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

FORM 8-K

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

Date of Report (Date of earliest event reported): June 1, 2017

Hickok Incorporated
(Exact Name of Registrant as Specified in Charter)

Ohio (State or Other Jurisdiction of Incorporation)	0-147 (Commission File Number)	34-0288470 (IRS Employer Identification No.)
--	---	---

10514 Dupont Avenue Cleveland, Ohio (Address of Principal Executive Offices)	44108 (Zip Code)
--	----------------------------

(216) 541-8060
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On June 1, 2017, Hickok Acquisition A LLC (“Hickok Acquisition Sub”), a wholly owned subsidiary of Hickok Incorporated (the “Company”), entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Air Enterprises Acquisition LLC, a Delaware limited liability company (“Air Enterprises”), and Mr. A. Malachi Mixon, III and Mr. William M. Weber, each of whom are the principal members of Air Enterprises (each, a “Member” and collectively with Air Enterprises, the “Sellers”).

Pursuant to the Purchase Agreement, Hickok Acquisition Sub has agreed to purchase certain assets and assume certain specified liabilities and obligations of Air Enterprises’ custom air handling solutions business (the “Air Enterprises Division”) for \$10,250,000.

Hickok Acquisition Sub and Sellers have made customary representations, warranties, covenants and indemnities in the Purchase Agreement. Subject to certain limitations, each of Hickok Acquisition Sub, on the one hand, and Sellers, on the other hand, have agreed to indemnify the other party for certain matters, including breaches of representations, warranties and covenants. The assertions embodied in those representations and warranties were made solely for purposes of the contract by and among the parties thereto and are not intended to provide factual, business, or financial information about Hickok Acquisition Sub, the Sellers or the Air Enterprises Division. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to shareholders or different from what a shareholder might view as material, may have been used for purposes of allocating risk between Hickok Acquisition Sub and Sellers rather than establishing matters as facts, may have been qualified by certain disclosures not reflected in the Purchase Agreement that were made to the other parties in connection with the negotiation of the Purchase Agreement and generally were solely for the benefit of the parties to that agreement.

The Company, and its subsidiaries as borrowers, funded a portion of the purchase price with borrowings under a Credit Agreement entered into on June 1, 2017 with JPMorgan Chase Bank, N.A. as lender (the “Credit Agreement”). The Credit Agreement is comprised of a revolving facility in the amount of \$8,000,000, subject to a borrowing base (determined based on 80% of Eligible Accounts, plus 50% of Eligible Progress Billing Accounts, plus 50% of Eligible Inventory, minus Reserves as defined in the Credit Agreement) and a term A loan in the amount of \$2,000,000, payable in consecutive monthly installments of \$41,667 commencing on July 1, 2017. The revolving facility includes a \$3 million sublimit for the issuance of letters of credit. Interest for borrowings under the revolving facility accrues at a per annum rate equal to Prime Rate or LIBOR plus applicable margins of (i) 0.00% for Prime Rate loans and (ii) 2.00% for LIBOR loans. The maturity date of the revolving facility is June 1, 2020. Interest for borrowings under the term A loan accrues at a per annum rate equal to Prime Rate or LIBOR plus applicable margins of (i) 0.25% for Prime Rate loans and (ii) 2.25% for LIBOR loans. The maturity date of the term A loan is June 1, 2021. The Credit Agreement includes a commitment fee on the unused portion of the revolving facility of 0.25% per annum payable quarterly. The obligations of the Company and other borrowers under the Credit Agreement are secured by a blanket lien on all of the assets of the Company and its subsidiaries. The Credit Agreement also includes customary representations and warranties and applicable reporting requirements and covenants, including fixed charge coverage ratio and senior funded indebtedness to EBITDA ratio financial covenants.

In connection with entering into the Credit Agreement, the Company made a onetime prepayment of a portion of the outstanding principal under outstanding promissory notes held by First Francis Company Inc. ("First Francis"), in the amount of \$500,000. The Company will not be required to make any of the scheduled quarterly payments due under these notes for the remainder of calendar 2017. First Francis is owned by Edward Crawford and Matthew Crawford, who serve on the Board of Directors of the Company.

The foregoing descriptions of the Purchase Agreement and Credit Agreement are qualified in their entirety by the copies of such documents which are attached as Exhibit 2.1 and Exhibit 10.1, respectively, and incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets

The information set forth in Item 1.01 above is hereby incorporated by reference into this Item 2.01.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth in Item 1.01 above is hereby incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(a) *Financial statements of businesses acquired.*

The Company will file the financial statements required by Item 9.01 (a) of Form 8-K by an amendment to this Current Report on Form 8-K no later than 71 days from the date this Current Report on Form 8-K is required to be filed.

