Loan Lender as of the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(b).

“Term Loans” means the Initial Term Loans and, if applicable, the Incremental Term Loans and “Term Loan” means any of such Term Loans.

“Termination Event” means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount in excess of the Threshold Amount: (a) a “Reportable Event” described in Section 4043 of ERISA for which the thirty (30) day notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds

under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status with the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the partial or complete withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

“Threshold Amount” means \$10,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and outstanding Term Loans of such Lender at such time.

“Total Lease Adjusted Leverage Ratio” means, as of any date of determination the result of (a) the sum of (i) the amount of Consolidated Total Indebtedness as of such date, plus (ii) the product of (A) actual cash Rental Expense for the four (4) consecutive fiscal quarters ending on or immediately prior to such date, multiplied by (B) 8.0, to (b) Consolidated EBITDAR for the four (4) fiscal quarters then ended as of such date.

“Transaction Costs” means all transaction fees, charges, integration costs and other amounts related to the Transactions, any actual or attempted IPO and any actual or attempted Permitted Acquisitions (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith), in each case to the extent expensed (a) with respect to integration costs, prior to or within eighteen (18) months after the closing of any such Permitted Acquisition and (b) with respect to all other items of Transaction Costs, prior to or within twelve (12) months after the closing of the Credit Facility or any such Permitted Acquisition, as applicable, and which are reasonable and customary (or are otherwise approved by the Administrative Agent in its reasonable discretion). Transaction Costs shall include an aggregate of \$1,225,000 for the O’Charley’s Bonus Payment.

“Transactions” means, collectively, (a) the repayment in full of all Indebtedness outstanding under the Existing Credit Agreement, (b) the initial Extensions of Credit, (c) the payment of the Specified Dividend and (d) the payment of the Transaction Costs incurred in connection with the foregoing.

“UCC” means the Uniform Commercial Code as in effect in the State of Delaware.

“United States” means the United States of America.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 5.11(g).

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association.

“Wholly-Owned” means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by Holdings and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a Person other than Holdings and/or one or more of its Wholly-Owned Subsidiaries).

“Withholding Agent” means any Credit Party and the Administrative Agent.

SECTION 1.2 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c)

the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and

(a) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including”.

SECTION 1.3 Accounting Terms.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 8.1(a), except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Holdings and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower 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 that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed

herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein,

(a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act of 1933, the UCC, the Investment Company Act of 1940, the Interstate Commerce Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all

increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9 Guarantees. Unless otherwise specified, the amount of any Guarantee shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee.

SECTION 1.10 Covenant Compliance Generally. For purposes of determining compliance under Sections 9.1, 9.2, 9.3, 9.5 and 9.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of Holdings and its Subsidiaries delivered pursuant to Section 8.1(a). Notwithstanding the foregoing, for purposes of determining compliance with Sections 9.1, 9.2 and 9.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for the avoidance of doubt, the foregoing provisions of this Section 1.10 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

ARTICLE II REVOLVING CREDIT FACILITY

SECTION 2.1 Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans to the Borrower from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided, that (a) the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder until the Revolving Credit Maturity Date.

SECTION 2.2 Swingline Loans.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender shall make Swingline Loans to the Borrower from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date; provided, that

(a) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment.

(b) Refunding.

(i) Swingline Loans shall be refunded by the Revolving Credit Lenders on demand by the Swingline Lender. Such refundings shall be made by the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages and shall thereafter be reflected as Revolving Credit Loans of the Revolving Credit Lenders on the books and records of the Administrative Agent. Each Revolving Credit Lender shall fund its respective Revolving Credit Commitment Percentage of Revolving Credit Loans as required to repay Swingline Loans outstanding to the Swingline Lender upon demand by the Swingline Lender but in no event later than 1:00 p.m. on the next succeeding Business Day after such demand is made. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower hereby authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages (unless the amounts so recovered by or on behalf of the Borrower pertain to a Swingline Loan extended after the occurrence and during the continuance

of an Event of Default of which the Administrative Agent has received notice in the manner required pursuant to Section 11.3 and which such Event of Default has not been waived by the Required Lenders or the Lenders, as applicable).

(iii) Each Revolving Credit Lender acknowledges and agrees that its obligation to refund Swingline Loans in accordance with the terms of this Section is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Article VI. Further, each Revolving Credit Lender agrees and acknowledges that if prior to the refunding of any outstanding Swingline Loans pursuant to this Section, one of the events described in Section 10.1(i) or (j) shall have occurred, each Revolving Credit Lender will, on the date the applicable Revolving Credit Loan would have been made, purchase an undivided participating interest in the Swingline Loan to be refunded in an amount equal to its Revolving Credit Commitment Percentage of the aggregate amount of such Swingline Loan. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its participation and upon receipt thereof the Swingline Lender will deliver to such Revolving Credit Lender a certificate evidencing such participation dated the date of receipt of such funds and for such amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender's participating interest in a Swingline Loan, the Swingline Lender receives any payment on account thereof, the Swingline Lender will distribute to such Revolving Credit Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's participating interest was outstanding and funded).

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of **Exhibit B** (a "Notice of Borrowing") not later than 1:00

p.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three

(3) Business Days before each LIBOR Rate Loan, of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be,

(x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of

\$1,000,000 or a whole multiple of \$100,000 in excess thereof, (y) with respect to LIBOR Rate Loans in an aggregate principal amount of \$2,000,000 or a whole multiple of \$250,000 in excess thereof and

(z) with respect to Swingline Loans in an aggregate principal amount of \$100,000 or a whole multiple of

\$50,000 in excess thereof, (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan,

(D) in the case of a Revolving Credit Loan whether the Loans are to be LIBOR Rate Loans or Base Rate Loans, and (E) in the case of a LIBOR Rate Loan, the duration of the Interest Period applicable thereto; provided that if the Borrower wishes to request LIBOR Rate Loans having an Interest Period of twelve months in duration, such notice must be received by the Administrative Agent not later than 1:00 p.m. four (4) Business Days prior to the requested date of such borrowing, whereupon the Administrative Agent shall give prompt notice to the Revolving Credit Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. If the Borrower fails to specify a type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as Base Rate Loans. If the Borrower requests a Borrowing of LIBOR Rate Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. A Notice of

Borrowing received after 1:00 p.m. shall be deemed received on the next Business Day. The Administrative Agent

shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m. on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, the Swingline Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as **Exhibit C** (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b).

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Termination Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments. If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)).

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Revolving Credit Loans and Swingline Loans, in whole or in part, with irrevocable prior written notice to the Administrative Agent substantially in the form attached as **Exhibit D** (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, specifying the date and amount of prepayment and whether the prepayment is of LIBOR Rate Loans, Base Rate Loans, Swingline Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of \$3,000,000 or a whole multiple of \$1,000,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans), \$5,000,000

or a whole multiple of \$1,000,000 in excess thereof with respect to LIBOR Rate Loans and \$500,000 or a whole multiple of \$100,000 in excess thereof with respect to Swingline Loans. A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. Notwithstanding the foregoing, any Notice of a Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence and may be revoked by the Borrower in the event such refinancing is not consummated (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(d) Prepayment of Excess Proceeds. In the event proceeds remain after the prepayments of Term Loan Facility pursuant to Section 4.4(b), the amount of such excess proceeds shall be used on the date of the required prepayment under Section 4.4(b) to prepay the outstanding principal amount of the Revolving Credit Loans, without a corresponding reduction of the Revolving Credit Commitment, with remaining proceeds, if any, refunded to the Borrower.

(e) Limitation on Prepayment of LIBOR Rate Loans. The Borrower may not prepay any LIBOR Rate Loan on any day other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

(f) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Hedge Agreement entered into with respect to the Loans.

SECTION 2.5 Permanent Reduction of the Revolving Credit Commitment.

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least five (5) Business Days prior irrevocable written notice to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than \$3,000,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence and may be revoked by the Borrower in the event such refinancing is not consummated (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(b) Corresponding Payment. Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 10.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative

Agent for all L/C Obligations) and shall result in the termination of the Revolving Credit Commitment and the Swingline Commitment and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any LIBOR Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

ARTICLE III

LETTER OF CREDIT FACILITY

SECTION 3.1 L/C Facility.

(a) Availability. Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit in an aggregate amount not to exceed its L/C Commitment for the account of the Borrower or, subject to Section 3.10, any Subsidiary thereof, Letters of Credit may be issued on any Business Day from the Closing Date through but not including the fifth (5th) Business Day prior to the Revolving Credit Maturity Date in such form as may be approved from time to time by the applicable Issuing Lender; provided, that no Issuing Lender shall issue any Letter of Credit if, after giving effect to such issuance, (a) the L/C Obligations would exceed the L/C Sublimit or (b) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment. Each Letter of Credit shall (i) be denominated in Dollars, (ii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit (subject to automatic renewal for additional one (1) year periods pursuant to the terms of the Letter of Credit Application or other documentation acceptable to the applicable Issuing Lender), which date shall be no later than the fifth (5th) Business Day prior to the Revolving Credit Maturity Date and (iii) be subject to the ISP98 as set forth in the Letter of Credit Application or as determined by the applicable Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin

or restrain such Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which such Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect or known to such Issuing Lender as of the Closing Date and that such Issuing Lender in good faith deems material to it, or (C) the conditions set forth in Section 6.2 are not satisfied. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. As of the Closing Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Loan Documents, a Letter of Credit issued and outstanding hereunder.

(b) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that any Issuing Lender issue a Letter of Credit by delivering to such Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent’s Office) a Letter of Credit Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender or the Administrative Agent may request. Upon receipt of any Letter of Credit Application, the applicable Issuing Lender shall, process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue the Letter of Credit requested thereby (but in no event shall such Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by such Issuing Lender and the Borrower. The applicable Issuing Lender shall promptly furnish to the Borrower and the Administrative Agent a copy of such Letter of Credit and the Administrative Agent shall promptly notify each Revolving Credit Lender of the issuance and upon request by any Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender’s participation therein.

SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 5.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the applicable Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are LIBOR Rate Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the applicable Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrower shall pay directly to the applicable Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by such Issuing Lender as set forth in the Fee Letter executed by such Issuing Lender. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the applicable Issuing Lender.

(c) Other Fees, Costs, Charges and Expenses. In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse each Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by such Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it.

SECTION 3.4 L/C Participations.

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant’s own account and risk an undivided interest equal to such L/C Participant’s Revolving Credit Commitment Percentage in each

Issuing

Lender's obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit, issued by it, such Issuing Lender shall notify the Administrative Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the applicable Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent (which, in turn shall pay such Issuing Lender) the amount specified on the applicable due date. If any such amount is paid to such Issuing Lender after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of such Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to such Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

SECTION 3.5 Reimbursement Obligation of the Borrower. In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the applicable Issuing Lender on each date on which such Issuing Lender notifies the Borrower of the date and amount of a draft paid by it under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment. Unless the Borrower shall immediately notify such Issuing Lender that the Borrower intends to reimburse such Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan bearing interest at the Base Rate on the applicable repayment date in the amount of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan bearing interest at the Base Rate in such amount, the proceeds of which shall be applied to reimburse such Issuing Lender for the amount of the related drawing and such fees and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse such Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse such Issuing Lender as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrower's obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any set off, counterclaim or defense to payment which the Borrower may have or have had against the applicable Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees that the applicable Issuing Lender

and the L/C Participants shall not be responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by such Issuing Lender's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrower agrees that any action taken or omitted by any Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of bad faith, gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of such Issuing Lender or any L/C Participant to the Borrower. The responsibility of any Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit issued to it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Resignation of Issuing Lenders.

(a) Any Lender may at any time resign from its role as an Issuing Lender hereunder upon not less than thirty (30) days prior notice to the Borrower and the Administrative Agent (or such shorter period of time as may be acceptable to the Borrower and the Administrative Agent).

(b) Any resigning Issuing Lender shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its resignation as an Issuing Lender and all L/C Obligations with respect thereto (including, without limitation, the right to require the Revolving Credit Lenders to take such actions as are required under Section 3.4). Without limiting the foregoing, upon the resignation of a Lender as an Issuing Lender hereunder, the Borrower may, or at the request of such resigned Issuing Lender the Borrower shall, use commercially reasonable efforts to, arrange for one or more of the other Issuing Lenders to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such resigned Issuing Lender and outstanding at the time of such resignation, or make other arrangements satisfactory to the resigned Issuing Lender to effectively cause another Issuing Lender to assume the obligations of the resigned Issuing Lender with respect to any such Letters of Credit.

SECTION 3.9 Reporting of Letter of Credit Information and L/C Commitment. At any time that there is an Issuing Lender that is not also the financial institution acting as Administrative Agent, then (a) on the last Business Day of each calendar month, (b) on each date that a Letter of Credit is amended, terminated or otherwise expires, (c) on each date that a Letter of Credit is issued or the expiry date of a Letter of Credit is extended, and (d) upon the request of the Administrative Agent, each Issuing Lender (or, in the case of clauses (b), (c) or (d) of this Section, the applicable Issuing Lender) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including, without limitation, any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such Issuing Lender) with respect to each Letter of Credit issued by such Issuing Lender that is outstanding hereunder. In addition, each Issuing Lender shall provide notice to the Administrative Agent of its L/C Commitment, or any change thereto, promptly upon it becoming an Issuing Lender or making any change to its L/C Commitment. No failure on the part of any L/C Issuer to provide such information pursuant to this Section 3.9 shall limit the obligations of the Borrower or any Revolving Credit Lender hereunder with respect to its reimbursement and participation obligations hereunder.

Section 3.10 Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

ARTICLE IV

TERM LOAN FACILITY

SECTION 4.1 Initial Term Loan. Subject to the terms and conditions of this Agreement and the

other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Term Loan Lender severally agrees to make the Initial Term Loan to the Borrower on the Closing Date in a principal amount equal to such Lender's Term Loan Commitment as of the Closing Date.

SECTION 4.2 Procedure for Advance of Term Loan.

(a) Initial Term Loan. The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing prior to 1:00 p.m. on the Closing Date requesting that the Term Loan Lenders make the Initial Term Loan as a Base Rate Loan on such date (provided that the Borrower may request, no later than three (3) Business Days prior to the Closing Date, that the Lenders make the Initial Term Loan as a LIBOR Rate Loan if the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement). Upon receipt of such Notice of Borrowing from the Borrower,

the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 3:00 p.m. on the Closing Date, each Term Loan Lender will make available to the Administrative Agent for the account of the Borrower, at the Administrative Agent's Office in immediately available funds, the amount of such Initial Term Loan to be made by such Term Loan Lender on the Closing Date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the Initial Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing.

SECTION 4.3 Incremental Term Loans. Any Incremental Term Loans shall be borrowed pursuant to, and in accordance with Section 5.13.

SECTION 4.4 Repayment of Term Loans.

(a) Initial Term Loan. The Borrower shall repay the aggregate outstanding principal amount of the Initial Term Loan in consecutive quarterly installments on the last Business Day of each of March, June, September and December commencing December 31, 2014 as set forth below, except as the amounts of individual installments may be adjusted pursuant to Section 4.4 hereof:

FISCAL YEAR		
2014	December 31	\$1,375,000
	March 31	\$1,375,000
2015	June 30	\$1,375,000
	September 30	\$1,375,000
	December 31	\$1,375,000
	March 31	\$1,375,000
2016	June 30	\$1,375,000
	September 30	\$2,062,500
	December 31	\$2,062,500
	March 31	\$2,062,500
2017	June 30	\$2,062,500
	September 30	\$2,062,500
	December 31	\$2,062,500
	March 31	\$2,062,500
2018	June 30	\$2,062,500
	September 30	\$2,750,000
	December 31	\$2,750,000
	March 31	\$2,750,000
2019	June 30	\$2,750,000
	March 31	\$2,750,000

If not sooner paid, the Initial Term Loan shall be paid in full, together with accrued interest thereon, on the Term Loan Maturity Date.

(b) Incremental Term Loans. The Borrower shall repay the aggregate outstanding principal amount of each Incremental Term Loan (if any) as determined pursuant to, and in accordance with, Section 5.13.

SECTION 4.5 Prepayments of Term Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time, without premium or penalty, to prepay the Term Loans, in whole or in part, upon delivery to the Administrative Agent of a Notice of Prepayment not later than 1:00 p.m. (i) on the same Business Day as each Base Rate Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, specifying the date and amount of prepayment, whether the prepayment is of LIBOR Rate Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and whether the prepayment is of the Initial Term Loan, an Incremental Term Loan or a combination thereof, and if a combination thereof, the amount allocable to each. Each optional prepayment of the Term Loans hereunder shall be in an aggregate principal amount of at least \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and shall be applied to the outstanding principal installments of the Initial Term Loan and, if applicable, any Incremental Term Loans as the Borrower may elect. Each prepayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. A Notice of Prepayment received after 1:00 p.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the applicable Term Loan Lenders of each Notice of Prepayment. Notwithstanding the foregoing, any Notice of Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any other incurrence of Indebtedness may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence and may be revoked by the Borrower in the event such refinancing is not consummated; provided that the delay or failure of such contingency shall not relieve the Borrower from its obligations, if any, in respect thereof under Section 5.9.