(b) *Pro Forma Financial Information.*

The Company will file the financial statements required by Item 9.01 (b) of Form 8-K by an amendment to this Current Report on Form 8-K no later than 71 days from the date this Current Report on Form 8-K is required to be filed.

(d) *Exhibits*

<u>Exhibit No.</u>	<u>Description of Exhibits</u>
2.1	Asset Purchase Agreement, dated June 1, 2017, by and among Hickok Acquisition A LLC, Air Enterprises Acquisition LLC, A. Malachi Mixon, III and William M. Weber*
10.1	Credit Agreement, dated June 1, 2017, among Hickok Incorporated, Hickok Acquisition A LLC, Supreme Electronics Corp., Federal Hose Manufacturing LLC, Waekon Corporation, Hickok Operating LLC and JPMorgan Chase Bank, N.A.

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule so furnished.

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 hereunto duly authorized.

Date: June 5, 2017

HICKOK INCORPORATED

/s/ Brian E. Powers

Name: Brian E. Powers

Its: Chairman, President and Chief Executive Officer

Exhibit Index

<u>Exhibit No.</u>	<u>Description of Exhibits</u>
2.1	Asset Purchase Agreement, dated June 1, 2017, by and among Hickok Acquisition A LLC, Air Enterprises Acquisition LLC, A. Malachi Mixon, III and William M. Weber*
10.1	Credit Agreement, dated June 1, 2017, among Hickok Incorporated, Hickok Acquisition A LLC, Supreme Electronics Corp., Federal Hose Manufacturing LLC, Waekon Corporation, Hickok Operating LLC and JPMorgan Chase Bank, N.A.

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule so furnished.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”) is entered into as of the 1st day of June, 2017, by and among Hickok Acquisition A LLC, an Ohio limited liability company (“Buyer”), Air Enterprises Acquisition LLC, a Delaware limited liability company (“Seller”), and A. Malachi Mixon, III and William M. Weber, each an individual and a member of Seller (each a “Member,” and collectively with Seller, the “Seller Parties”).

RECITALS:

WHEREAS, Seller is engaged in the business of designing, engineering, manufacturing and installing commercial, institutional, and industrial custom air handling solutions worldwide (the “Business”).

WHEREAS, on the terms and subject to the conditions of this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of Seller’s assets used by Seller in the operation of the Business, and Seller desires to assign to Buyer, and Buyer desires to assume from Seller, certain specified liabilities of Seller related to the Business.

WHEREAS, the Members own membership interests of Seller and will directly benefit from the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth in this Agreement, Buyer and Seller Parties hereby agree as follows:

ARTICLE 1

Definitions

1.1 Definitions. Certain terms used in this Agreement shall have the meanings set forth in Article 9, or elsewhere herein as indicated in Article 9.

1.2 Accounting Terms. Accounting terms used in this Agreement and not otherwise defined herein shall have the meanings attributed to them under GAAP, except as may otherwise be specified herein.

ARTICLE 2

Purchase and Sale

2.1 Purchase and Sale.

2.1.1 Acquired Assets. On the terms and subject to the conditions contained herein, Seller hereby sells, assigns, transfers and delivers to Buyer, and Buyer hereby purchases, acquires and accepts from Seller, free and clear of all Liens (other than Permitted Liens), all of Seller’s right, title and interest in and to all of Seller’s assets, properties, rights and claims that are used in or related to Seller’s conduct of the Business (other than the Excluded Assets) (the “Acquired Assets”), including, without limitation, the following:

(a) Accounts Receivable. All accounts receivable and all notes, bonds and other evidences of indebtedness in favor of Seller and rights to receive payments arising out of sales and services rendered, including any rights of Seller with respect to any third party collection procedures or any other actions or proceedings which have been commenced in connection therewith, together with the proceeds in respect of any of the foregoing (the “Accounts Receivable”);

(b) Inventory. Any and all inventory used in or held for use in the Business, including, without limitation, any samples, raw materials, work in progress, accessories, supplies, spare parts, finished products, shipping containers, labels, packaging materials, and any prepaid inventory, whether in the possession of Seller, on consignment or otherwise in the possession of a third party, or in transit to Seller (the “Inventory”);

(c) Fixed Assets. All machinery, equipment, furniture, furnishings, molds, fixtures, tools, dies, vessels, vehicles, computers and other tangible personal property used in or related to Seller’s conduct of the Business, including, without limitation, all Fixed Assets located at the Akron Facilities, which include all Fixed Assets set forth on Schedule 2.1.1(c) (collectively, the “Fixed Assets”);

(d) Business Intellectual Property. All Intellectual Property owned or used by Seller in its operation of the Business, including, without limitation, the name “Air Enterprises” and any variation or derivation thereof (collectively, the “Business Intellectual Property”), together with the goodwill and right to sue third-parties for past infringement or improper, unlawful or unfair use or disclosure of the Business Intellectual Property;

(e) Assumed Contracts. To the extent transferable, the Contracts to which Seller is a party that are related to its operation of the Business and that are set forth on Schedule 2.1.1(e) (collectively, “Assumed Contracts”);

(f) Books and Records. Subject to Section 7.1.4 and other than the Excluded Records, all of the books and records of Seller related to the Acquired Assets or the Business, including business records, files, research material, tangible data, documents, payroll and personnel records with respect to the Transferred Employees (to the extent permitted by Law), invoices, customer lists, vendor lists, service provider lists, sales and sales promotional data, advertising materials, credit information, cost and pricing information, customer and supplier lists and reference catalogs, in each case whether in written or electronic form; provided, that to the extent such books and records are not reasonably separable from documents or databases that do not relate exclusively to the Business, copies of such books and records shall be provided to Buyer;

(g) Listings. All interests in and to telephone and fax numbers, post office boxes and all listings in all telephone books and directories, stationery, forms, labels, shipping materials, catalogs, brochures, art work, photographs, digital marketing materials and advertising and promotional materials used in or related to the Business, whether in written or electronic form;

(h) Permits. To the extent transferable, all Permits held by Seller that are required by Governmental Authorities and used in Seller's operation of the Business or the operation of the Acquired Assets (the "Acquired Permits");

(i) Prepaid Assets. All prepaid assets and other similar items, including prepaid expenses, security deposits, deferred charges, advance payments and other prepaid items, in each case related to the Business (the "Prepaid Assets");

(j) Customer Deposits. All prepaid deposits of any customers of the Business;

(k) Claims. Except for any claims arising under insurance policies of Seller, all rights, claims, causes of action (including, without limitation, rights of recovery, rights of setoff, rights of recoupment and other rights of any kind against third parties) and choses in action of Seller relating to any of the Acquired Assets, the Business or the Assumed Liabilities, along with any and all recoveries by settlement, judgment or otherwise in connection with same;

(l) Warranties. All of Seller's rights in, to and under third party warranties and guarantees extended by suppliers, vendors, contractors, manufacturers and licensors that are part of any of the Acquired Assets, the Business or the Assumed Liabilities;

(m) Goodwill. Any and all goodwill and going concern value associated with the Business or the Acquired Assets;

(n) UPC Codes. All Global Trade Item Numbers or Universal Product Codes related to the Acquired Assets and/or the Business;

(o) Club Membership. One of Seller's memberships to Firestone Country Club associated with Glenn Swartz; and

(p) Other Assets. All other assets of Seller used in or related to its operation of the Business (unless included in the Excluded Assets).

2.1.2 Excluded Assets. The following assets, properties, rights, Contracts and claims, wherever located, whether tangible or intangible, real or personal, of Seller (whether or not related to, or used by Seller in its operation of, the Business) are not included in the definition of Acquired Assets and are not being sold, assigned, transferred or delivered to Buyer (collectively, the "Excluded Assets"):

(a) Cash; Bank Accounts. All cash, cash equivalents, marketable securities and similar investments, bank accounts, lockboxes and deposits of Seller;

(b) Claims. All rights, claims, causes of action (including, without limitation, rights of recovery, rights of setoff, rights of recoupment and other rights of any kind against third parties) and choses in action of Seller relating to any of the Excluded Assets or Retained Liabilities and all such claims arising under insurance policies of Seller (including, for the avoidance of doubt, all such claims arising out of the operation of the Business prior to the Closing), along with any and all recoveries by settlement, judgment or otherwise in connection with same;

(c) Warranties. All of Seller's rights in, to and under third party warranties and guarantees extended by suppliers, vendors, contractors, manufacturers and licensors that are part of any of the Excluded Assets or Retained Liabilities;

(d) Insurance Policies. All insurance policies of Seller and all claims and rights of Seller under such insurance policies, whether or not related to the Business;

(e) Seller Plans. All rights and interest in and under the Seller Plans (including any pension and 401(k) plans);

(f) Tax Refunds and Deposits. All (i) claims for and rights of Seller to receive Tax refunds and (ii) Tax deposits;

(g) Transaction Documents. All rights of Seller under this Agreement, the other agreements and instruments executed and delivered in connection with this Agreement, and the transactions contemplated hereby or thereby;

(h) Excluded Records. (i) Seller's minute books, stock books and other organizational records having to do with the formation and capitalization of Seller, (ii) any personnel records and other records relating to the employees of Seller that Seller is required by Law to retain in its possession, and (iii) Tax Returns of Seller (collectively, the "Excluded Records");

(i) Capital Stock. All capital stock or other equity interests of Seller owned by Seller in any other Person;

(j) Excluded Contracts. Any Contracts which are not included among the Assumed Contracts (the "Excluded Contracts"), including, without limitation, the Leases;

(k) Other Excluded Assets. The assets set forth on Schedule 2.1.2(k); and

(l) Other Assets. All assets of Seller or any of its Affiliates relating exclusively to the Retained Businesses.