(b) Mandatory Prepayments.

(i) Debt Issuances. The Borrower shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (v) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Debt Issuance not otherwise permitted pursuant to Section 9.1. Such prepayment shall be made within five (5) Business Days after the date of receipt of the Net Cash Proceeds of any such Debt Issuance.

(ii) Asset Dispositions. The Borrower shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (v) below in amounts equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Asset Disposition permitted pursuant to, and in accordance with, clauses (g) and (n) of Section 9.5 to the extent that the aggregate amount of such Net Cash Proceeds exceed \$5,000,000 during any Fiscal Year. Such prepayments shall be made within five (5) Business Days after the date of receipt of the Net Cash Proceeds of any such Asset Disposition by such Credit Party or any of its Subsidiaries; provided that, so long as no Default or Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(ii) to the extent that such Net Cash Proceeds are reinvested in assets used or useful in the business of Holdings and its Subsidiaries within twelve (12) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary or committed to be reinvested pursuant to a legally binding agreement in assets used or useful in the business of Holdings and its Subsidiaries within twelve (12) months after receipt of such Net Cash Proceeds and are thereafter actually reinvested in assets used or useful in the business of Holdings and its Subsidiaries within eighteen (18) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary; provided further that any portion of such Net Cash Proceeds not committed to be reinvested pursuant to a legally binding agreement within such twelve (12) month period or actually reinvested within such eighteen (18)

month period shall be prepaid in accordance with this Section 4.4(b)(ii), on or before the last day of such eighteen (18) month period.

(iii) Insurance and Condemnation Events. The Borrower shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (v) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Insurance and Condemnation Event to the extent that the aggregate amount of such Net Cash Proceeds exceed \$5,000,000 during any Fiscal Year. Such prepayments shall be made within five (5) Business Days after the date of receipt of Net Cash Proceeds of any such Insurance and Condemnation Event by such Credit Party or such Subsidiary; provided that, so long as no Default or Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(iii) to the extent that such Net Cash Proceeds are reinvested in assets used or useful in the business of Holdings within twelve (12) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary or are committed to be reinvested pursuant to a legally binding agreement in assets used or useful in the business of Holdings and its Subsidiaries within twelve (12) months after receipt of such Net Cash Proceeds and are thereafter actually reinvested in assets used or useful in the business of Holdings within eighteen (18) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary; provided further that any portion of the Net Cash Proceeds not committed to be reinvested pursuant to a legally binding agreement within such twelve (12) month period or actually reinvested within such eighteen (18) month period shall be prepaid in accordance with this Section 4.4(b)(iii), on or before the last day of such eighteen (18) month period.

(iv) Excess Cash Flow. After the end of each Fiscal Year (commencing with the Fiscal Year ending on or about December 31, 2015), within five (5) Business Days after the earlier to occur of (x) the delivery of the financial statements and related Officer's Compliance Certificate for such Fiscal Year and (y) the date on which the financial statements and the related Officer's Compliance Certificate for such fiscal year are required to be delivered pursuant to Section 8.1(a) and Section 8.2(a), the Borrower shall make mandatory principal prepayments of the Loans in the manner set forth in clause (v) below in an amount equal to (A) if the Total Lease Adjusted Leverage Ratio is greater than 4.50 to 1.00 as of the end of such Fiscal Year, (1) fifty percent (50%) of Excess Cash Flow, if any, for such Fiscal Year, (B) if the Total Lease Adjusted Leverage Ratio is greater than 4.00 to 1.00 but less than or equal to 4.50 to 1.00, twenty five percent (25%) of Excess Cash Flow, if any, for such Fiscal Year and (C) if the Total Lease Adjusted Leverage Ratio is less than or equal to 4.00 to 1.00, no Excess Cash Flow prepayment shall be required; provided that amounts payable under clauses (A) and (B) above shall be reduced by voluntary principal prepayments of the Term Loan and voluntary prepayments or repayments of Revolving Credit Loans to the extent that the Revolving Credit Commitment is permanently reduced by an equal amount at the time of such payment or prepayment, in each case, made in such Fiscal Year.

(v) Notice; Manner of Payment. Upon the occurrence of any event triggering the prepayment requirement under clauses (i) through and including (iv) above, the Borrower shall promptly deliver a Notice of Prepayment to the Administrative Agent and upon receipt of such notice, the Administrative Agent shall promptly so notify the Lenders. Each

prepayment of the Loans under this Section shall be applied ratably between the Initial Term Loans and any Incremental Term Loans as follows: (A) first to the next four (4) scheduled quarterly principal installments of the Initial Term Loans and/or Incremental Term Loans, as applicable, in direct order of maturity, (B) second, to reduce on a pro rata basis the remaining scheduled principal installments of the Initial Term Loans and as determined by the Borrower and the applicable Incremental Lenders to reduce the remaining scheduled principal installments of any Incremental Term Loans and (C) third, to the extent of any excess, to repay the Revolving Credit Loans pursuant to Section 2.4(d), without a corresponding reduction in the Revolving Credit Commitment and (D) fourth, to Cash Collateralize any L/C Obligations then outstanding.

(vi) No Reborrowings. Amounts prepaid under the Term Loan pursuant to this Section may not be reborrowed. Each prepayment shall be accompanied by any amount required to be paid pursuant to Section 5.9.

ARTICLE V

GENERAL LOAN PROVISIONS

SECTION 5.1 Interest.

(a) Interest Rate Options. Subject to the provisions of this Section, at the election of the Borrower, (i) Revolving Credit Loans and the Term Loans shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) the LIBOR Rate plus the Applicable Margin (provided that the LIBOR Rate shall not be available until three (3) Business Days (or four (4) Business Days with respect to a LIBOR Rate based on a twelve month Interest Period) after the Closing Date unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement) and (ii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 5.2.

(b) Default Rate. Subject to Section 10.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 10.1(a),(b), (i) or (j), or (ii) at the election of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request LIBOR Rate Loans, Swingline Loans or Letters of Credit, (B) all outstanding LIBOR Rate Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to LIBOR Rate Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(c) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing September 30, 2014; and interest on each LIBOR Rate Loan shall be due and payable on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year).

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans. Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to

(a) convert at any time all or any portion of any outstanding Base Rate Loans (other than Swingline Loans) in a principal amount equal to \$2,000,000 or any whole multiple of \$250,000 in excess thereof into one or more LIBOR Rate Loans and (b) upon the expiration of any Interest Period, (i) convert all or any part of its outstanding LIBOR Rate Loans in a principal amount equal to \$1,000,000 or a whole multiple of \$100,000 in excess thereof into Base Rate Loans (other than Swingline Loans) or (ii) continue such LIBOR Rate Loans as LIBOR Rate Loans. Whenever the Borrower desires to convert or continue Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as **Exhibit E** (a "Notice of Conversion/Continuation") not later than 1:00 p.m. three (3) Business Days before the day on which a proposed conversion or continuation of such Loan is to be effective specifying (A) the Loans to be converted or continued, and, in the case of any LIBOR Rate Loan to be converted or continued, the last day of the Interest Period therefor, (B) the effective date of such conversion or continuation (which shall be a Business Day), (C) the principal amount of such Loans to be converted or continued, and (D) the Interest Period to be applicable to such converted or continued LIBOR Rate Loan; provided that if the Borrower wishes to request LIBOR Rate Loans having an Interest Period of twelve months in duration, such notice must be received by the Administrative Agent not later than 1:00 p.m. four (4) Business Days prior to the requested date of such conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any LIBOR Rate Loan, then the applicable LIBOR Rate Loan shall be converted to a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loan. If the Borrower requests a conversion to, or continuation of, LIBOR Rate Loans, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a LIBOR Rate Loan (but a Revolving Credit Loan bearing interest at the LIBOR Rate or the Base Rate may be used to repay a Swingline Loan). The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion / Continuation. Notwithstanding the foregoing, Loans made on the Closing Date or any of the three (3) Business Days following the Closing Date, may only consist of Base Rate Loans unless the Borrower delivers a funding indemnity letter, substantially in the form of Exhibit I or otherwise reasonably acceptable to the Administrative Agent not less than three (3) Business Days prior to the Closing Date. LIBOR Rate Loans shall be made by each Revolving Lender at its LIBOR Lending Office and Base Rate Loans at its domestic Lending Office.

SECTION 5.3 Fees.

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 5.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the "Commitment Fee") at a rate per annum equal to the Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing September 30, 2014 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.

(b) Other Fees. The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in their Fee Letter. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

SECTION 5.4 Manner of Payment. Each payment by the Borrower on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made not later than 3:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in immediately available funds and shall be made without any set off, counterclaim or deduction whatsoever. Any payment received after such time but before 4:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 10.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 4:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth

herein its Commitment Percentage in respect of the relevant Credit Facility (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of any Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of such Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 5.9, 5.10, 5.11 or 12.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 5.15(a)(ii).

SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and each Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or such Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the applicable Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or such Issuing Lender to the Borrower and its Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or any Issuing Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note, Term Loan Note and/or Swingline Note, as applicable, which shall evidence such Lender's Revolving Credit Loans, Term Loans and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.9, 5.10, 5.11 or 12.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and

(a) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to Holdings or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

SECTION 5.7 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Sections 2.3(b) and 4.2 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders, any Issuing Lender or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, any Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, any Issuing Lender or the Swingline Lender, as the case maybe, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans and issue or participate in Letters of Credit are several and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

SECTION 5.8 Changed Circumstances.

(a) Circumstances Affecting LIBOR Rate Availability. In connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed LIBOR Rate Loan or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make LIBOR Rate Loans and the right of the Borrower to convert any Loan to or continue any Loan as a LIBOR Rate Loan shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such LIBOR Rate Loan

together with accrued interest thereon (subject to Section 5.1(d)), on the last day of the then current Interest Period applicable to such LIBOR Rate Loan; or (B) convert the then outstanding principal amount of each such LIBOR Rate Loan to a Base Rate Loan as of the last day of such Interest Period.

(b) Laws Affecting LIBOR Rate Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any LIBOR Rate Loan, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist,

(i) the obligations of the Lenders to make LIBOR Rate Loans, and the right of the Borrower to convert any Loan to a LIBOR Rate Loan or continue any Loan as a LIBOR Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans and (ii) if any of the Lenders may not lawfully continue to maintain a LIBOR Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan for the remainder of such Interest Period.

SECTION 5.9 Indemnity. The Borrower hereby indemnifies each of the Lenders against any loss or expense (including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain a LIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained) which may arise or be attributable to each Lender's obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan (a) as a consequence of any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a LIBOR Rate Loan, (b) due to any failure of the Borrower to borrow, continue or convert on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation or (c) due to any payment, prepayment or conversion of any LIBOR Rate Loan on a date other than the last day of the Interest Period therefor. The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Commitment Percentage of the LIBOR Rate Loans in the London interbank market and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error.

SECTION 5.10 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or any Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, any Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, such Issuing Lender or other Recipient, the Borrower shall promptly pay to any such Lender, such Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law affecting such Lender or such Issuing Lender or any Lending Office of such Lender or such Lender's or such Issuing Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy), then from time to time upon written request of such Lender or such Issuing Lender the Borrower shall promptly pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender, or an Issuing Lender or such other Recipient setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or an Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or such Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 5.11 Taxes.

(a) Defined Terms. For purposes of this Section 5.11, the term "Lender" includes any Issuing Lender and the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within twenty (20) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability, in reasonable detail, delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the

Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Intentionally Omitted.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.11, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.11(g)(i)(A), (i)(B) and (i)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) Any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal

withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of *Exhibit H-1* to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate

substantially in the form of *Exhibit H-2* or *Exhibit H-3*, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of *Exhibit H-4* on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund (or a credit for overpayment of Taxes in lieu of a refund) of any Taxes as to which it has been indemnified pursuant to this Section 5.11 (including by the payment of additional amounts pursuant to this Section 5.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Indemnification of the Administrative Agent. Each Lender and each Issuing Lender shall severally indemnify the Administrative Agent within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes

the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (i). The agreements in paragraph (i) shall survive the resignation and/or replacement of the Administrative Agent.

(j) Survival. Each party's obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 5.12 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, 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. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 5.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.10 or Section 5.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 5.13 Incremental Loans.

(a) At any time, the Borrower may by written notice to the Administrative Agent elect to request the establishment of:

(i) one or more incremental term loan commitments (any such incremental term loan commitment, an "Incremental Term Loan Commitment") to make one or more additional term loans (any such additional term loan,

an “Incremental Term Loan”); or

(ii) one or more increases in the Revolving Credit Commitments (any such increase, an “Incremental Revolving Credit Commitment” and, together with the Incremental Term Loan Commitments, the “Incremental Loan Commitments”) to make revolving credit loans under the Revolving Credit Facility (any such increase, an “Incremental Revolving Credit Increase” and, together with the Incremental Term Loans, the “Incremental Loans”);

provided that (1) after giving effect to any such Incremental Loans, the aggregate Revolving Commitments plus the aggregate principal amount of all Initial Term Loans and Incremental Term Loans outstanding as of such date shall not (as of any date of incurrence thereof) exceed \$250,000,000 and

(1) the total aggregate amount for each Incremental Loan Commitment (and the Incremental Loans made thereunder) shall not be less than a minimum principal amount of \$10,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (1). Each such notice shall specify the date (each, an “Increased Amount Date”) on which the Borrower proposes that any Incremental Loan Commitment shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to Administrative Agent. The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Incremental Loan Commitment (any such Person, an “Incremental Lender”). Any proposed Incremental Lender offered or approached to provide all or a portion of any Incremental Loan Commitment may elect or decline, in its sole discretion, to provide such Incremental Loan Commitment. Any Incremental Loan Commitment shall become effective as of such Increased Amount Date; provided that:

(A) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to (1) any Incremental Loan Commitment, (2) the making of any Incremental Loans pursuant thereto and (3) any Permitted Acquisition consummated in connection therewith;

(B) the Administrative Agent and the Lenders shall have received from the Borrower an Officer’s Compliance Certificate demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, that the Borrower is in compliance with the financial covenants set forth in Section 9.14 based on the financial statements most recently delivered pursuant to Section 8.1(a) or 8.1(b), as applicable, both before and after giving effect (on a Pro Forma Basis) to (x) any Incremental Loan Commitment, (y) the making of any Incremental Loans pursuant thereto (with any Incremental Loan Commitment being deemed to be fully funded) and (z) any Permitted Acquisition consummated in connection therewith;

(C) each of the representations and warranties contained in Article VII shall be true and correct in all material respects, except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true and correct in all respects, on such

Increased Amount Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date);

(D) the proceeds of any Incremental Loans shall be used for general corporate purposes of the Borrower and its Subsidiaries (including Permitted Acquisitions);

(E) each Incremental Loan Commitment (and the Incremental Loans made thereunder) shall constitute Obligations of the Borrower and shall be secured and guaranteed with the other Extensions of Credit on a pari passu basis;

(F) (1) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Lender Joinder Agreement):

(a) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Administrative Agent, the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a shorter weighted average life to maturity than the remaining weighted average life to maturity of the Initial Term Loan or a maturity date earlier than the Term Loan Maturity Date;

(b) the Applicable Margin and pricing grid, if applicable, for such Incremental Term Loan shall be determined by the Administrative Agent, the applicable Incremental Lenders and the Borrower on the applicable Increased Amount Date; provided that if the total yield in respect of any Incremental Term Loan exceeds the total yield for the Initial Term Loan by more than 0.50%, then the Applicable Margin for the Initial Term Loan shall be increased so that the total yield in respect of such Initial Term Loan is equal to the total yield for the Incremental Term Loan *minus* 0.50%; provided further in determining the total yield(s) applicable to each Incremental Term Loan and the total yield(s) for the Initial Term Loan, (AA) original issue discount (“OID”) or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders under such Incremental Term Loan or the Initial Term Loan in the initial primary syndication thereof shall be included (with OID being equated to interest based on assumed four-year life to maturity) and (BB) customary arrangement or commitment fees payable to any Lead Arranger (or its affiliates) in connection with the Initial Term Loan or to one or more arrangers (or their affiliates) of any Incremental Term Loan shall be excluded (it being understood that the effects of any and all interest rate floors shall be included in determining total yield(s) under this provision); and

(c) except as provided above, all other terms and conditions applicable to any Incremental Term Loan, to the extent not consistent with the terms and conditions applicable to the Initial Term Loan, shall be reasonably satisfactory to the Administrative Agent and the Borrower;

(2) in the case of each Incremental Revolving Credit Increase (the terms of which shall be set forth in the relevant Lender Joinder Agreement):

(a) such Incremental Revolving Credit Increase shall mature on the Revolving Credit Maturity Date, shall bear interest and be entitled to fees, in each case at a rate determined by the Administrative Agent, the applicable Incremental Lenders and the Borrower, and shall be subject to the same terms and conditions as the Revolving Credit Loans; interest rate margins and/or unused fees with respect to any Incremental Revolving Credit Increase may be higher than the interest rate margins and/or unused fees applicable to the then existing Revolving Credit Commitments; provided that if the interest rate margins and/or unused fees, as applicable, in respect of any Incremental Revolving Credit Increase exceed the interest rate margins and/or unused fees, as applicable, for the Initial Revolving Credit Facility, then the interest rate margins and/or unused fees, as applicable, for the Initial Revolving Credit Facility shall be increased so that the interest rate margins and/or unused fees, as applicable, are equal to the interest rate margins and/or unused fees for such Incremental Revolving Credit Increase;

(b) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent on the applicable Increased Amount Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 5.9 in connection with such reallocation as if such reallocation were a repayment); and

(c) except as provided above, all of the other terms and conditions applicable to such Incremental Revolving Credit Increase shall, except to the extent otherwise provided in this Section 5.13, be identical to the terms and conditions applicable to the Revolving Credit Facility;

(G) (1) any Incremental Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Term Loan Lenders under the Term Loan Facility and each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the Initial Term Loan (such prepayments to be shared pro rata on the basis of the original aggregate funded amount thereof among the Initial Term Loan and the Incremental Term Loans); and

(2) any Incremental Lender with an Incremental Revolving Credit Increase shall be entitled to the same voting rights as the existing Revolving Credit Lenders under the Revolving Credit Facility and any Extensions of Credit made in connection with each Incremental Revolving Credit Increase shall receive proceeds of prepayments on the same basis as the other Revolving Credit Loans made hereunder;

(H) such Incremental Loan Commitments shall be effected pursuant to one or more Lender Joinder Agreements executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental

Lenders (which Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to

this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 5.13); and

(I) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Credit Party authorizing such Incremental Loan and/or Incremental Term Loan Commitment) reasonably requested by Administrative Agent in connection with any such transaction.