2.1.3 Assumed Liabilities. Buyer hereby assumes and agrees to pay, perform and discharge when due only the following Liabilities of Seller, and in each case only to the extent such Liabilities arise exclusively from the operation the Business (the "Assumed Liabilities"):

(a) Trade Payables. All trade accounts payable of Seller related exclusively to the Business that: (i) are not outstanding in excess of Seller's normal and customary periods for payment as of the Closing and in no event more than one hundred twenty (120) days old, (ii) arose in the ordinary course of the Business, and (iii) remain unpaid at the Closing, all as specifically set forth on Schedule 2.1.3(a) (the "Trade Payables");

(b) **Assumed Contracts.** The performance or payment obligations arising after the Closing under the Assumed Contracts to the extent (i) such performance or payment obligations accrue, relate and are to be performed solely after the Closing, (ii) such performance or payment obligations are not related to a breach of an Assumed Contract that occurred prior to the Closing, and (iii) the corresponding benefits of such Assumed Contracts are validly assigned to and received by Buyer; and

(c) **Accrued Liabilities.** Those accrued liabilities of Seller relating exclusively to the Business incurred in the ordinary course of business and specifically listed by account set forth on Schedule 2.1.3(c) (the “Assumed Accrued Liabilities”).

2.1.4 Retained Liabilities. Notwithstanding anything in this Agreement to the contrary, except for the Assumed Liabilities, Buyer is not assuming and will not become responsible for any Liabilities of Seller, whether or not related to the Business (the Liabilities being retained by Seller are hereinafter collectively referred to as the “Retained Liabilities”). No disclosure by Seller contained in the Disclosure Schedules will in any way affect Seller’s obligations hereunder with respect to the Retained Liabilities. A non-exclusive list of the Retained Liabilities is set forth below:

(a) **Transaction Documents.** Any of Seller’s Liabilities under this Agreement or the Seller Ancillary Agreements;

(b) **Expenses.** Any of Seller’s Liabilities for expenses or fees incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the consummation (or preparation for the consummation) of the transactions contemplated hereby (including all attorneys’ and accountants’ fees and brokerage fees), including without limitation, any unpaid change of control or severance obligations of Seller;

(c) **Taxes.** Any Liability of Seller for Taxes, including any Liability of Seller for any amount of federal, state, local or other Taxes which are imposed on or measured by the income of Seller for any period;

(d) **Product Liability.** All Liabilities to customers or third parties with respect to services performed by Seller prior to the Closing or products manufactured, sold, assembled, distributed or leased by Seller prior to the Closing, without regard to (i) the basis or theory of claim (negligence, strict tort, breach of express or implied warranty, fraud or failure to warn, test, inspect or instruct, infringement claims and any related claims, or otherwise), (ii) the nature of the damages sought (property damage, economic loss, personal injury, wrongful death or other), or (iii) whether the claim arose or is asserted before or after the Closing;

(e) **Employees.** All Liabilities arising out of the employment relationship between Seller and any of its employees or former employees existing at any time, whether before or after the Closing, including, without limitation, all Liabilities relating to any Seller Plan or other Plan sponsored or maintained by Seller at any time or to which Seller has made contributions, all severance claims of any employee of Seller (including, without limitation, such claims relating to or resulting from the consummation of the transactions contemplated hereby) and all workers’ compensation or EEOC claims, demands, investigations or proceedings relating to matters which occurred prior to the Closing;

(f) Past Violations. Any of Seller's Liabilities (i) arising by reason of any violation or alleged violation of any Law or any requirement of any Governmental Authority or (ii) arising by reason of any breach or alleged breach by Seller of any Contract, Permit or Order;

(g) Litigation. Any of Seller's Liabilities relating to any legal action, litigation, proceeding or claim arising out of or in connection with Seller's conduct of the Business or any other conduct of Seller, Seller's officers, directors, employees, consultants, agents or advisors on or prior to the Closing Date;

(h) Environmental. Any Liability arising under Environmental Law and relating to or arising from Seller, whether or not related to the Business or the Acquired Assets prior to the Closing Date, including, but not limited to, any such Liability relating to or arising from (i) the Leased Real Property or any other real property presently or formerly owned, operated or leased by Seller, (ii) the off-site transportation, disposal or arranging for the off-site disposal of any Hazardous Materials, (iii) the release of Hazardous Materials in, at, on, from or emanating from the Leased Real Property or any other real property presently or formerly owned, operated or leased by Seller, or (iv) the actual or alleged violation of any Environmental Law;