(b) (i) The Incremental Term Loans shall be deemed to be Term Loans; provided that such Incremental Term Loan shall be designated as a separate tranche of Term Loans for all purposes of this Agreement.

(ii) The Incremental Lenders shall be included in any determination of the Required Lenders and, unless otherwise agreed, the Incremental Lenders will not constitute a separate voting class for any purposes under this Agreement.

(c) (i) On any Increased Amount Date on which any Incremental Term Loan Commitment becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Term Loan Commitment shall make, or be obligated to make, an Incremental Term Loan to the Borrower in an amount equal to its Incremental Term Loan Commitment and shall become a Term Loan Lender hereunder with respect to such Incremental Term Loan Commitment and the Incremental Term Loan made pursuant thereto.

(ii) On any Increased Amount Date on which any Incremental Revolving Credit Increase becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Revolving Credit Commitment shall become a Revolving Credit Lender hereunder with respect to such Incremental Revolving Credit Commitment.

SECTION 5.14 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, any Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of such Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to Section 5.15(a)(iv)) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of each Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, each Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 5.14 or Section 5.15 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of any Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 5.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lenders and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 5.15, the Person providing Cash Collateral, the Issuing Lenders and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to

the Loan Documents.

SECTION 5.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 12.2.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lenders or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 5.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Swingline Loans issued under this Agreement, in accordance with Section 5.14; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a

result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 5.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 5.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(C) With respect to any Commitment Fee or letter of credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each applicable Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in

Section 6.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lenders and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 5.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE VI

CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Term Loan Note in favor of each Term Loan Lender requesting a Term Loan Note, a Swingline Note in favor of the Swingline Lender (in each case, if requested thereby), the Security Documents, the Guaranty Agreement and the Management Fee Subordination Agreement, together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer's Certificate. A certificate from a Responsible Officer of Holdings and the Borrower to the effect that

(A) all representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true and correct in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true and correct in all respects); (B) none of the Credit Parties is in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) since December 29, 2013, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and
(E) each of the Credit Parties, as applicable, has satisfied each of the conditions set forth in Section 6.1 and Section 6.2.

(ii) Certificate of Secretary of each Credit Party. A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Credit Party and all amendments thereto, certified by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, (B) the bylaws or other governing document of such Credit Party as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors (or other governing body) of such Credit Party authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 6.1(b)(iii).

(iii) Certificates of Good Standing. Certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable.

(iv) Opinions of Counsel. Opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Administrative Agent shall reasonably request (which such opinions shall expressly permit reliance by permitted successors and assigns of the Administrative Agent and the Lenders).

(c) Personal Property Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of the Administrative Agent, on behalf of the Secured Parties, in the Collateral and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Permitted Liens and Liens to be terminated in connection with the repayment of existing Indebtedness contemplated under Section 6.1(g)(iii)).

(ii) Pledged Collateral. The Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Credit Party, indicating among other things that the assets of each such Credit Party are free and clear of any Lien (except for Permitted Liens) and Liens to be terminated in connection with the repayment of existing Indebtedness contemplated under Section 6.1(g)(iii).

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, evidence of property, business interruption and liability insurance covering each Credit Party, evidence of payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender's loss payee (and mortgagee, as applicable) on all policies for property hazard insurance and as additional insured on all policies for liability insurance), and if requested by the Administrative Agent, copies of such insurance policies.

(v) Other Collateral Documentation. The Administrative Agent shall have received any documents reasonably requested thereby or as required by the terms of the Security Documents to evidence its security interest in the Collateral (including, without limitation, any landlord waivers or collateral access agreements, filings evidencing a security interest in any intellectual property included in the Collateral, notices and assignments of claims required under Applicable Laws, bailee or warehouseman letters or filings with the FCC or any other applicable Governmental Authority).

(d) Intentionally Omitted.

(e) Consents; Defaults.

(i) Governmental and Third Party Approvals. The Credit Parties shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Loan Documents and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on any of the Credit Parties or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could reasonably be expected to have such effect.

(ii) No Injunction, Etc. No action, proceeding or investigation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby.

(f) Financial Matters.

(i) Financial Statements. The Administrative Agent shall have received (A) the audited Consolidated balance sheet of Holdings and its Subsidiaries as of December 29, 2013, December 30, 2012, March 15, 2012 and March 17, 2011 and the related audited statements of income and retained earnings and cash flows for the respective Fiscal Years then ended and (B) unaudited Consolidated balance sheet of Holdings and its Subsidiaries as of June 15, 2014 and related unaudited interim statements of income and retained earnings.

(ii) Pro Forma Financial Statements. The Administrative Agent shall have received pro forma consolidated financial statements for Holdings and its Subsidiaries for the four-quarter period most recently ended prior to the Closing Date for which financial statements are available calculated on a Pro Forma Basis after giving effect to the Transactions and a pro forma balance sheet of Holdings and its Subsidiaries prepared from the financial statements for the calendar month ended immediately prior to the Closing Date giving pro forma effect to the Transactions.

(iii) Financial Projections. The Administrative Agent shall have received pro forma Consolidated financial statements for Holdings and its Subsidiaries, and projections prepared by management of Holdings, of balance sheets, income statements and cash flow statements on an annual basis for each year during the term of the Credit Facility, which shall not be materially inconsistent with any financial information or projections previously delivered to the Administrative Agent in connection with the negotiation of the terms of the Loans and this Agreement.

(iv) Financial Condition/Solvency Certificate. Holdings shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of Holdings, that

(A) after giving effect to the Transactions, the Credit Parties and their Subsidiaries thereof, on a Consolidated basis, are Solvent, (B) attached thereto are calculations evidencing compliance on a Pro Forma Basis after giving effect to the Transactions with the covenants contained in Section 9.14, and (C) the financial projections previously delivered to the Administrative Agent represent the good faith estimates (utilizing reasonable assumptions) of the financial condition and operations of Holdings and its Subsidiaries.

(v) Payment at Closing. The Borrower shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent, the Arranger and the Lenders the fees set forth or referenced in Section 5.3 and any other accrued and unpaid fees or commissions due hereunder, (B) all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent accrued and unpaid prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings

(provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents.

(g) Miscellaneous.

(i) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(ii) Intentionally Omitted.

(iii) Existing Indebtedness. All existing Indebtedness of Holdings and its Subsidiaries (excluding Indebtedness permitted pursuant to Section 9.1) shall be repaid in full, all commitments (if any) in respect thereof shall have been terminated and all guarantees therefor and security therefor shall be released, and the Administrative Agent shall have received pay-off letters in form and substance satisfactory to it evidencing such repayment, termination and release.

(i) PATRIOT Act, etc. Holdings, the Borrower and each of the Subsidiary Guarantors shall have provided to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent in order to comply with requirements of the PATRIOT Act, applicable "know your customer" and anti-money laundering rules and regulations.

(ii) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the Transactions.

Without limiting the generality of the provisions of the last paragraph of Section 11.3, for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 6.2 Conditions to All Extensions of Credit. The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit), convert or continue any Loan and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, continuation, conversion, issuance or extension date:

(a) Continuation of Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent shall have received a Notice of Borrowing or Letter of Credit Application, as applicable, from the Borrower in accordance with Section 2.3(a), Section 3.2, or Section 4.2, as applicable.

(d) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender,

(i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Credit Parties hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Organization; Power; Qualification. Each Credit Party and each Subsidiary thereof (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own its Properties and to carry on its business as now being and hereafter proposed to be conducted and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except in jurisdictions where the failure to be so qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect. The jurisdictions in which each Credit Party and each Subsidiary thereof are organized as of the Closing Date are described on Schedule 1 to the Disclosure Letter.

SECTION 7.2 Ownership. Each Subsidiary of each Credit Party as of the Closing Date is listed on Schedule 2 to the Disclosure Letter. As of the Closing Date, the capitalization of each Credit Party (other than Holdings) and its Subsidiaries consists of the number of shares or units, authorized, issued and outstanding, of such classes and series, with or without par value, described on Schedule 2 to the Disclosure Letter. All outstanding shares of such Credit Parties and Subsidiaries have been duly authorized and validly issued and are fully paid and nonassessable and not subject to any preemptive or similar rights, except as described in Schedule 2 to the Disclosure Letter. As of the Closing Date, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever, which are convertible into, exchangeable for or otherwise provide for or require the issuance of Equity Interests of any Credit Party or any Subsidiary thereof, except as described on Schedule 2 to the Disclosure Letter.

SECTION 7.3 Authorization; Enforceability. Each Credit Party and each Subsidiary thereof has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents have been duly executed and delivered by the duly authorized officers of each Credit Party and each Subsidiary thereof that is a party thereto, and each such document constitutes the legal, valid and binding obligation of each Credit Party and each Subsidiary thereof that is a party thereto, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

SECTION 7.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc. The execution, delivery and performance by each Credit Party and each Subsidiary thereof of the Loan Documents to which each such Person is a party, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to any Credit Party or any Subsidiary thereof where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of any Credit Party or any Subsidiary thereof, (c) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, which breach or default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority. No consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement other than (i) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect,

(ii) consents or filings under the UCC, (iii) filings with the United States Copyright Office and/or the United States Patent

and Trademark Office and (iv) Mortgage filings with the applicable county recording office or register of deeds.

SECTION 7.5 Compliance with Law; Governmental Approvals. Each Credit Party and each Subsidiary thereof (a) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to the knowledge of any Responsible Officer, threatened attack by direct or collateral proceeding, (b) is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties and (c) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law except in each case (a), (b) or (c) where the failure to have, comply or file could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.6 Tax Returns and Payments. Each Credit Party and each Subsidiary thereof has duly filed or caused to be filed all federal, state, local and other tax returns required by Applicable Law to be filed, and has paid, or made adequate provision for the payment of, all federal, state, local and other taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party). Such returns accurately reflect in all material respects all liability for taxes of any Credit Party or any Subsidiary thereof for the periods covered thereby. As of the Closing Date, except as set forth on Schedule 3 to the Disclosure Letter, there is no ongoing audit or examination or, to the knowledge of any Responsible Officer, other investigation by any Governmental Authority of the tax liability of any Credit Party or any Subsidiary thereof. No Governmental Authority has asserted any Lien or other claim against any Credit Party or any Subsidiary thereof with respect to unpaid taxes which has not been discharged or resolved (other than (a) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party and (b) Permitted Liens). The charges, accruals and reserves on the books of each Credit Party and each Subsidiary thereof in respect of federal, state, local and other taxes for all Fiscal Years and portions thereof since the organization of any Credit Party or any Subsidiary thereof are in the judgment of Holdings and the Borrower adequate, and the Borrower does not anticipate any additional taxes or assessments for any of such years.

SECTION 7.7 Intellectual Property Matters. Each Credit Party and each Subsidiary thereof owns or possesses rights to use all material franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business. To the knowledge of any Responsible Officer, no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and no Credit Party nor any Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights as a result of its business operations.

SECTION 7.8 Environmental Matters. Except to the extent that no Material Adverse Effect could reasonably be expected to result therefrom:

(a) The properties owned, leased or operated by each Credit Party and each Subsidiary thereof now or in the past do not contain, and to their knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which constitute or constituted a violation of applicable Environmental Laws;

(b) Each Credit Party and each Subsidiary thereof and such properties and all operations conducted in connection therewith are in compliance, and have been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about such properties or such operations which could interfere with the continued operation of such properties or impair the fair saleable value thereof;

(c) No Credit Party nor any Subsidiary thereof has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws that, if adversely determined, could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, nor does any Responsible Officer of any Credit Party or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened;

(d) Hazardous Materials have not been transported or disposed of to or from the properties owned, leased or operated by any Credit Party or any Subsidiary thereof in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, Environmental Laws, nor have any Hazardous Materials been generated, treated,

stored or disposed of at, on or under any of such properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Laws;

(e) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of any Responsible Officer, threatened, under any Environmental Law to which any Credit Party or any Subsidiary thereof is or will be named as a potentially responsible party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any applicable Environmental Law with respect to any Credit Party, any Subsidiary thereof, with respect to any real property owned, leased or operated by any Credit Party or any Subsidiary thereof or operations conducted in connection therewith that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and

(f) There has been no release, or to the knowledge of any Responsible Officer of any Credit Party or any Subsidiary thereof, threat of release, of Hazardous Materials at or from properties owned, leased or operated by any Credit Party or any Subsidiary, now or in the past, in violation of or in amounts or in a manner that could give rise to liability under applicable Environmental Laws that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 7.9 Employee Benefit Matters.

(a) As of the Closing Date, no Credit Party nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified on Schedule 4 to the Disclosure Letter;

(b) Each Credit Party and each ERISA Affiliate is in compliance with all applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired. No liability has been incurred by any Credit Party or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not reasonably be expected to have a Material Adverse Effect;

(c) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan, nor has any Credit Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan on or prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, in each case where such event could reasonably be expected to have a Material Adverse Effect, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(d) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Credit Party nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (i) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(e) No Termination Event has occurred or is reasonably expected to occur;

(f) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to the knowledge of any Responsible Officer, threatened concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Credit Party or any ERISA Affiliate, (ii) any Pension Plan or (iii) any Multiemployer Plan.

(g) No Credit Party nor any Subsidiary thereof is a party to any contract, agreement or arrangement that could, solely as a result of the delivery of this Agreement or the consummation of transactions contemplated hereby, result in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code.

SECTION 7.10 Margin Stock. No Credit Party nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors. Following the application of the proceeds of each Extension of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of Holdings and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 9.2 or Section 9.5 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness in excess of the Threshold Amount will be “margin stock”.

SECTION 7.11 Government Regulation. No Credit Party nor any Subsidiary thereof is an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act of 1940) and no Credit Party nor any Subsidiary thereof is, or after giving effect to any Extension of Credit will be, subject to regulation under the Interstate Commerce Act, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated hereby.

SECTION 7.12 Material Contracts. Schedule 5 to the Disclosure Letter sets forth a complete and accurate list of all Material Contracts of each Credit Party and each Subsidiary thereof in effect as of the Closing Date. Other than as set forth in Schedule 5 to the Disclosure Letter, as of the Closing Date, each such Material Contract is, and after giving effect to the consummation of the transactions contemplated by the Loan Documents will be, in full force and effect in accordance with the terms thereof. To the extent requested by the Administrative Agent, each Credit Party and each Subsidiary thereof has delivered to the Administrative Agent a true and complete copy of each Material Contract listed on Schedule 5 to the Disclosure Letter. As of the Closing Date, no Credit Party nor any Subsidiary thereof (nor, to the knowledge of any Responsible Officer, any other party thereto) is in breach of or in default (beyond any applicable grace or notice periods) under any Material Contract in any material respect.

SECTION 7.13 Employee Relations. As of the Closing Date, no Credit Party or any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 6 to the Disclosure Letter. No Responsible Officer knows of any pending, threatened or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 7.14 Burdensome Provisions. No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Equity Interests to the Borrower or any Subsidiary or to transfer any of its assets or properties to the Borrower or any other Subsidiary in each case other than existing under or by reason of (i) the Loan Documents, (ii) Applicable Law or (iii) with respect to the sale of any assets or of the equity of any Credit Party or its Subsidiary otherwise permitted under this Agreement, by reason of the sale agreement governing the conduct of the respective parties to such sale prior to the closing thereof (so long as the restrictions are limited to the assets or equity subject to such sale).

SECTION 7.15 Financial Statements. The audited and unaudited financial statements delivered pursuant to Section 6.1(f)(i) are complete and correct and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of Holdings and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements and the absence of footnotes from unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. Such financial statements show all material indebtedness and other material liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof (but do not reflect the Holdings JAX Guaranty Obligations), including material liabilities for taxes, material commitments, and Indebtedness, in each case, to the extent required to be disclosed under GAAP.

SECTION 7.16 No Material Adverse Change. Since December 29, 2013, there has been no material adverse change in the properties, business, operations, or financial condition of Holdings and its Subsidiaries and since such date, no event has occurred or condition arisen, either individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

SECTION 7.17 Solvency. The Credit Parties, on a Consolidated basis, are Solvent.

SECTION 7.18 Title to Properties. As of the Closing Date, the real property listed on Schedule 7 to the Disclosure Letter constitutes all of the real property that is owned by any Credit Party or any of its Subsidiaries. Each Credit Party and each Subsidiary thereof has such title to the real property owned by it, and such occupancy rights to the real property leased by it as is necessary or desirable to the conduct of its business and valid and legal title to all of its personal property and assets, except those which have been disposed of by the Credit Parties and their Subsidiaries which dispositions have been in the ordinary course of business or as otherwise expressly permitted hereunder.

SECTION 7.19 Litigation. There are no actions, suits or proceedings pending nor, to the knowledge of any Responsible Officer, threatened against or in any other way relating adversely to or affecting any Credit Party or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect. All material actions, suits or proceedings pending, to the knowledge of any Responsible Officer, threatened against or in any other way relating adversely to or affecting any Credit Party or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority are set forth on Schedule 8 to the Disclosure Letter.

SECTION 7.20 Anti-Terrorism; Anti-Money Laundering. No Credit Party nor any of its Subsidiaries or, to the knowledge of any Responsible Officer, any of their Related Parties (i) is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States (50 U.S.C. App. §§ 1 et seq.), (ii) is in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto or (C) the PATRIOT Act (collectively, the "Anti-Terrorism Laws") or (iii) is a Sanctioned Person. No part of the proceeds of any Extension of Credit hereunder will be unlawfully used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, the Administrative Agent, any Issuing Lender or the Swingline Lender) of any Anti-Terrorism Laws.

SECTION 7.21 Absence of Defaults. No event has occurred or is continuing (a) which constitutes a Default or an Event of Default, or (b) which constitutes a default or event of default by any Credit Party or any Subsidiary thereof under (i) any Material Contract (after the expiration of any applicable grace or notice periods) or (ii) any judgment, decree or order to which any Credit Party or any Subsidiary thereof is a party or by which any Credit Party or any Subsidiary thereof or any of their respective properties may be bound or which would require any Credit Party or any Subsidiary thereof to make any payment thereunder prior to the scheduled maturity date therefor that, in any case under this clause (ii), could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 7.22 Senior Indebtedness Status. The Obligations of each Credit Party and each Subsidiary thereof under this Agreement and each of the other Loan Documents ranks and shall continue to rank at least senior in priority of payment to all Subordinated Indebtedness and all senior unsecured Indebtedness of each such Person and is designated as "Senior Indebtedness" under all instruments and documents, now or in the future, relating to all Subordinated Indebtedness and all senior unsecured Indebtedness of such Person.

SECTION 7.23 Disclosure. Holdings and/or its Subsidiaries have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which any Credit Party and any Subsidiary thereof are subject, and all other matters known to any Responsible Officer, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No financial statement, material report, material certificate or other material information furnished in writing by or on behalf of any Credit Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the time when made or delivered; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized by the Lenders that projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit

Parties and their Subsidiaries, and are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary materially from such projections).

SECTION 7.24 Flood Hazard Insurance. With respect to each parcel of real property subject to a Mortgage, the Administrative Agent has received (a) such flood hazard certifications, notices and confirmations thereof, and effective flood

hazard insurance policies as are described in Section 6.1(d)(iii) with respect to real property collateral on the Closing Date, (b) all flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full, and (c) except as the Borrower has previously given written notice thereof to the Administrative Agent, there has been no redesignation of any real property into or out of a special flood hazard area.

ARTICLE VIII

AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, each Credit Party will, and will cause each of its Subsidiaries to:

SECTION 8.1 Financial Statements and Budgets. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) **Annual Financial Statements.** As soon as practicable and in any event within ninety (90) days (or, if earlier, on the date of any required public filing thereof) after the end of each Fiscal Year (commencing with the Fiscal Year ended December 28, 2014), an audited Consolidated balance sheet of Holdings and its Subsidiaries as of the close of such Fiscal Year and audited Consolidated statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of recognized national standing acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any “going concern” or similar qualification or exception or any qualification as to the scope of such audit or with respect to accounting principles followed by Holdings or any of its Subsidiaries not in accordance with GAAP.

(b) **Quarterly Financial Statements.** As soon as practicable and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended September 7, 2014), an unaudited Consolidated balance sheet of Holdings and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated statements of income, retained earnings and cash flows and a report containing management’s discussion and analysis of such financial statements for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by Holdings in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the

chief financial officer of Holdings to present fairly in all material respects the financial condition of Holdings and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of Holdings and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.

(c) **Annual Business Plan and Budget.** As soon as practicable and in any event within forty-five (45) days after the end of each Fiscal Year, a business plan and operating and capital budget of Holdings and its Subsidiaries for the ensuing four (4) fiscal quarters, such plan to be prepared in accordance with GAAP and to include, on a quarterly basis, the following: a quarterly operating and capital budget, a projected income statement, statement of cash flows and balance sheet, calculations demonstrating projected compliance with the financial covenants set forth in Section 9.14 and a report containing management’s discussion and analysis of such budget with a reasonable disclosure of the key assumptions and drivers with respect to such budget, accompanied by a certificate from a Responsible Officer to the effect that such budget contains good faith estimates (utilizing assumptions believed to be reasonable at the time of delivery of such budget) of the financial condition and operations of Holdings and its Subsidiaries for such period.

SECTION 8.2 Certificates; Other Reports. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) at each time financial statements are delivered pursuant to Sections 8.1(a) or (b) and at such other times as the Administrative Agent shall reasonably request, a duly completed Officer's Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower and a report containing management's discussion and analysis of such financial statements;

(b) promptly upon receipt thereof, copies of all reports, if any, submitted to any Credit Party, any Subsidiary thereof or any of their respective boards of directors by their respective independent public accountants in connection with their auditing function, including, without limitation, any management report and any management responses thereto;

(c) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of Indebtedness of any Credit Party or any Subsidiary thereof in excess of the Threshold Amount pursuant to the terms of any indenture, loan or credit or similar agreement;

(d) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Credit Party or any Subsidiary thereof with any Environmental Law that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(e) after an IPO, promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) after an IPO, promptly, and in any event within five (5) Business Days after receipt thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary thereof;

(g) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the PATRIOT Act), as from time to time reasonably requested by the Administrative Agent or any Lender; and

(h) such other information regarding the operations, business affairs and financial condition of any Credit Party or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Section 8.1(a) or (b) or Section 8.2(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 12.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Officer's Compliance Certificates required by Section 8.2 to the Administrative Agent. Except for such Officer's Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak Online or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant

to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

SECTION 8.3 Notice of Litigation and Other Matters. Promptly (but in no event later than ten

(1) days after any Responsible Officer obtains knowledge thereof) notify the Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

- (a) the occurrence of any Default or Event of Default;
- (b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving any Credit Party or any Subsidiary thereof or any of their respective properties, assets or businesses in each case that could reasonably be expected to result in a Material Adverse Effect;
- (c) any notice of any violation received by any Credit Party or any Subsidiary thereof from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect;
- (d) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Credit Party or any Subsidiary thereof;
- (e) any attachment, judgment, lien, levy or order exceeding the Threshold Amount that is assessed against any Credit Party or any Subsidiary thereof;
- (f) any event which constitutes or which with the passage of time or giving of notice or both would constitute a default or event of default under any Material Contract to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any Subsidiary thereof or any of their respective properties may be bound which could reasonably be expected to have a Material Adverse Effect; and
- (g) (i) any unfavorable determination letter from the IRS regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by any Credit Party or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (iii) all notices received by any Credit Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA and (iv) any Responsible Officer obtaining knowledge that any Credit Party or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Pension Plan under a distress termination within the meaning of Section 4041(c) of ERISA.

Each notice pursuant to Section 8.3 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 8.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

SECTION 8.4 Preservation of Corporate Existence and Related Matters. Except as permitted by Section 9.4, preserve and maintain its separate corporate existence and all rights, franchises, licenses and privileges necessary to the conduct of its business, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

SECTION 8.5 Maintenance of Property and Licenses.

(a) In addition to the requirements of any of the Security Documents, protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case except as such action or inaction would not reasonably be expected to result in a Material Adverse Effect.

(b) Maintain, in full force and effect in all material respects, each and every license, permit, certification, qualification, approval or franchise issued by any Governmental Authority (each a "License") required for each of them to conduct their respective businesses as presently conducted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.6 Insurance. Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law and as are required by any Security Documents. All such insurance shall, (a) provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, (b) name the Administrative Agent as an additional insured party thereunder and (c) in the case of each casualty insurance policy, name the Administrative Agent as lender's loss payee. On the Closing Date and from time to time thereafter deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby. Without limiting the foregoing, the Borrower shall and shall cause each appropriate Credit Party to (i) maintain, if available, fully paid flood hazard insurance on all real property that is located in a special flood hazard area and that is subject to a Mortgage, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent, (ii) furnish to the Administrative Agent evidence of renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof, and (iii) furnish to the Administrative Agent prompt written notice of any redesignation of any such improved real property into or out of a special flood hazard area.

SECTION 8.7 Accounting Methods and Financial Records. Maintain a system of accounting, and keep proper books, records and accounts (which shall be true and complete in all material respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its Properties.

SECTION 8.8 Payment of Taxes and Other Obligations. Pay and perform (a) all taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property and (b) all other Indebtedness, obligations and liabilities in accordance with customary trade practices; provided, that the Borrower or such Subsidiary may contest any item described in this Section in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP.

SECTION 8.9 Compliance with Laws and Approvals. Observe and remain in compliance with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.10 Environmental Laws. In addition to and without limiting the generality of Section 8.9, except to the extent that no Material Adverse Effect could reasonably be expected to result therefrom: (a) comply with, and use commercially reasonable efforts to ensure such compliance by all tenants and subtenants with all applicable Environmental Laws and obtain and comply with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants, if any, obtain and comply with and maintain, any and all material licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws, and (c) defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the presence of Hazardous Materials, or the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the Borrower or any such Subsidiary, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing directly result from the bad faith, gross negligence or willful misconduct

of the party seeking indemnification therefor, as determined by a court of competent jurisdiction by final nonappealable judgment.

SECTION 8.11 Compliance with ERISA. In addition to and without limiting the generality of Section 8.9, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent to confirm compliance with this Section.

SECTION 8.12 Visits and Inspections. Permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, all at the expense of the Borrower (limited, except during the continuance of an Event of Default to the cost of a single visit and inspection by the Administrative Agent and all Lenders on a combined basis, per calendar year), to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower at any time without advance notice. Upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and

Lenders once during each Fiscal Year, which meeting will be held at the Borrower's corporate offices (or such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed by the Borrower and the Administrative Agent.

SECTION 8.13 Additional Subsidiaries and Real Property.

Within 30 days after the end of each Fiscal Quarter (as such time period may be extended by the Administrative Agent in its sole discretion):

(a) **Additional Domestic Subsidiaries.** Cause any Material Domestic Subsidiary that has been created or acquired to (i) become a Subsidiary Guarantor by delivering to the Administrative Agent a duly executed supplement to the Subsidiary Guaranty Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement) owned by such Subsidiary by delivering to the Administrative Agent a duly executed supplement to each applicable Security Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each applicable Security Document, (iii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iv) deliver to the Administrative Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests of such Person, (iii) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Person, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) **Additional Foreign Subsidiaries.** Notify the Administrative Agent of any Person that becomes a First Tier Foreign Subsidiary and cause the applicable Credit Party to (i) deliver to the Administrative Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new First Tier Foreign Subsidiary and a consent thereto executed by such new First Tier Foreign Subsidiary (including, without limitation, if applicable, original certificated Equity Interests (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Equity Interests of such new First Tier Foreign Subsidiary, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) Real Property Collateral. With respect to the acquisition of any owned real property with a fair market value in excess of \$2,000,000 by any Credit Party that is not then subject to the existing Security Documents, (i) notify the Administrative Agent and (ii) deliver such mortgages, deeds of trust, title insurance policies, environmental reports, surveys and other documents reasonably requested by the Administrative Agent in connection with granting and perfecting a first priority Lien, other than Permitted Liens, on such real property in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, all in form and substance acceptable to the Administrative Agent.

(d) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with (or as may be reasonably required in advance of) the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 8.13(a) or (b), as applicable, until the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 8.13(a) or (b), as applicable, within thirty (30) days after the end of the calendar quarter in which the consummation of such Permitted Acquisition occurs, as such time period may be extended by the Administrative Agent in its sole discretion).

(e) Exclusions. The provisions of this Section 8.13 shall not apply to assets as to which the Administrative Agent and the Borrower shall reasonably determine that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby.

SECTION 8.14 Hedge Agreement. Not later than ninety (90) days after the Closing Date, enter into and maintain at all times thereafter for a period of not less than two (2) years, Hedge Agreements with Persons acceptable to the Administrative Agent, in an amount sufficient to cause at least 50% percent of the aggregate principal amount of the Initial Term Loan to be fixed rate Indebtedness.

SECTION 8.15 Use of Proceeds.

(a) The Borrower shall use the proceeds of the Extensions of Credit (i) to finance the Specified Dividend, (ii) to finance Capital Expenditures, (iii) pay fees, commissions and expenses in connection with the Transactions, (iv) to repay existing Indebtedness of Holdings and its Subsidiaries as contemplated under Section 6.1(g)(iii), and (v) for working capital and general corporate purposes of the Borrower and its Subsidiaries.

(b) The Borrower shall use the proceeds of any Incremental Term Loan and any Incremental Revolving Credit Increase as permitted pursuant to Section 5.13, as applicable.

SECTION 8.16 Corporate Governance. (a) Maintain entity records and books of account separate from those of any other entity which is an Affiliate of such entity, (b) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity (except pursuant to cash management systems reasonably acceptable to the Administrative Agent) and (c) provide that its board of directors (or equivalent governing body) will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of any other entity which is an Affiliate of such entity. For the purposes of this Section 8.16, "Affiliate" shall not include Holdings or any Subsidiary thereof.

SECTION 8.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens contemplated by the Security Documents or the validity or priority of any such Lien (subject to Permitted Liens), all at the expense of the Credit Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents (subject to Permitted Liens).

SECTION 8.18 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 8.18, in each case within the time limits specified on such schedule.