(i) Successor Liability. Any Liabilities which Buyer may become liable for as a result of or in connection with the failure by Buyer or Seller to comply with any bulk sales or bulk transfers laws or as a result of any "defacto merger" or "successor-in-interest" theories of liability;

(j) Indebtedness. All of Seller's indebtedness, including the current portion of any long-term debt and any working capital line, Liabilities related to notes payable, mortgages, term loans, equipment loans, cash overdrafts, revolver borrowings and loans or payables to any shareholder of Seller (or any relative of any such shareholder) or any employee or Affiliate of Seller, or any other obligation for borrowed money, and any interest related to any of the foregoing ("Indebtedness");

(k) Accounts Payable and Accrued Liabilities. All accounts payable or accrued liabilities of Seller other than the Trade Payables and the Assumed Accrued Liabilities;

(l) Excluded Contracts. All Liabilities under any Contract other than the Assumed Contracts and under any Permit other than the Acquired Permits;

(m) Excluded Assets and Retained Businesses. Any Liability relating to any of the Excluded Assets and/or the Retained Businesses (including, without limitation, under any Seller Plans, Contracts or understandings related thereto); and

(n) Other Liabilities. Any other Liability of Seller not expressly assumed by Buyer pursuant to Section 2.1.3 above.

2.2 Consideration.

2.2.1 Purchase Price. The aggregate consideration to be paid by Buyer to Seller in consideration of the Acquired Assets shall consist of:

- (a) Ten Million Two Hundred Fifty Thousand Dollars (\$10,250,000) (the “Purchase Price”); and
- (b) the assumption by Buyer of the Assumed Liabilities.

2.3 Allocation of the Purchase Price. The allocation of the Purchase Price and Assumed Liabilities among the Acquired Assets for purposes of Section 1060 of the Internal Revenue Code are as set forth on Schedule 2.3, and Buyer and Seller agree to be bound by such fair market value determination and allocation and to complete and attach Internal Revenue Service Form 8594 to their respective Tax Returns accordingly.

ARTICLE 3

Representations and Warranties Concerning the Business

The Seller Parties, on a joint and several basis, hereby represent and warrant to Buyer as follows:

3.1 Organization; Authority and Enforceability.

3.1.1 Seller is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of Delaware. Seller has all requisite power and authority to own and lease its assets, including the Acquired Assets, and to operate the Business as the same are now being owned, leased and operated. Seller is duly qualified or licensed to do business as a foreign entity in, and is in good standing in, each jurisdiction in which the nature of the Business or the ownership of its assets or properties requires it to be so qualified or licensed, which jurisdictions are set forth on Schedule 3.1.1(a). Seller has provided to Buyer a true, complete and correct copy of the Charter Documents, as currently in effect, of Seller. Schedule 3.1.1(b) sets forth the capitalization of Seller, and all of the issued and outstanding capital stock of Seller is owned by the Shareholders, as set forth on Schedule 3.1.1(b). Seller does not have any ownership interest in any other Person, is not a member of any partnership or joint venture, and has never operated as a subsidiary or division of another Person.

3.1.2 Each Seller Party has full legal power, authority and capacity to execute, deliver and perform this Agreement and each other agreement, instrument and document to be executed and delivered by such Seller Party in connection herewith (collectively, the “Seller Ancillary Agreements”), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each Seller Ancillary Agreement by each Seller Party, as applicable, has been duly and validly authorized and approved by all necessary action (corporate or otherwise) on the part of such Seller Party. This Agreement and each Seller Ancillary Agreement constitutes the legal, valid, and binding obligation of each Seller Party, as applicable, enforceable against each Seller Party, as applicable, in accordance with their terms, except as enforceability may be limited by applicable equitable principles (whether applied in a proceeding at Law or in equity) or by bankruptcy, receivership, insolvency, reorganization, moratorium, or similar Laws affecting creditors’ rights generally (“Enforceability Exceptions”).

3.2 Noncontravention.

3.2.1 Consents. Except as set forth on Schedule 3.2.1, no waiver, approval, consent or permit of, or filing with or notice to, any Person or Governmental Authority is required in connection with the transaction contemplated hereby or the execution, delivery or performance by any Seller Party of this Agreement or any other agreement or document delivered by or on behalf of any Seller Party in connection herewith.

3.2.2 No Conflicts. Except as set forth on Schedule 3.2.2, no action taken or required to be taken by or on behalf of any Seller Party in connection herewith, including, but not limited to, the execution, delivery and performance of this Agreement and each Seller Ancillary Agreement: (a) gives rise to a right of any party to accelerate, amend, modify, or terminate, or require payments under, or require the authorization, consent or approval from any third party or result in the creation of a Lien upon any of the Acquired Assets, pursuant to any Permit or Contract to which any Seller Party is a party or under which any Seller Party is bound; (b) disrupts or impairs any business relationship which any Seller Party has related to the Business with any dealer, distributor, sales representative, supplier or customer; (c) conflicts with or violates: (i) any Law; (ii) the Charter Documents of Seller; (iii) any Contract by which any Seller Party is bound or to which any of the Acquired Assets are subject; or (iv) any order, arbitration award, judgment, decree or other similar restriction to which any Seller Party is subject; or (d) constitutes an event which, after notice or lapse of time or both, could result in any of the foregoing.

3.3 Financial Statements.

3.3.1 Attached as Schedule 3.3.1 is a true, correct and complete copy of the internally prepared, unaudited balance sheet of Seller as of May 31, 2017 (the “Closing Balance Sheet”). The Closing Balance Sheet has: (a) been prepared in all material respects in accordance with GAAP, consistently applied, without modification of the accounting principles used in the preparation thereof throughout the periods presented, except for the absence of normal disclosures made in footnotes and for normal year-end adjustments which are not material, individually or in the aggregate; and (b) presents fairly the financial position of Seller and the Business as of the Closing Date and the results of operations for the period then ended. The Closing Balance Sheet is consistent in all material respects with the books and records of Seller (which books and records are true and complete in all material respects), and there have been no material changes to the financial position of the Seller as set forth on the Closing Balance Sheet.

3.3.2 Attached as Schedule 3.3.2 are true, correct and complete copies of the (a) reviewed financial statements of Seller as of and for the fiscal year ended December 31, 2015 prepared by Seller's external accountants, and internally prepared, unaudited financial statements of Seller as of and for the fiscal year ended December 31, 2016 (the "Annual Financial Statements"), and (b) the internally prepared, unaudited financial statements of Seller as of and for the four (4) month period ended April 30, 2017 (the "Interim Statements," and together with the Annual Financial Statements, the "Financial Statements"). The Financial Statements have: (a) been prepared in all material respects in accordance with GAAP, consistently applied, without modification of the accounting principles used in the preparation thereof throughout the periods presented, except with respect to the Interim Financial Statements, for the absence of normal disclosures made in footnotes and for normal year-end adjustments which are not material, individually or in the aggregate; and (b) present fairly the financial position of Seller and the Business as of the dates indicated and the results of operations for the periods then ended. The Financial Statements are consistent in all material respects with the books and records of Seller (which books and records are true and complete in all material respects). The unaudited balance sheet of Seller as of April 30, 2017 and included in the Interim Financial Statements is herein referred to as the "Acquisition Balance Sheet."

3.3.3 Seller does not have any debt, liabilities or obligations whatsoever related to the Business (whether or not accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due and regardless of when asserted) other than those (i) specifically reflected on and fully reserved against on the face of the Acquisition Balance Sheet, (ii) incurred in the ordinary course of business since the date of the Acquisition Balance Sheet (none of which relates to breach of Contract, breach of warranty, tort, infringement, or violation of Law), or (iii) pursuant to the Seller Plans, Leases or Contracts and not resulting from a breach pursuant to, or violation of Law related to, such items by Seller.

3.4 Absence of Certain Changes. Since December 31, 2016, (i) there has occurred no fact, event or circumstance which has had or could reasonably be expected to have a Material Adverse Effect and (ii) the Business has been conducted in the ordinary course of business, consistent with past practice. Without limiting the generality of the foregoing, except as set forth on Schedule 3.4, since December 31, 2016, Seller has not, with respect to the Business or the Acquired Assets:

- (a) other than with respect to the sale of inventory in the ordinary course of business consistent with past practice, sold, assigned, transferred, leased, licensed or otherwise encumbered any of its tangible or intangible assets related to the Business;
- (b) made or granted any bonus or any wage or salary increase to any employee or group of employees of the Business;
- (c) suffered any extraordinary losses, waived any rights of value or cancelled any debts or claims (whether or not in the ordinary course of business or consistent with past practice) related to the Business in excess of Ten Thousand Dollars (\$10,000) in the aggregate;
- (d) made capital expenditures or commitments therefor related to the Business that amount to more than Ten Thousand Dollars (\$10,000) individually or Twenty Five Thousand Dollars (\$25,000) in the aggregate;
- (e) made any material loans or advances to, guaranties for the benefit of, or any investments in, any Person related to the Business (other than advances to employees in the ordinary course of business consistent with past practice);

(f) made any material change to its reporting or accounting methods, principles, policies or practices related to the Business, including (x) Tax reporting or accounting, (y) depreciation or amortization policies or rates, or (z) the payment of accounts payable or the collection of Accounts Receivable;