ARTICLE IX NEGATIVE COVENANTS

Until all of the Obligations (other than contingent, indemnification obligations not then due) have been paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Credit Parties will not, and will not permit any of their respective Subsidiaries to;

SECTION 9.1 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

- (a) the Obligations;
- (b) Indebtedness and obligations owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;
- (c) Indebtedness existing on the Closing Date and listed on Schedule 9 to the Disclosure Letter, and any refinancings, refundings, renewals or extensions thereof; provided that (i) the principal amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, (ii) the final maturity date and weighted average life of such refinancing, refunding, renewal or extension shall not be prior to or shorter than that applicable to the Indebtedness prior to such refinancing, refunding, renewal or extension and (iii) any refinancing, refunding, renewal or extension of any Subordinated Indebtedness shall be (A) on subordination terms at least as favorable to the Lenders, (B) no more restrictive on Holdings and its Subsidiaries than the Subordinated Indebtedness being refinanced, refunded, renewed or extended and (C) in an amount not less than the amount outstanding at the time of such refinancing, refunding, renewal or extension;
- (d) Indebtedness incurred in connection with Capital Leases and purchase money Indebtedness in an aggregate amount not to exceed \$20,000,000 at any time outstanding;
- (e) Indebtedness of a Person existing at the time such Person became a Subsidiary or assets were acquired from such Person in connection with an Investment permitted pursuant to Section 9.3, to the extent that (i) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (ii) neither Holdings nor any Subsidiary thereof (other than such Person or any other Person that such Person merges with or that acquires the assets of such Person) shall have any liability or other obligation with respect to such Indebtedness and (iii) the aggregate outstanding principal amount of such Indebtedness does not exceed \$25,000,000 at any time outstanding;
- (f) Guaranty Obligations with respect to Indebtedness permitted pursuant to subsections (a) through (e) of this Section, subsections (g) through (t) of this Section, and, other than with respect to the Indebtedness of any Subsidiary which is not a Credit Party, subsection (u) of this Section (and the Holdings JAX Guaranty Obligation);
- (g) unsecured intercompany Indebtedness:
 - (i) owed by any Credit Party to another Credit Party;
 - (ii) owed by any Credit Party to any Non-Guarantor Subsidiary (provided that such Indebtedness shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent); and
 - (iii) owed by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary;
- (h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business (and any endorsement of instruments or other payment items for deposit);
- (i) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing;

(j) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations, and (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with any Asset Disposition permitted by Section 9.5;

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

(l) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called “procurement cards” or “P-cards”), or cash management services;

(m) unsecured Indebtedness of Holdings owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by Holdings of the Equity Interests of Holdings that has been issued to such Persons, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$1,000,000, and (iii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to Administrative Agent;

(n) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of Holdings or the applicable Credit Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(o) Indebtedness composing Investments permitted by Section 9.3;

(p) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business;

(q) unsecured Indebtedness of Holdings or its Subsidiaries in respect of earn-outs owing to sellers of assets or Equity Interests to Borrower or its Subsidiaries that is incurred in connection with the consummation of one or more Permitted Acquisitions so long as such unsecured Indebtedness is on terms and conditions not materially more restrictive than the terms of this Agreement;

(r) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness permitted under this Section 9.1;

(s) Indebtedness of Holdings or its Subsidiaries resulting from any guaranties of the lease obligations of any Credit Party (other than Holdings) to the extent such lease obligations are permitted to be incurred under this Agreement;

(t) Indebtedness of Holdings or its Subsidiaries resulting from the guaranty of the obligations of any Credit Party (other than Holdings), as franchisor, pursuant to the registration requirements of one or more states in which franchises are offered to franchisees; and

(u) Indebtedness of any Credit Party or any Subsidiary thereof not otherwise permitted pursuant to this Section in an aggregate principal amount not to exceed \$25,000,000 at any time outstanding.

SECTION 9.2 Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Loan Documents (including, without limitation, Liens in favor of the Swingline Lender and/or the Issuing Lenders, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

(b) Liens in existence on the Closing Date and described on Schedule 10 to the Disclosure Letter, and the replacement, renewal or extension thereof (including Liens incurred, assumed or suffered to exist in connection with any refinancing, refunding, renewal or extension of Indebtedness pursuant to Section 9.1(c) (solely to the extent that such Liens were in existence on the Closing Date and described on Schedule 10 to the Disclosure Letter)); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond

that in existence on the Closing Date, except for products and proceeds of the foregoing;

(c) Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which (i) are not overdue for a period of more than thirty (30) days, or if more than thirty (30) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP and (ii) do not,

individually or in the aggregate, materially impair the use thereof in the operation of the business of Holdings or any of its Subsidiaries;

(e) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(f) encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of business;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(h) Liens securing Indebtedness permitted under Section 9.1(d); provided that (i) such Liens shall be created substantially simultaneously with the acquisition, repair, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased (other than in connection with additional work) and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair improvement or lease amount (as applicable) of such Property at the time of purchase, repair, improvement or lease (as applicable);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 10.1(m) or securing appeal or other surety bonds relating to such judgments;

(j) (i) Liens on Property (i) of any Subsidiary which are in existence at the time that such Subsidiary is acquired pursuant to a Permitted Acquisition and (ii) of the Borrower or any of its Subsidiaries existing at the time such tangible property or tangible assets are purchased or otherwise acquired by the Borrower or such Subsidiary thereof pursuant to a transaction permitted pursuant to this Agreement; provided that, with respect to each of the foregoing clauses (i) and (ii), (A) such Liens are not incurred in connection with, or in anticipation of, such Permitted Acquisition, purchase or other acquisition, (B) such Liens are applicable only to specific Property, (C) such Liens do not attach to any other Property of Holdings or any of its Subsidiaries and (D) the Indebtedness secured by such Liens is permitted under Section 9.1(e) of this Agreement).

(k) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of the Borrower or any Subsidiary thereof;

(l) (i) contractual or statutory Liens of landlords to the extent relating to the property and assets relating to any lease agreements with such landlord, (ii) contractual Liens of suppliers (including sellers of goods) or customers granted in the ordinary course of business to the extent limited to the

property or assets relating to such contract, (iii) Liens in favor of a landlord to secure Holdings' or its Subsidiaries' obligations to pay rent, which Lien is (A) limited to the leasehold interest, fixtures and personal property located at such Restaurant, (B) senior to Agent's security interest in the leasehold and fixtures, and (C) subordinate to Agent's security interest in the personal property (including equipment) located at such Restaurant (other than tangible personal property having an aggregate value not to exceed 5% of Consolidated Assets for all such Restaurants);

(m) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business which do not

(i) interfere in any material respect with the business of Holdings or its Subsidiaries or materially detract from the value of the relevant assets of Holdings or its Subsidiaries or (ii) secure any Indebtedness;

(n) the interests of lessors under operating leases and licensors under nonexclusive license agreements or Permitted Exclusive Licenses;

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted by Section 9.1(k);

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(q) Liens solely on any cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(r) Liens on liquor licenses in favor of a landlord (i) to secure Holdings' or its Subsidiaries' obligations to pay rent, or (ii) in the form of a purchase right or any similar Lien in connection with the transfer of such liquor license from a landlord to Holdings or such Subsidiary as part of a leasing arrangement, which Liens in each case (x) are limited to the liquor license applicable to the Restaurant location being leased from such landlord and (y) may be senior to Administrative Agent's security interest in such liquor license; provided that Liens of the type described in this clause (r), (A) shall not apply to more than 30 Restaurant locations at any time and (B) shall not be permitted to the extent that the aggregate Store Operating Cash Flow for such Restaurants for any period exceeds 5.0% of the aggregate Store Operating Cash Flow for all Restaurants operated by Holdings and its Subsidiaries; and

(s) Liens not otherwise permitted hereunder on assets other than the Collateral securing Indebtedness or other obligations in the aggregate principal amount not to exceed \$25,000,000 at any time outstanding.

SECTION 9.3 Investments. Purchase, own, invest in or otherwise acquire (in one transaction or a series of transactions), directly or indirectly, any Equity Interests, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person (all the foregoing, "Investments") except:

(a) (i) Investments existing on the Closing Date in Subsidiaries existing on the Closing Date;

(ii) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 11 to the Disclosure Letter;

(iii) Investments made after the Closing Date by any Credit Party in any other Credit Party (other than Holdings) or in any other Domestic Subsidiary (and Investments by any Credit Party in any of its Subsidiaries in order to maintain a minimum net capital or as may otherwise be required by law);

(iv) Investments made after the Closing Date by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary; and

(v) Investments made after the Closing Date by any Non-Guarantor Subsidiary in any Credit Party;

(b) Investments in cash and Cash Equivalents;

- (c) Investments by the Borrower or any of its Subsidiaries consisting of Capital Expenditures permitted by this Agreement;
- (d) deposits made in the ordinary course of business to secure the performance of leases or other obligations as permitted by Section 9.2;
- (e) Hedge Agreements permitted pursuant to Section 9.1;
- (f) purchases of assets in the ordinary course of business;
- (g) Investments by the Borrower or any Subsidiary thereof in the form of Permitted Acquisitions;
- (h) Investments in the form of loans and advances to officers, directors and employees (A) in the ordinary course of business in an aggregate amount not to exceed at any time outstanding \$1,000,000 (determined without regard to any write-downs or write-offs of such loans or advances) and (B) for the purpose of purchasing Equity Interests in Holdings so long as the proceeds of such loans are used in their entirety to purchase such Equity Interests in an aggregate amount not to exceed at any time outstanding \$1,000,000 (determined without regard to any write-downs or write-offs of such loans or advances);
 - (i) Investments in the form of Restricted Payments permitted pursuant to Section 9.6;
 - (j) Guaranty Obligations permitted pursuant to Section 9.1(f);
 - (k) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
 - (l) advances made in connection with purchases of goods or services in the ordinary course of business;
 - (m) Investments received in settlement of amounts due to any Credit Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Credit Party or any of its Subsidiaries as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Credit Party or its Subsidiaries;
 - (n) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Credit Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims;
 - (o) Investments resulting from entering into (i) Cash Management Agreements, or (ii) agreements relative to Indebtedness that is permitted under Section 9.1(l);
 - (p) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition;
 - (q) Investments arising out of the receipt by Borrower or any of its Subsidiaries of non-cash consideration in connection with any Asset Disposition permitted by Section 9.5;
 - (r) Investments in “rabbi trusts” made by any Credit Party (other than Holdings) in connection with executive deferred compensation arrangements entered into by such Credit Party in the ordinary course of business; and
 - (s) Investments not otherwise permitted pursuant to this Section in an aggregate amount not to exceed \$30,000,000 at any time outstanding; provided that, immediately before and immediately after giving pro forma effect to any such Investments, no Default or Event of Default shall have occurred and be continuing.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 9.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

SECTION 9.4 Fundamental Changes. Merge, consolidate or enter into any similar combination with, or enter into any

Asset Disposition of all or substantially all of its assets (whether in a single transaction or a series of transactions) with, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(a) (i) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) or (ii) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into any Subsidiary Guarantor (provided that the Subsidiary Guarantor shall be the continuing or surviving entity or simultaneously with such transaction or the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 8.13 in connection therewith);

(b) (i) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(c) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to the Borrower or any Subsidiary Guarantor; provided that, with respect to any such disposition by any Non-Guarantor Subsidiary, the consideration for such disposition shall not exceed the fair value of such assets;

(d) (i) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(e) any Wholly-Owned Subsidiary of the Borrower may merge with or into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with any acquisition permitted hereunder (including, without limitation, any Permitted Acquisition permitted pursuant to Section 9.3(g)); provided that in the case of any merger involving a Wholly-Owned Subsidiary that is a Domestic Subsidiary, (i) a Subsidiary Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 8.13 in connection therewith; and

(f) any Person may merge into the Borrower or any of its Wholly-Owned Subsidiaries in connection with a Permitted Acquisition permitted pursuant to Section 9.3(g); provided that (i) in the case of a merger involving the Borrower or a Subsidiary Guarantor, the continuing or surviving Person shall be the Borrower or such Subsidiary Guarantor and (ii) the continuing or surviving Person shall be the Borrower or a Wholly-Owned Subsidiary of the Borrower.

SECTION 9.5 Asset Dispositions. Make any Asset Disposition except:

(a) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrower or any of its Subsidiaries;

(b) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Borrower and its Subsidiaries;

(c) leases, subleases, licenses or sublicenses of real or personal property granted by the Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of the Borrower or any of its Subsidiaries;

(d) Asset Dispositions in connection with Insurance and Condemnation Events; provided that the requirements of Section 4.4(b) are complied with in connection therewith;

(e) Refranchising Sales; provided that (i) there shall be no more than 40 Restaurants that are the subject of a Refranchising Sale during any Fiscal Year and (ii) such Refranchising Sales shall be made on commercially reasonable terms and in the ordinary course of Borrower's or any Subsidiary's business,

(f) Assets Dispositions in connection with transactions permitted by Section 9.4;

(g) sale-leaseback transactions permitted by Section 9.12;

- (h) the granting of Permitted Liens;
- (i) the making of Restricted Payments that are expressly permitted by Section 9.6;

(j) (i) the lapse of registered or issued patents, trademarks, copyrights and other intellectual property of Holdings and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of Administrative Agent or the Lenders;

- (k) the making of Investments permitted by Section 9.3;

(l) sales of inventory and equipment, located at leased locations to a subtenant in connection with the sublease of any such leased real property not prohibited under this Agreement;

(m) so long as no Event of Default has occurred and is continuing or would result therefrom, leases or subleases of Restaurant properties to Persons in order to facilitate the sale of alcoholic beverages at such Restaurant properties, which leases shall be on terms and conditions reasonably satisfactory to Administrative Agent, provided that Borrower and its Subsidiaries shall not be party to leases with respect to more than 10 such Restaurant properties in the aggregate at any time during the term of this Agreement; and

(n) Asset Dispositions not otherwise permitted pursuant to this Section; provided that (i) at the time of such Asset Disposition, no Default or Event of Default shall exist or would result from such Asset Disposition, and (ii) the aggregate fair market value of all property disposed of in reliance on this clause (n) shall not exceed \$25,000,000 in any Fiscal Year and \$50,000,000 during the term of this Agreement.

SECTION 9.6 Restricted Payments. Declare or pay any dividend on, or make any payment or other distribution on account of, or purchase, redeem, retire or otherwise acquire (directly or indirectly), or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any class of Equity Interests of any Credit Party or any Subsidiary thereof, or make any distribution of cash, property or assets to the holders of shares of any Equity Interests of any Credit Party or any Subsidiary thereof (all of the foregoing, the "Restricted Payments") provided that:

(a) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Holdings, the Borrower or any of its Subsidiaries may pay dividends in shares of its own Qualified Equity Interests;

- (b) any Subsidiary of the Borrower may pay cash dividends to the Borrower or any Subsidiary Guarantor;

(c) (i) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis) and (ii) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis); and

(d) the Borrower may declare and make (and each Subsidiary of the Borrower may declare and make to enable the Borrower to do the same) Restricted Payments to Holdings, so that Holdings may, and Holdings shall be permitted to:

- (i) pay any Taxes which are due and payable by the Credit Parties as part of a consolidated group;

(ii) pay corporate operating (including, without limitation, directors fees and expenses) and overhead expenses (including, without limitation, rent, utilities and salary) in the ordinary course of business and fees and expenses of attorneys, accountants, appraisers and the like;

(iii) pay any management fees and reimbursement of expenses to the Sponsor or its designees to the extent permitted pursuant to Section 9.7;

(iv) with respect to any tax period (or portion thereof) of Holdings during which Holdings is treated as a disregarded entity or partnership, for federal or state income tax purposes, Holdings may declare and pay cash distributions (each, a "Tax Distribution") to its members with respect to each such tax period for which income tax, or an installment of estimated tax, would be required to be paid by a member of Holdings by virtue of owning such membership interest in Holdings, as applicable. For the purposes of computing the aggregate amount of Tax Distributions made to a member of Holdings for any taxable period, any tax withholding amounts with respect to such member for such taxable period shall

be treated as a Tax Distribution made by Holdings to such member. For purposes of this Section 9.6(d), a Tax Distribution made by Holdings after the last day of any taxable year shall generally be treated as being made with respect to the year in which such Tax Distribution is actually made and not with respect to the prior taxable year; provided that any Tax Distribution made on or before April 15th of any year may, at Holdings' option, be deemed to have been made with respect to the immediately preceding taxable year to the extent such Tax Distribution would have been permitted to be made in such preceding taxable year. Tax Distributions may be made (if necessary) on a quarterly basis to facilitate the members' ability to make quarterly estimated tax payments with respect to their taxable income or loss attributable to Holdings. Any such Tax Distributions will be based on interim balances computed for the Tax Liability Accounts that reflect each member's estimated taxable income or loss from the beginning of the Fiscal Year through the end of such quarter. At the end of each Fiscal Year, final adjustments to the Tax Liability Account will be made to reflect the actual results of the year, and each member must immediately repay any amount of Tax Distribution distributed to it with respect to such year in excess of the Tax Distribution it should have received based on such final adjustment;

(v) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, redeem, retire or otherwise acquire shares of its Equity Interests or options or other equity or phantom equity in respect of its Equity Interests from present or former officers, employees, directors or consultants (or their family members or trusts or other entities for the benefit of any of the foregoing) (including with respect to obligations existing under the Profits Interest Program and Restricted Stock Program) or make severance payments to such Persons in connection with the death, disability or termination of employment or consultancy of any such officer, employee, director or consultant (A) to the extent that such purchase is made with the Net Cash Proceeds of any offering of equity securities of or capital contributions to Holdings or (B) otherwise in an aggregate amount not to exceed \$2,000,000 in any Fiscal Year; provided that, with respect to any portion of the amount set forth above, to the extent not utilized in the Fiscal Year for which it is permitted above, such unutilized amount may be carried over for application in the next following Fiscal Year; provided further that, if any such amount is so carried over, (a) it will be deemed used in the applicable subsequent Fiscal Year and (b) it may not be carried over to another subsequent Fiscal Year; and

(vi) pay the Specified Dividend; provided that to the extent that any portion of the Specified Dividend is paid after the Closing Date, the Borrower must demonstrate, to the reasonable satisfaction of the Administrative Agent, that after giving effect to the payment of such portion of the Specified Dividend on a Pro Forma Basis (i) the Total Lease Adjusted Leverage Ratio shall not exceed 5.00 to 1.00, and (ii) Liquidity is at least \$25,000,000.