(g) instituted or permitted any material change in the conduct of the Business, or any material change in its method of purchase, sale, lease, management, marketing, promotion or operation;

(h) taken any action, or failed to take any action, that has had or would reasonably be expected to have the effect of accelerating to pre-Closing periods a material amount of sales to customers or other revenues related to the Business that would otherwise be expected to take place or be incurred after the Closing;

(i) suffered any theft, damage, destruction or loss (without regard to any insurance) of or to any tangible asset or assets which would have been included in the Acquired Assets and having a value in excess of Ten Thousand Dollars (\$10,000) individually or Twenty Five Thousand Dollars (\$25,000) in the aggregate;

(j) amended, canceled, terminated, relinquished, waived or released any Contract related to the Business; or

(k) agreed, whether orally or in writing, to do any of the foregoing.

3.5 Taxes. All Tax Returns of Seller required by any Governmental Authority to be filed in connection with the Business or the Acquired Assets have been timely filed, and all such Tax Returns are correct and complete. All Taxes of Seller relating to the Business or the Acquired Assets have been paid, other than Taxes which are not yet due or which, if due, are not yet delinquent, are being contested in good faith or have not been finally determined, and which are specified on Schedule 3.5. There are no Tax claims, audits or proceedings pending or, To Seller's Knowledge, threatened, in connection with the Business or the Acquired Assets. There are not currently in force any extensions of time with respect to the dates on which any Tax Return relating to the Business or the Acquired Assets was or is due to be filed by Seller, or any waivers or agreements for the extension of time for the assessment or payment of any Tax relating to the Business or the Acquired Assets. With respect to the Business, Seller has withheld or collected from each payment made to each of its employees the amount of all Taxes required to be withheld or collected therefrom and Seller has paid the same when due to the proper Governmental Authorities.

3.6 Employees. Except as set forth on Schedule 3.6(a), there are no, and in the past five (5) years, there have been no pending or, To Seller's Knowledge, threatened controversies, grievances or claims by any employee or former employee of Seller related to the Business with respect to his or her employment, termination of employment, compensation or benefits (other than routine claims for benefits under the Seller Plans in the ordinary course). Seller has not been or a party to, or bound by, any collective bargaining agreement with any labor organization, nor is there currently or has there been in the past three (3) years, any pending or, To Seller's Knowledge, threatened union organizational activities or proceedings with respect to employees of Seller related to the Business. No labor strike, slowdown or stoppage is pending or, To Seller's Knowledge, threatened against Seller with respect to the Business. Seller is in compliance in all material respects with all Laws with respect to the Business relating to the employment of labor, including all such Laws relating to wages, hours, the Worker Adjustment and Retraining Notification Act of 1988, as amended (the "Warn Act"), or similar foreign Law, collective bargaining, discrimination, civil rights, safety and health, workers' compensation, engagement of independent contractors (including the classification of individuals as employees or independent contractors) and the withholding and payment of income and employment Taxes and any similar Tax. There has been no "mass layoff" or "plant closing" as defined by the WARN Act or any similar layoff or closing as defined by any foreign Law with respect to the Business in the past two (2) years. Schedule 3.6(b) sets forth a complete list of all employees of Seller related to the Business, including their ages, dates of hire, years of service credited under each applicable Seller Plan for purposes of eligibility, vesting and accrual of benefits as appropriate, accrued vacation, compensation (and whether hourly or salaried) and exempt or non-exempt status.

3.7 Employee Benefit Plans and Other Compensation Arrangements. A description of the Seller Plans is set forth on Schedule 3.7, and complete and correct copies of all written Seller Plans and related trusts and amendments thereto, and summary plan descriptions and summaries of material modifications thereof, if any, and summaries of all oral Seller Plans have been delivered to Buyer. None of the Seller Plans is a Multiemployer Plan or Pension Plan, nor has Seller or any ERISA Affiliate of Seller ever been a sponsor of, or been obligated to make contributions to, any such Plan. All of the Seller Plans and any related trusts currently satisfy, and for all prior periods have satisfied, in form and operation, all requirements for any Tax-favored treatment intended for such Seller Plan or trust or applicable to Seller Plans or trusts of its type, including, as applicable, Sections 105, 106, 125, 401(a), 401(k) and 501 of the Code and no reportable event (within the meaning of Section 4043 of ERISA) has occurred or is expected to occur with respect thereto. All of the Seller Plans have been operated in compliance in all material respects with their respective terms and all Laws, and all contributions to any Seller Plan required by Law or Contract have been timely made. None of the Seller Plans provide life insurance, medical or other welfare benefits to persons who are not current employees of Seller or their dependents, except as required by Part 6 of Title I of ERISA or any similar state Law. Seller has retained the right to unilaterally amend or terminate each Seller Plan to the fullest extent permitted by Law. Seller has never had any ERISA Affiliate. There are no pending or, to the To Seller's Knowledge, threatened claims by or on behalf of any of the Seller Plans or by any employee, beneficiary or alternate payee with an interest under any Seller Plan (other than routine claims for benefits). Seller does not have any Liability with respect to any Plan related to the Business, other than for contributions, payments or benefits due in the ordinary course under the Seller Plans, none of which are overdue. No event has occurred and no condition exists that would subject Buyer or the Acquired Assets, either directly or by reason of Seller's affiliation with any affiliate, to any Tax, fine, Lien, penalty or other Liability imposed by ERISA, the Code or other applicable Laws with respect to any Plan. Seller does not maintain any Seller Plan under which it would be obligated to pay benefits, or under which any benefit would become accelerated or vested, because of the consummation of the transactions contemplated by this Agreement. No Seller Plan or related obligation is required to be transferred or assigned to Buyer by operation of law or otherwise.