(e) Holdings may make a one-time payment to Hazem Ouf or his designee (and Borrower or any of its Subsidiaries may make dividends or distributions to Holdings to facilitate such payment by Holdings) on or prior to August 31, 2015, in an aggregate amount not to exceed \$10,000,000 in connection with the termination of the Phantom Equity Agreement, so long as, after giving effect to such Restricted Payment on a Pro Forma Basis (i) that the Total Lease Adjusted Leverage Ratio shall be at least 0.25 below the applicable ratio set forth in Section 9.14(a), and (ii) Liquidity is at least \$25,000,000;

(f) other Restricted Payments so long as, after giving effect to such Restricted Payment on a Pro Forma Basis, Liquidity is at least \$25,000,000; provided that to the extent that, after giving effect to such Restricted Payment on a Pro Forma Basis (i) the Total Lease Adjusted Leverage Ratio is greater than 1 to 1.00, the aggregate amount of such Restricted Payments, when combined with all others made pursuant to this Section 9.6(f) in the then-current Fiscal year, must be less than \$15,000,000, (ii) the Total Lease Adjusted Leverage Ratio is greater than or equal to 3.50 to 1.00 but less than 4.00 to 1.00, the aggregate amount of such Restricted Payments, when combined with all others made pursuant to this Section 9.6(f) in the then-current Fiscal year, must be less than \$30,000,000 and (iii) to the extent the Total Lease Adjusted Leverage Ratio is less than 3.50 to 1.00, there shall be no limit.

SECTION 9.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with (a) any officer, director, holder of any Equity Interests in, or other Affiliate of, Holdings, the Borrower or any of its Subsidiaries, (b) any Affiliate of any such officer, director or holder or (c) the Sponsor or any officer, director, holder of any Equity Interests in, or other Affiliate of, the Sponsor, other than:

- (i) transactions permitted by Sections 9.1, 9.3, 9.4, 9.5, 9.6 and 9.13;
- (ii) transactions existing on the Closing Date and described on Schedule 12 to the Disclosure Letter;
- (iii) transactions among Credit Parties;

(iv) other transactions in the ordinary course of business on terms as favorable as would be obtained by it on a comparable arm's-length transaction with an independent, unrelated third party as determined in good faith by the board of directors (or equivalent governing body) of Holdings;

(v) employment and severance arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business, including the Profits Interest Program and the Restricted Stock Program;

(vi) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of Holdings, the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries; and

(vii) payment to the Sponsor of (A) fees and indemnities in an amount not to exceed the amount provided by the Management Agreement with respect to the services addressed therein and (B) reasonable out-of-pocket expenses; provided that, in either case set forth in the foregoing clauses (A) or (B), no Event of Default shall have occurred and be continuing prior thereto or as result thereof.

SECTION 9.8 Accounting Changes; Organizational Documents.

(a) Change its Fiscal Year end, or make (without the consent of the Administrative Agent) any material change in its accounting treatment and reporting practices except as required by GAAP.

(b) Amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents) in any manner materially adverse to the rights or interests of the Lenders.

(c) Amend, modify or change the Management Agreement in any manner that would be adverse to the Lenders in any material respect.

SECTION 9.9 Payments and Modifications of Subordinated Indebtedness.

(a) Amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any Subordinated Indebtedness in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder.

(b) Cancel, forgive, make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (x) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (y) at the maturity thereof) any Subordinated Indebtedness, except:

(i) refinancings, refundings, renewals, extensions or exchange of any Subordinated Indebtedness permitted by Section 9.1(c),(g)(ii) or (u), and by any subordination provisions applicable thereto;

(ii) payments and prepayments of any Subordinated Indebtedness made solely with the proceeds of Qualified Equity Interests not otherwise required to prepay Loans pursuant to Section 4.4(b(ii)); and

(iii) the payment of interest, expenses and indemnities in respect of Subordinated Indebtedness incurred under Section 9.1(c),(g)(ii) or (u) (other than any such payments prohibited by any subordination provisions applicable thereto).

SECTION 9.10 No Further Negative Pledges; Restrictive Agreements.

(a) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument

governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) customary restrictions contained in the organizational documents of any Non-Guarantor Subsidiary as of the Closing Date and (iv) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien).

(b) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) pay dividends or make any other distributions to any Credit Party or any Subsidiary on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Credit Party or (iii) make loans or advances to any Credit Party, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law and (C) in connection with the sale of any assets or equity of a Credit Party or its Subsidiary permitted under this Agreement (but only to the extent such encumbrance or restriction is limited to the assets or equity that is the subject of such sale).

(c) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) sell, lease or transfer any of its properties or assets to any Credit Party or (ii) act as a Credit Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (F) customary restrictions contained in an agreement related to the sale of Property (to the extent such sale is permitted pursuant to Section 9.5) that limit the transfer of such Property pending the consummation of such sale, (G) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto and (H) customary provisions restricting assignment of any agreement entered into in the ordinary course of business.

SECTION 9.11 Nature of Business. Engage in any business other than a Permitted Business.

SECTION 9.12 Sale Leasebacks. Directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, which any Credit Party or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Credit Party or Subsidiary of a Credit Party in an aggregate amount exceeding \$5,000,000 in any Fiscal Year or \$10,000,000 during the term of this Agreement.

SECTION 9.13 Growth Capital Expenditures. Permit the aggregate amount of all Growth Capital Expenditures in any Fiscal Year to exceed \$40,000,000 in such Fiscal Year. Notwithstanding the foregoing, 50% of any portion of any amount set forth above, if not expended in the Fiscal Year for which it is permitted above, may be carried over for expenditure in the next following Fiscal Year; provided that, if any such amount is so carried over, (a) it will be deemed used in the applicable subsequent Fiscal Year and (b) it may not be carried over to another subsequent Fiscal Year. The amount of Capital Expenditures that are permitted to be made in any Fiscal Year shall be increased after the consummation of a Permitted Acquisition in an amount equal to 30% of the target's EBITDA for the four (4) fiscal quarter period most recently ended.

SECTION 9.14 Financial Covenants.

(a) Total Lease Adjusted Leverage Ratio. As of the last day of any fiscal quarter ending during the periods specified below, permit the Total Lease Adjusted Leverage Ratio to be greater than the corresponding ratio set forth below:

Period	Maximum Ratio
Closing Date through Q3-2015	5.25 to 1.00
Q4-2015 through Q3-2016	5.00 to 1.00
Q4-2016 through Q3-2017	4.75 to 1.00
Q4-2017 and thereafter	4.50 to 1.00

(b) Consolidated Fixed Charge Coverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Fixed Charge Ratio to be less than 1.25 to 1.00.

(c) Specified Equity Contribution. Notwithstanding the above, the parties hereto acknowledge and agree that, solely for purposes of calculations made in determining compliance with this Section 9.14, any cash equity contribution made to Holdings by, or issuance of Equity Interests by Holdings to (in each case other than Disqualified Equity Interests), the Permitted Investors (and which shall be contributed by Holdings to the Borrower) following the request therefor by Holdings, on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered with respect to a fiscal year pursuant to Section 8.1(a) or a fiscal quarter pursuant to Section 8.1(b), as applicable, will be deemed to increase, dollar for dollar, Consolidated EBITDAR for the purposes of determining compliance with the financial covenants contained in this Section 9.14 at the end of such fiscal year or fiscal quarter and each applicable subsequent period (any such equity contribution, a "Specified Equity Contribution"); provided that (i) there shall not be more than two (2) Specified Equity Contributions in any four (4) consecutive fiscal quarter period, (ii) there shall not be more than four (4) Specified Equity Contributions made during the term of this Agreement, (iii) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Credit Parties to be in compliance with the financial covenants set forth above, (iv) any Indebtedness repaid with the proceeds of the Specified Equity Contribution shall be disregarded for purposes of calculating the financial covenants for each such period during which the Specified Equity Contribution is included in the calculation of Consolidated EBITDA, and (v) a Specified Equity Contribution shall only be included in the computation of the financial covenants for purposes of determining compliance by the Credit Parties with this Section 9.14 and not for any other purpose under this Agreement (including, without limitation, any determination of the Applicable Margin, any compliance with this Section 9.14 set forth in the definition of Permitted Acquisition and in the determination of the availability of any baskets set forth in Article VIII or Article IX). Upon the making of a Specified Equity Contribution, the financial covenants in this Section 9.14 shall be recalculated giving effect to the increase in Consolidated EBITDA; provided that nothing in this subsection shall waive any Default or Event of Default that exists pursuant to clauses (a) or (b) of this Section 9.14 until such recalculation. If, after giving effect to such recalculation, the Credit Parties are in compliance with the financial covenants, the Credit Parties shall be deemed to have satisfied the requirements of the financial covenants retroactively as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date and the applicable Default or Event of Default that had occurred shall be deemed waived and not to have occurred for all purposes of this Agreement and the other Credit Documents.

SECTION 9.15 Limitations on Holdings. Permit Holdings to:

(a) hold any assets other than (i) the Equity Interests of the Borrower (and/or intercompany advances to the Borrower), (ii) assets, properties or rights that are not capable of being sold, assigned, transferred or conveyed to the Borrower without the consent of any other Person, or if such assignment or attempted assignment would constitute a breach thereof, or a violation of any Applicable Law, (iii) agreements relating to the issuance, sale, purchase, repurchase or registration of securities of Holdings, (iv) minute books and other corporate books and records of Holdings and (v) other miscellaneous non-material assets;

(b) have any liabilities other than (i) the liabilities under the Loan Documents, (ii) tax liabilities arising in the ordinary course of business, (iii) Indebtedness permitted under Section 9.1, or Investments permitted under Section 9.3 (iv) corporate, administrative and operating expenses in the ordinary course of business and (v) liabilities under any contracts or agreements described in (a)(ii) and (iii) above; or

(c) engage in any activities or business other than (i) issuing shares of its own Qualified Equity Interests, (ii) holding the assets and incurring the liabilities described in this Section 9.15 and activities incidental and related thereto or (iii) making payments, dividends, distributions, issuances or other activities permitted pursuant to Sections 9.6 or 9.7.

SECTION 9.16 Disposal of Subsidiary Interests. Permit any Domestic Subsidiary to be a non- Wholly-Owned Subsidiary except as a result of or in connection with a dissolution, merger, amalgamation, consolidation or disposition permitted by Section 9.4 or 9.5.

ARTICLE X

DEFAULT AND REMEDIES

SECTION 10.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise).

(b) Other Payment Default. The Borrower shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(c) Misrepresentation. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Material Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Material Subsidiary thereof in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(a) Default in Performance of Certain Covenants. Any Credit Party or any Material Subsidiary thereof shall default in the performance or observance of any covenant or agreement contained in Sections 8.1, 8.2, 8.3 (a), 8.4, 8.13, 8.14, 8.15, 8.17, or 8.18, or Article IX.

(b) Default in Performance of Other Covenants and Conditions. Any Credit Party or any Material Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section) or any other Loan Document and such default shall continue for a period of thirty (30) days after the earlier of (i) the Administrative Agent's delivery of written notice thereof to the Borrower and (ii) a Responsible Officer of any Credit Party having obtained knowledge thereof.

(a) Indebtedness Cross-Default. Any Credit Party or any Material Subsidiary thereof shall default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, any such Indebtedness to become due prior to its stated maturity (any applicable grace period having expired).

(c) Change in Control. Any Change in Control shall occur.

(d) Voluntary Bankruptcy Proceeding. Any Credit Party or any Material Subsidiary thereof shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(e) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Credit Party or any Material Subsidiary thereof in any court of competent jurisdiction seeking

(i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Material Subsidiary thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

(f) Failure of Agreements. Any provision of this Agreement or any provision of any other Loan Document shall for any reason cease to be valid and binding on any Credit Party or any Material Subsidiary thereof party thereto or any such Person shall so state in writing, or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

(g) ERISA Events. The occurrence of any of the following events: (i) any Credit Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, any Credit Party or any ERISA Affiliate is required to pay as contributions thereto and such unpaid amounts are in excess of the Threshold Amount, (ii) a Termination Event or (iii) any Credit Party or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding the Threshold Amount.

(h) Judgment. A judgment or order for the payment of money which causes the aggregate amount of all such judgments or orders (net of any amounts paid or fully covered by independent third party insurance as to which the relevant insurance company does not dispute coverage) to exceed the Threshold Amount shall be entered against any Credit Party or any Material Subsidiary thereof by any court and such judgment or order shall continue without having been paid, discharged, vacated or stayed for a period of thirty (30) consecutive days after the entry thereof.

SECTION 10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(a) Acceleration; Termination of Credit Facility. Terminate the Revolving Credit Commitment and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 10.1(h) or (i), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, the Borrower shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations on a pro rata basis. After all such Letters of Credit shall have expired or been fully drawn

upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) General Remedies. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Secured Obligations.

SECTION 10.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this

Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.2 for the benefit of all the Lenders and any Issuing Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 5.6), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.2 and (ii) in addition to the matters set forth in clauses (b), and (d) of the preceding proviso and subject to Section 5.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 10.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Lenders in their capacity as such and the Swingline Lender in its capacity as such, ratably among the Administrative Agent, the Issuing Lenders and the Swingline Lender in proportion to the respective amounts described in this clause First payable to them;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Issuing Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the Administrative Agent for the account of the Issuing Lenders, to Cash Collateralize any L/C Obligations then outstanding; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written

notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI for itself and its Affiliates as if a “Lender” party hereto.

SECTION 10.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 3.3, 5.3 and 12.3) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 5.3 and 12.3.

SECTION 10.6 Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Lenders, shall have the right to credit bid and purchase for the benefit of the Administrative Agent and the Lenders all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law.

(b) Each Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE XI

THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authority.

(a) Each of the Lenders and each Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither Holdings nor any Subsidiary thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between

contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such Issuing Lender for purposes of

acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article XI for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of Articles XI and XII (including Section 12.3, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers and same duties and obligations in its capacity as a Lender as any other Lender and may exercise and be subject to the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 11.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations in its capacity as Administrative Agent except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings, the Borrower or any of their respective Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it

(i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.2 and Section 10.2) or (ii) in the absence of its own bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by Holdings, the Borrower, a Lender or an Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents

of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith (including, without limitation, any report provided to it by an Issuing Lender pursuant to Section 3.9), (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Lender's L/C Commitment (it being understood and agreed that each Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

SECTION 11.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for Holdings and the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with bad faith, gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 11.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(a) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(a) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender

directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 12.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(b) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (b) the retiring Issuing Lender and

Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties 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 and each Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 11.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Lender hereunder.

SECTION 11.9 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or any of its Affiliate's capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Revolving Credit Commitment and payment in full of all Secured Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 12.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Permitted Lien; and

(iii) to release any Subsidiary Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty Agreement pursuant to this Section 11.9. In each case as specified in this Section 11.9, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Subsidiary Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.9. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 9.5, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 11.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 10.4 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE XII MISCELLANEOUS

SECTION 12.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower: ABRH, LLC
3038 Sidco Drive
Nashville, TN 37204
Attn: Anita Adams, Chief Financial Officer Direct Dial: 615-782-6923
Fax No.: 615-782-5030
E-mail: anita.adams@abrholdings.com

With a required copy to:

ABRH, LLC
3038 Sidco Drive
Nashville, TN 37204
Attn: Goodloe Partee, General Counsel Direct Dial: 615-782-6922
Fax No.: 615-782-5030
E-mail: Goodloe.partee@abrholdings.com

If to Wells Fargo as Administrative Agent:

Wells Fargo Bank, National Association MAC D1109-019
1525 West W.T. Harris Blvd. Charlotte, NC 28262
Attention of: Syndication Agency Services Telephone No.: (704) 590-2703
Facsimile No.: (704) 715-0092

With copies to:

Wells Fargo Bank, National Association 1808 Aston Avenue, Suite 250
Carlsbad, CA 92008 Attention of: Jacob Norton
Telephone No.: (760) 918-2716
Facsimile No.: (760) 918 2727
E-mail: Jacob.Norton@wellsfargo.com

If to any Lender:

To the address set forth on the Register

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Lender pursuant to Article II if such Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the

Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative 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 acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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 that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(e) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lenders and the other Lenders by posting the Borrower Materials on the Platform, subject to the confidentiality provisions of Section 12.10.

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Credit Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Credit Party’s or the Administrative Agent’s transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Credit Party, any Lender, any Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

(f) Private Side Designation. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its

delegate, in accordance with such Public Lender’s compliance procedures and Applicable Law, including United States Federal and state securities Applicable Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities Applicable Laws.

SECTION 12.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

(a) Without the prior written consent of the Required Revolving Credit Lenders, amend, modify or waive (i) Section 6.2 or any other provision of this Agreement if the effect of such amendment, modification or waiver is to require the Revolving Credit Lenders (pursuant to, in the case of any such amendment to a provision hereof other than Section 6.2, any substantially concurrent request by the Borrower for the borrowing of Revolving Credit Loans) to make Revolving Credit Loans when such Revolving Credit Lenders would not otherwise be required to do so, (ii) the amount of the Swingline Commitment or (iii) the amount of the L/C Sublimit;

(b) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 10.2) or the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(c) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby (provided, however, that waivers of mandatory prepayments shall be permitted with Required Lender approval);

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clause (iv) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrower to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(e) change Section 5.6 or Section 10.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) change Section 4.5(b)(v) in a manner that would alter the order of application of amounts prepaid pursuant thereto without the written consent of each Lender directly and adversely affected thereby;

(g) except as otherwise permitted by this Section 12.2, change any provision of this Section or reduce the percentages specified in the definitions of "Required Lenders," or "Required Revolving Credit Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(h) consent to the assignment or transfer by any Credit Party of such Credit Party's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 9.4), in each case, without the written consent of each Lender;

(i) release (i) Holdings, (ii) all of the Subsidiary Guarantors or (iii) Subsidiary Guarantors comprising substantially all of the credit support for the Secured Obligations, in any case, from any Guaranty Agreement (other than as authorized in Section 11.9), without the written consent of each Lender; or

(j) release all or substantially all of the Collateral or release any Security Document (other than as authorized in Section 11.9 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each affected Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver, and (vi) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Revolving Credit Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 12.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 5.13 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans and the Incremental Revolving Credit Increases to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Term Loan Commitments and the Incremental Revolving Credit Increase, as applicable, or outstanding Incremental Term Loans and outstanding Incremental Revolving Credit Increase, as applicable, in any determination of (i) Required Lenders or Required Revolving Credit Lenders, as applicable or (ii) similar required lender terms applicable thereto); provided that no

amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender.

SECTION 12.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrower and any other Credit Party, jointly and severally, shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable out-of-pocket fees, charges and disbursements of external counsel for the Administrative Agent) in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents

or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out of pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any Issuing Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims), penalties, damages, liabilities and related expenses (including the out-of-pocket fees, charges and disbursements of any external counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Credit Party), other than such Indemnitee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Transactions), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Credit Party or any Subsidiary thereof, or any Environmental Claim related in any way to any Credit Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Credit Party or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant’s fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by any Credit Party or any Subsidiary thereof against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Credit Party or such Subsidiary has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender’s share of the Total Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders’ Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower and

each other Credit Party shall not assert, and hereby waives, any claim against any Indemnitee, 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 Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above 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 Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 12.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by Applicable Law, to set off and apply any and all

deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 10.4 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, such Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 12.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, any Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 12.6 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND CONSENT AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.7 Reversal of Payments. To the extent any Credit Party makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

SECTION 12.8 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 12.9 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term Loan Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such fifth (5th) Business Day;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed

to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Credit Facility if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) the Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lenders and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) Permitted Investor, (B) Holdings or any of its Subsidiaries or Affiliates, (C) so long as no Event of Default has occurred and is continuing, any Competitor or (D) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (D).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lenders, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.8, 5.9, 5.10, 5.11 and 12.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates, which shall be null and void.)

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption and each Lender Joinder Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lenders, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver or modification described in Section 12.2(b),(c),(d) or (e) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9,

1. and 5.11 (subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same

extent as if it were a Lender and had acquired its

interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. 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 without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 12.10 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative or other compulsory proceeding, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (iii) to an investor or prospective investor in an Approved Fund that also agrees that

Information shall be used solely for the purpose of evaluating an investment in such Approved Fund, (iv) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, or (v) to a nationally recognized rating agency that requires access to information regarding Holdings and its Subsidiaries, the Loans and the Loan Documents in connection with ratings issued with respect to an Approved Fund, (g) on a confidential basis to (i) any rating agency in connection with rating Holdings or its Subsidiaries or the Credit Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) to Gold Sheets and other similar bank trade publications, such information to consist of deal terms and other information customarily found in such publications, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to any Credit Party or its Subsidiary, (k) to governmental regulatory authorities in connection with any regulatory examination of the Administrative Agent or any Lender or in accordance with the Administrative Agent's or any Lender's regulatory compliance policy if the Administrative Agent or such Lender deems necessary for the mitigation of claims by those authorities against the

Administrative Agent or such Lender or any of its subsidiaries or affiliates, (l) to the extent that such information is independently developed by such Commitment Party, or (m) for purposes of establishing a “due diligence” defense. For purposes of this Section, “Information” means all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any Subsidiary thereof; provided that, in the case of information received from a Credit Party or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential.

SECTION 12.11 Performance of Duties. Each of the Credit Party’s obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

SECTION 12.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 12.13 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 12.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 12.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12.16 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, any Issuing Lender, the Swingline Lender and/or the Arranger, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 12.17 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification obligations not then due) arising hereunder or under any other Loan Document shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) or otherwise satisfied in a manner acceptable to the applicable Issuing Lender and the Revolving Credit Commitment has been terminated. The Administrative Agent is hereby permitted to release all Liens on the Collateral upon the repayment of the outstanding principal of and all accrued interest on the Loans, payment of all outstanding fees and expenses hereunder and the termination of the Revolving Credit Commitment. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 12.18 USA PATRIOT Act. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, each of them is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the PATRIOT Act.

SECTION 12.19 Independent Effect of Covenants. The Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII or IX hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII or IX, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VIII or IX.

SECTION 12.20 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, each Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arrangers and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Arrangers or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Arranger or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Credit Party acknowledges and agrees that each Lender, the Arrangers and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, Holdings, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, Arranger or Affiliate thereof were not a Lender or Arranger or an Affiliate thereof (or an agent or any other person with any similar role under the Credit Facilities) and without any duty to account therefor to any other Lender, the Arrangers, Holdings,

the Borrower or any Affiliate of the foregoing. Each Lender, the Arrangers and any Affiliate thereof may accept fees and other consideration from Holdings, the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facilities or otherwise without having to account for the same to any other Lender, the Arrangers, Holdings, the Borrower or any Affiliate of the foregoing.

SECTION 12.21 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents which imposes additional burdens on Holdings or any of its Subsidiaries or further restricts the rights of Holdings or any of its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

[Signature pages to follow]

EXHIBIT A-1

[FORM OF] REVOLVING CREDIT NOTE

[Date]

FOR VALUE RECEIVED, the undersigned, ABRH, LLC, a Delaware limited liability company (the "Borrower") hereby unconditionally promises to pay, on the Revolving Credit Maturity Date (as defined in the Credit Agreement referred to below), to [] or its registered assigns (the "Lender"), at the office of Wells Fargo Bank, National Association, in lawful money of the United States of America and in immediately available funds, the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the undersigned pursuant to Section 2.1 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof and, to the extent permitted by law, accrued interest in respect hereof from time to time from the date hereof until payment in full of the principal amount hereof and accrued interest hereon, at the rates and on the dates set forth in the Credit Agreement.

This Revolving Credit Note is one of the Revolving Credit Notes referred to in the Credit Agreement, dated as of August 19, 2014 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"), by and among the Borrower, the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as administrative agent for the Lenders (the "Administrative Agent"), and the holder is entitled to the benefits thereof. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Revolving Credit Note shall become, or may be declared to be, immediately due and payable, all as and to the extent provided therein. In the event this Revolving Credit Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees.

All parties now and hereafter liable with respect to this Revolving Credit Note, whether maker, principal, surety, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

This Revolving Credit Note may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

This Revolving Credit Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 1.2 (Other Definitions and Provisions), 12.5 (Governing Law, Jurisdiction, Etc.) and 12.6 (Waiver of Jury Trial).

23340171

THIS REVOLVING CREDIT NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Borrower has caused this Revolving Credit Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

ABRH, LLC,
a Delaware limited liability company

By:
Name:

Title:

EXHIBIT A-2

[FORM OF] SWINGLINE NOTE

[Date]

FOR VALUE RECEIVED, the undersigned, ABRH, LLC, a Delaware limited liability company (the "Borrower") hereby unconditionally promises to pay, on the Revolving Credit Maturity Date (as defined in the Credit Agreement referred to below), to [] or its registered assigns (the "Swingline Lender"), at the office of Wells Fargo Bank, National Association, in lawful money of the United States of America and in immediately available funds, the aggregate unpaid principal amount of all Swingline Loans made by the Lender to the undersigned pursuant to Section 2.2(a) of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof and, to the extent permitted by law, accrued interest in respect hereof from time to time from the date hereof until payment in full of the principal amount hereof and accrued interest hereon, at the rates and on the dates set forth in the Credit Agreement.

This Swingline Note is the Swingline Note referred to in the Credit Agreement, dated as of August 19, 2014 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"), by and among the Borrower, the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as administrative agent for the Lenders (the "Administrative Agent"), and the holder is entitled to the benefits thereof. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Swingline Note shall become, or may be declared to be, immediately due and payable, all as and to the extent provided therein. In the event this Swingline Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees.

All parties now and hereafter liable with respect to this Swingline Note, whether maker, principal, surety, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

This Swingline Note may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

This Swingline Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 1.2 (Other Definitions and Provisions), 12.5 (Governing Law, Jurisdiction, Etc.) and 12.6 (Waiver of Jury Trial).

THIS SWINGLINE NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Borrower has caused this Swingline Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

a Delaware limited liability company **ABRH, LLC,**

By: Name:

Title:

EXHIBIT A-3

[FORM OF]
TERM LOAN NOTE

[Date]

FOR VALUE RECEIVED, the undersigned, ABRH, LLC, a Delaware limited liability company (the "Borrower") hereby unconditionally promises to pay, on the Term Loan Maturity Date (as defined in the Credit Agreement referred to below), to [] or its registered assigns (the "Lender") at the office of Wells Fargo Bank, National Association, in lawful money of the United States of America and in immediately available funds, the aggregate unpaid principal amount of the Term Loan made by the Lender to the undersigned pursuant to Section 4.1 of the Credit Agreement referred to below. The undersigned further agrees to pay interest in like money at such office on the unpaid principal amount hereof and, to the extent permitted by law, accrued interest in respect hereof from time to time from the date hereof until payment in full of the principal amount hereof and accrued interest hereon, at the rates and on the dates set forth in the Credit Agreement.

This Term Loan Note is one of the Term Loan Notes referred to in the Credit Agreement, dated as of August 19, 2014 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"), by and among the Borrower, the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as administrative agent for the Lenders (the "Administrative Agent"), and the holder is entitled to the benefits thereof. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Term Loan Note shall become, or may be declared to be, immediately due and payable, all as and to the extent provided therein. In the event this Term Loan Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees.

All parties now and hereafter liable with respect to this Term Loan Note, whether maker, principal, surety, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

This Term Loan Note may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

This Term Loan Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 1.2 (Other Definitions and Provisions), 12.5 (Governing Law, Jurisdiction, Etc.) and 12.6 (Waiver of Jury Trial).

THIS TERM LOAN NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Borrower has caused this Term Loan Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

a Delaware limited liability company **ABRH, LLC,**

By: Name:

Title:

EXHIBIT B

[FORM OF]
NOTICE OF BORROWING

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the “Borrower”), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to Section [2.3(a)][4.2][5.13] of the Credit Agreement, the Borrower hereby requests the following (the “Proposed Borrowing”):

[Term Loan be made as follows:]¹

Date ²	Amount	Interest Rate (Base Rate/ LIBOR Rate) ³	Interest Period (one, three, six or twelve months ⁴ -- for LIBOR Rate only) ²
Closing Date	[\$[]		

[Incremental Facility be made as follows:]⁵

Date	[Type of Incremental Facility]	Amount	Interest Rate (Base Rate/ LIBOR Rate)	Interest Period (one, three, six or twelve months -- for LIBOR Rate)

1 Only to be used on the Closing Date.

2 LIBOR Rate Loans in any amount are only available if this Notice of Borrowing is provided to the Administrative Agent not later the third Business Day prior to the date of the requested borrowing.

3 LIBOR Rate is only available on the Closing Date if the Borrower delivers a Funding Indemnity Letter in accordance with the Credit Agreement

4 Notice for LIBOR Rate Loans having an Interest Period of twelve months must be received four (4) Business Days prior to the requested date of such borrowing.

5 Only to be used in connection with an Incremental Facility issued pursuant to Section 5.13.

				only)

Revolving Loans be made as follows:

Date	Amount	Interest Rate (Base Rate/ LIBOR Rate)	Interest Period (one, three, six or twelve months -- for LIBOR Rate only)

NOTE: REVOLVING LOAN BORROWINGS THAT ARE (A) BASE RATE LOANS MUST BE IN A MINIMUM AGGREGATE AMOUNT OF \$1,000,000 AND IN INTEGRAL MULTIPLES OF \$100,000 IN EXCESS THEREOF AND (B) LIBOR RATE LOANS MUST BE IN A MINIMUM AGGREGATE AMOUNT OF \$2,000,000 AND IN INTEGRAL MULTIPLES OF \$250,000 IN EXCESS THEREOF

Swingline Loans to be made on [date] as follows:

Swingline Loans requested:

- (1) Total Amount of Swingline Loans \$

NOTE: SWINGLINE LOANS MUST BE IN A MINIMUM AGGREGATE AMOUNT OF \$100,000 AND IN INTEGRAL MULTIPLES OF \$50,000 IN EXCESS THEREOF.

The undersigned hereby certifies that the following statements [are true on the date hereof and]6 will be true on the date of the Proposed Borrowing:

(a) The representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of the date of the Proposed Borrowing with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty remains true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects as of such earlier date).

6Delete for Initial Term Loan.

(a) No Default or Event of Default has occurred and is continuing on the date of the Proposed Borrowing or immediately after giving effect to the Proposed Borrowing unless such Default or Event of Default has been cured or waived in accordance with the Credit Agreement.

(b) Immediately after giving effect to the making of the Proposed Borrowing (and the application of the proceeds thereof), (i) the sum of the aggregate principal amount of outstanding Revolving Credit Loans plus outstanding Swingline Loans plus outstanding L/C Obligations does not exceed the Revolving Credit Commitment then in effect, (ii) the outstanding L/C Obligations do not exceed the L/C Commitment and (iii) the outstanding Swingline Loans shall not exceed the Swingline Commitment.

(c) All conditions set forth in Section [2.3(a)][4.2] of the Credit Agreement shall have been satisfied.

(d) [If a Swingline Loan is requested] All conditions set forth in Section 2.2 of the Credit Agreement shall have been satisfied.

(e) Additional Conditions to Letters of Credit. If the issuance of a Letter of Credit is requested, (i) all conditions set forth in Section 3.1 shall have been satisfied and

(ii) there shall exist no Revolving Credit Lender that is a Defaulting Lender unless the Issuing Lender has entered into satisfactory arrangements with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's risk with respect to such Defaulting Lender.

(f) Additional Conditions to Swingline Loans. If a Swingline Loan is requested, (i) all conditions set forth in Section 2.2 shall have been satisfied and (ii) there shall exist no Revolving Credit Lender that is a Defaulting Lender unless the Swingline Lender has entered into satisfactory arrangements with the Borrower or such Defaulting Lender to eliminate the Swingline Lender's risk with respect to such Defaulting Lender.

[(h) [If an Incremental Loan is requested] All conditions set forth in Section 5.13 of the Credit Agreement shall have been satisfied.]

This Notice of Borrowing may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

a Delaware limited liability company

ABRH, LLC,

By: Name:

Title:

EXHIBIT C

[FORM OF]
ACCOUNT DESIGNATION NOTICE

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

The Administrative Agent is hereby authorized to disburse all Loan proceeds into the following account, unless the Borrower shall designate, in writing to the Administrative Agent, one or more other accounts:

Bank Name: [] ABA Routing Number: [] Account Number: []

[TO BE COMPLETED BY BORROWER]

Notwithstanding the foregoing, on the Closing Date, funds borrowed under the Credit Agreement shall be sent to the institutions and/or persons designated on payment instructions to be delivered separately.

This Account Designation Notice may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

a Delaware limited liability company

ABRH, LLC,

By: Name:

Title:

EXHIBIT D

[FORM OF]
NOTICE OF PREPAYMENT

[Date]

TO: Wells Fargo Bank, National Association, as Administrative Agent

Re: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement")

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This letter shall constitute written notice to the Lender pursuant to [Section 2.4(c)] [and][Section 4.5] of the Credit Agreement of the Borrower's intent to prepay the [Revolving Credit Loan][,and][Swingline Loan][,and][Term Loan] listed below in the amount corresponding to such Loan[s] on or about the corresponding date listed below (the "Scheduled Prepayment Date").

Scheduled Prepayment Date	Amount	Type of Loan (Initial Term Loan/ Incremental Term Loan/ Revolving Credit Loan/ Swingline Loan)	Interest Rate (Base Rate/ LIBOR Rate)

NOTE: PARTIAL PREPAYMENTS SHALL BE IN AN AGGREGATE AMOUNT OF (A) \$3,000,000 OR A WHOLE MULTIPLE OF \$1,000,000 IN EXCESS THEREOF WITH RESPECT TO REVOLVING CREDIT LOANS THAT ARE BASE RATE LOANS (OTHER THAN SWINGLINE LOANS), (B) \$5,000,000 OR A WHOLE MULTIPLE OF \$1,000,000 IN EXCESS THEREOF WITH RESPECT TO REVOLVING CREDIT LOANS THAT ARE LIBOR RATE LOANS, (C) \$500,000 OR A WHOLE MULTIPLE OF \$100,000 IN EXCESS THEREOF WITH RESPECT TO SWINGLINE LOANS AND (D) \$5,000,000 OR ANY WHOLE MULTIPLE OF \$1,000,000 IN EXCESS THEREOF WITH RESPECT TO OPTIONAL PREPAYMENTS OF TERM LOANS.

[This letter is delivered in connection with a refinancing or incurrence of Indebtedness, the proceeds of which shall be used to prepay all outstanding Obligations under the Credit Facility, and is consequently contingent upon the consummation of such refinancing or incurrence and may be revoked by the Borrower in the event such refinancing or incurrence is not consummated. The Borrower will forward to you draft release documents to be reviewed in connection with the release of the Collateral.]7

Notwithstanding the foregoing, this letter shall not be construed as a waiver of any rights of the Borrower or any of the other Credit Parties under the Credit Agreement and the other Loan Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

a Delaware limited liability company

ABRH, LLC,

By: Name:

Title:

EXHIBIT E

[FORM OF]
NOTICE OF CONVERSION/CONTINUATION

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the “Borrower”), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to Section 5.2 of the Credit Agreement, the Borrower hereby requests conversion (the “Proposed Conversion”) or continuation of the following Loans be made as follows (the “Proposed Continuation”):

Applicable Loan	Current Interest Rate and Interest Period	Date	Amount to be converted/ extended	Requested Interest Rate (Base Rate/ LIBOR Rate)	Requested Interest Period (one, three, six or twelve8 months -- for LIBOR Rate only)

NOTE: PARTIAL CONVERSIONS THAT ARE (A) BASE RATE LOANS MUST BE IN A MINIMUM AGGREGATE AMOUNT OF \$2,000,000 AND IN INTEGRAL MULTIPLES OF \$250,000 IN EXCESS THEREOF AND (B) LIBOR RATE LOANS MUST BE IN A MINIMUM AGGREGATE AMOUNT OF \$1,000,000 AND IN INTEGRAL MULTIPLES OF \$100,000 IN EXCESS THEREOF.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement.

The undersigned hereby certifies that no Default or Event of Default has occurred and is continuing on the date of the Proposed Conversion or Proposed Continuation or immediately

7 Notice for LIBOR Rate Loans having an Interest Period of twelve months must be received four (4) Business Days prior to the requested date of such borrowing.

after giving effect to the Proposed Conversion or Proposed Continuation unless such Default or Event of Default has been cured or waived in accordance with the Credit Agreement.

This Notice of Conversion/Continuation may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

a Delaware limited liability company

ABRH, LLC,

By: Name:

Title:

EXHIBIT F

[FORM OF]

OFFICER'S COMPLIANCE CERTIFICATE

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

For the fiscal [quarter] [year] ended [,].

The undersigned hereby certifies in his/her capacity as an officer and not in his/her individual capacity on behalf of the Credit Parties that, to the best of his/her knowledge, with respect to the Credit Agreement:

(a) The financial statements delivered for the fiscal period referred to above present fairly the financial position of Holdings and its Subsidiaries, for the period indicated above, in conformity with GAAP (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes) applied on a consistent basis (subject to any changes in GAAP).

(b) Except as otherwise noted herein, I have obtained no knowledge of any Default or Event of Default under the Credit Agreement;⁹

(c) Attached hereto on Schedule A is a calculation of Consolidated EBITDA for the fiscal quarter referred to above and the year to date period then ended (including a detailed explanation of adjustments made in the calculation).

(d) Attached hereto on Schedule B are calculations in reasonable detail demonstrating compliance by the Credit Parties with Section 9.14 of the Credit Agreement as of the last day of such period referred to above.

(e) [Attached hereto on Schedule C is a calculation of Excess Cash Flow.]¹⁰

⁸ If the undersigned has knowledge that a Default or Event of Default has occurred and is continuing, an explanation of such Default or Event of Default shall be provided on a separate page attached hereto.

(f) Attached hereto on Schedule D is a discussion and analysis of the attached financial statements by Borrower's management.

This Certificate may, upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

a Delaware limited liability company

ABRH, LLC,

By: Name:

Title:

EXHIBIT G

[FORM OF]
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the] [each] Assignor identified in item 1 below ([the] [each, an] "Assignor") and [the] [each] Assignee identified in item 2 below ([the] [each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors] [the Assignees] hereunder are several and not joint.]¹¹ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the] [each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the] [each] Assignor hereby irrevocably sells and assigns to [the Assignee] [the respective Assignees], and [the] [each] Assignee hereby irrevocably purchases and assumes from [the Assignor] [the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's] [the respective Assignors'] rights and obligations in [its capacity as a Lender] [their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor] [the respective Assignors] under the respective facilities identified below (including, without limitation, any Letters of Credit, guarantees and Swingline Loans included in such facilities) and

(i) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)] [the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the] [any] Assignor to [the] [any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the] [an] "Assigned Interest"). Each such sale and assignment is without recourse to [the] [any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the] [any] Assignor.

1. Assignor[s]:

9 Include bracketed language if there are either multiple Assignors or multiple Assignees.

2. Assignee[s]:

[for each Assignee, indicate [Affiliate] [Approved Fund] of [identify Lender]

3. Borrower: ABRH, LLC, a Delaware limited liability company

4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement.

5. Credit Agreement: Credit Agreement dated as of August 19, 2014 among the Borrower, the other Credit Parties from time to time party thereto, the lenders and other financial institutions from time to time party thereto, and Wells Fargo Bank, National Association, as Administrative Agent.

6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned	Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. Trade Date:
]12

Effective Date: , 20 .

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The terms set forth in this Assignment and Assumption are hereby agreed to:

[NAME OF ASSIGNOR]

ASSIGNOR[S]

By: Name:

Title:

ASSIGNEE[S]
[NAME OF ASSIGNEE]

By: Name:

Title:

[Consented to and] Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent

By: Name:
Title:

[Consented to:] [ABRH, LLC]

By: Name:

Title:

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The] [Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the] [the relevant] Assigned Interest, (ii) [the] [such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The] [Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements set forth in the definition of Eligible Assignee and in subsections 12.9(b)(v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 12.9(b)(iii) of the Credit Agreement),

(ii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the] [the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 8.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the] [such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative 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 Assignment and Assumption and to purchase [the] [such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the] [any] Assignor 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 action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the] [each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the] [the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the] [the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a "signature" of this Assignment and Assumption by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT H-1

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to the provisions of Section 5.11(g) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (e) the interest payments on the Loan(s) are not effectively connected with the undersigned's conduct of a U.S. trade or business or are effectively connected but are not includible in the undersigned's gross income for U.S. federal income tax purposes under an income tax treaty.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. person status on Internal Revenue Service Form W-8BEN. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Delivery of this Certificate by telecopy shall be effective as an original.

, as a Lender

By: Name: Title:

EXHIBIT H-2
[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes) TO: Wells Fargo Bank, National Association, as

Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the “Borrower”), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to the provisions of Section 5.11(g) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (e) the interest payments with respect to such participation are not effectively connected with the undersigned’s conduct of a U.S. trade or business or are effectively connected but are not includible in the undersigned’s gross income for U.S. federal income tax purposes under an income tax treaty.

The undersigned has furnished its participating Lender and the Company with a certificate of its non-U.S. person status on Internal Revenue Service Form W-8BEN. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Delivery of this Certificate by telecopy or other electronic means shall be effective as an original.

, as a Lender

By: Name: Title:

EXHIBIT H-3
[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes) TO: Wells Fargo Bank, National Association, as

Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to the provisions of Section 5.11(g) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its partners/members are the sole beneficial owners of such participation, (c) with respect such participation, neither the undersigned nor any of its partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (e) none of its partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (f) the interest payments with respect to such participation are not effectively connected with the undersigned's or its partners/members' conduct of a U.S. trade or business or are effectively connected but are not includible in the partners/members' gross income for U.S. federal income tax purposes under an income tax treaty.

The undersigned has furnished its participating Lender and the Company with Internal Revenue Service Form W-8IMY accompanied by an Internal Revenue Service Form W-8BEN from each of its partners/members claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Delivery of this Certificate by telecopy or other electronic means shall be effective as an original.

, as a Lender

By: Name: Title:

EXHIBIT H-4
[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes) TO: Wells Fargo Bank, National Association, as

Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

Pursuant to the provisions of Section 5.11(g) of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) the undersigned is not, and none of its partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (e) none of its partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (f) the interest payments on the Loan(s) are not effectively connected with the undersigned's or its partners/members' conduct of a U.S. trade or business or are effectively connected but are not includible in the partners/members' gross income for U.S. federal income tax purposes under an income tax treaty.

The undersigned has furnished the Administrative Agent and the Borrower with Internal Revenue Service Form W-8IMY accompanied by an Internal Revenue Service Form W-8BEN from each of its partners/members claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Delivery of this Certificate by telecopy or other electronic means shall be effective as an original.

, as a Lender

By: Name: Title:

EXHIBIT I

[FORM OF] FUNDING INDEMNITY LETTER

TO: Wells Fargo Bank, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 19, 2014, by and among ABRH, LLC, a Delaware limited liability company (the "Borrower"), the other Credit Parties, the Lenders and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: August 19, 2014

This letter is delivered in anticipation of the closing of the above-referenced Credit Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in the most recent draft of the Credit Agreement (including all exhibits and schedules thereto) circulated to the Borrower and the Lenders.

The Borrower anticipates that all conditions precedent to the closing of the Credit Agreement and the initial Extensions of Credit will be satisfied on or about August 19, 2014 (the "Closing Date"). The Borrower wishes to borrow [a portion of] [the initial Revolving Credit Loans] [and] [the Initial Term Loan], described in the Notice of Borrowing delivered in connection with this letter agreement, on the Closing Date as LIBOR Rate Loans (the "Closing Date LIBOR Rate Loans").

In order to induce the Lenders to accept this request prior to the Closing Date, the Borrower hereby agrees that, in the event the Borrower fails to borrow the Closing Date LIBOR Rate Loans on the Closing Date for any reason whatsoever (including the failure of the Credit Agreement to become effective), the Borrower hereby unconditionally agrees to reimburse each applicable Lender in respect of its Closing Date LIBOR Rate Loans upon its demand as set forth in Section 5.9 of the Credit Agreement as if it were in effect with respect to the requested Closing Date LIBOR Rate Loans.

This letter agreement shall be governed by, and shall be construed and enforced in accordance with, the law of the State of New York. This letter may (a) be executed in any number of counterparts by the different signatories hereto on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which together shall constitute one and the same letter and (b) upon execution, be delivered by facsimile or electronic mail, which shall be deemed for all purposes to be an original signature.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ABRH, LLC,
a Delaware limited liability company

By: Name: Title:

Schedule 1.1(a)

Existing Letters of Credit

1. Standby letter of credit SM202618A issued by Wells Fargo Bank, National Association in the face amount of \$85,000.00 for the benefit of Employers Insurance of Wausau.
2. Standby letter of credit SM202825A issued by Wells Fargo Bank, National Association in the face amount of \$500,000.00 for the benefit of Safety National Casualty Corp.
3. Standby letter of credit SM220033A issued by Wells Fargo Bank, National Association in the face amount of \$11,675,000.00 for the benefit of Zurich American Insurance Company.
4. Standby letter of credit NZS516179 issued by Wells Fargo Bank, National Association in the face amount of \$83,000.00 for the benefit of Arrowood Indemnity Company.
5. Standby letter of credit NZS516182 issued by Wells Fargo Bank, National Association in the face amount of \$1,425,000.00 for the benefit of Federal Insurance Company.
6. Standby letter of credit NZS625674 issued by Wells Fargo Bank, National Association in the face amount of \$3,878,156.00 for the benefit of Arch Insurance Company.

Schedule 1.1(b)

Commitments and Commitment Percentages

Lender	Term Loan Commitment	Term Loan Commitment Percentage	Revolving Credit Commitment	Revolving Credit Commitment Percentage
Wells Fargo Bank, National Association	\$20,952,380.95	19.047619048%	\$19,047,619.05	19.047619048%
Bank of America, N.A.	\$20,952,380.95	19.047619048%	\$19,047,619.05	19.047619048%
Cooperatieve Centrale Raiffeisen- Boerenleenbank B.A. "Rabobank Nederland", New York Branch	\$18,333,333.33	16.666666667%	\$16,666,666.67	16.666666667%
Regions Bank	\$18,333,333.33	16.666666667%	\$16,666,666.67	16.666666667%
Citizens Bank, National Association	\$18,333,333.33	16.666666667%	\$16,666,666.67	16.666666667%
Fifth Third Bank	\$13,095,238.10	11.904761905%	\$11,904,761.90	11.904761905%
TOTAL	\$110,000,000.00	100.000000000%	\$100,000,000.00	100.000000000%

Schedule 8.18 Post-Closing Matters

- (a) Real Property Collateral. The following shall be completed within sixty (60) days of the Closing Date (or such longer period of time as agreed to by the Administrative Agent):
- (1) Title Insurance. The Administrative Agent shall have received a marked-up commitment for an ALTA mortgagee title insurance policy, insuring the first priority Lien of the Administrative Agent (subject only to Permitted Liens), for the benefit of the Secured Parties, and showing no Liens prior to such Liens other than for ad valorem taxes not yet due and payable, with title insurance companies acceptable to the Administrative Agent, on each property subject to a Mortgage, but no survey of the property will be required.
 - (2) Title Exceptions. The Administrative Agent shall have received copies of all recorded documents creating exceptions to the title policy referred to in Section 6.1(d)(i).
 - (3) Matters Relating to Flood Hazard Properties. With respect to each parcel of real property subject to a Mortgage, the Administrative Agent shall have received (A) a “life of loan” flood hazard certification from the National Research Center, or any successor agency thereto and, (B) if such parcel of real property is located in a special flood hazard area: notices to (and confirmation of receipt by) the Borrower as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program because the community does not participate in the National Flood Insurance Program; and to the extent flood hazard insurance is available in the community in which the real property is located, a copy of one of the following: (w) the flood hazard insurance policy, (x) the Borrower’s application for a flood hazard insurance policy, together with proof of payment of the premium associated therewith, (y) a declaration page confirming that flood hazard insurance has been issued to the Borrower or (z) such other evidence of flood hazard insurance satisfactory to the Administrative Agent.
 - (4) Other Real Property Information. The Administrative Agent shall have received such other certificates, documents and information as are reasonably requested by the Lenders to ensure the validity and priority of the Lien created in favor of the Administrative Agent.
- (b) Control Agreements. To the extent not completed on or prior to the Closing Date, the Credit Parties will enter into Control Agreements required pursuant to Section 7(c) of the Guaranty and Security Agreement on or before the date that is thirty (30) days after the Closing Date (or such longer time period as agreed to by the Administrative Agent) .

CERTIFICATIONS

I, Raymond R. Quirk, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fidelity National Financial, 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. The registrant's other certifying officer and 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 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: November 10, 2014

By: /s/ Raymond R. Quirk
Raymond R. Quirk
Chief Executive Officer

CERTIFICATIONS

I, Anthony J. Park, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fidelity National Financial, 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. The registrant's other certifying officer and 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 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: November 10, 2014

By: /s/ Anthony J. Park
Anthony J. Park
Chief Financial Officer

CERTIFICATION OF PERIODIC FINANCIAL REPORTS PURSUANT TO 18 U.S.C. §1350

The undersigned hereby certifies that he is the duly appointed and acting Chief Executive Officer of Fidelity National Financial, Inc., a Delaware corporation (the "Company"), and hereby further certifies as follows.

1. The periodic report containing financial statements to which this certificate is an exhibit fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934.
2. The information contained in the periodic report to which this certificate is an exhibit fairly presents, in all material respects, the financial condition and results of operations of the Company.

In witness whereof, the undersigned has executed and delivered this certificate as of the date set forth opposite his signature below.

Date: November 10, 2014

By: /s/ Raymond R. Quirk
Raymond R. Quirk
Chief Executive Officer

CERTIFICATION OF PERIODIC FINANCIAL REPORTS PURSUANT TO 18 U.S.C. §1350

The undersigned hereby certifies that he is the duly appointed and acting Chief Financial Officer of Fidelity National Financial, Inc., a Delaware corporation (the "Company"), and hereby further certifies as follows.

1. The periodic report containing financial statements to which this certificate is an exhibit fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934.
2. The information contained in the periodic report to which this certificate is an exhibit fairly presents, in all material respects, the financial condition and results of operations of the Company.

In witness whereof, the undersigned has executed and delivered this certificate as of the date set forth opposite his signature below.

Date: November 10, 2014

By: /s/ Anthony J. Park
Anthony J. Park
Chief Financial Officer