3.8 Permits; Compliance with Laws. Except as set forth on Schedule 3.8(a), Seller has complied and is in compliance in all material respects with all applicable Laws related to the Business, and possesses and has possessed and is and has been in compliance in all material respects with, all licenses, permits, registrations, certificates of occupancy, approvals, authorizations, qualifications, consents and certificates from any Governmental Authority which are required under applicable Law with respect to the operation of the Business as currently or as it has, from time to time, been conducted (collectively, “Permits”). Each Permit is listed on Schedule 3.8(b). Except as set forth on Schedule 3.8(a), Seller has not received any notice from any Person in the past five (5) years alleging any noncompliance with any applicable Law or Permit related to the Business. Each such Permit is valid and in full force and effect, and none of the Permits will lapse, terminate, expire or otherwise be impaired (as they relate to the right or authorization of any of Seller) as a result of the performance of this Agreement by Seller, or the consummation of the transactions contemplated hereby. With respect to the Business, neither Seller nor any shareholders, members, officers, directors, executives, representatives, agents or employees of Seller (i) has used or is using any corporate funds for any illegal contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) has used or is using any corporate funds for any direct or indirect unlawful payments to any foreign or domestic government officials or employees applicable to Seller, (iii) has violated or is violating any provision of the United States Foreign Corrupt Practices Act of 1977, as amended, or any similar law under any jurisdiction, (iv) has established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties, (v) has made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment of any nature or (vi) has violated any anti-boycott provisions of any applicable Law or other applicable Laws relating to exports and embargos.

3.9 Real and Personal Properties.

3.9.1 Real Property.

(a) Seller does not own any real property.

(b) Schedule 3.9.1(b) identifies the Leased Real Property and lists the leases relating to such Leased Real Property, whether written or oral (the “Leases”). Seller has a valid and subsisting leasehold estate and the right to quiet enjoyment of the Leased Real Property. With respect to each Lease: (i) such Lease is in full force and effect and all rents, required deposits and additional rents due to date pursuant to such Lease have been paid in full, (ii) there is no existing default by Seller or, To Seller’s Knowledge, by the lessor of such Lease, (iii) Seller has not received any notice that it is in default under such Lease, (iv) Seller has not received any notice that the owner of the applicable Leased Real Property has made any assignment, mortgage, pledge or hypothecation of such Lease or the rents or use fees due thereunder, and (v) To Seller’s Knowledge, there exists no event, occurrence, condition or act (including the transactions contemplated by this Agreement), that with the giving of notice, the lapse of time or the happening of any further event or condition, would constitute a default by Seller under such Lease. The Leases provided to Buyer are all of the leases and rental agreements, together with all amendments, that constitute the Leased Real Property, and no Leases have been amended, modified or terminated other than amendments or modifications provided to Buyer.

(c) Neither the whole nor any portion of the Leased Real Property has been condemned, requisitioned, or otherwise taken by any public authority, and no written notice of any such condemnation, requisition, or taking has been received by Seller. To Seller's Knowledge, no such condemnation, requisition, or taking is threatened or contemplated. To Seller's Knowledge, there are no public improvements proposed or in progress that will result in special assessments against or otherwise adversely affect any of the Leased Real Property. Seller has not been notified in writing of future improvements by any public authority, any part of the cost of which would or might be asserted against Seller.

(d) The Leased Real Property is in compliance with all applicable Laws. The zoning of each parcel of the Leased Real Property permits the existing improvements and uses of Seller, subject to no variances, conditional use permits or other special use restrictions.

(e) Each of the buildings, structures, improvements and systems situated or located on the Leased Real Property is in good condition and repair, reasonable wear and tear excepted, and contains no material structural defects. None of the buildings, structures or improvements situated on the Leased Real Property, during the period of time during which such Leased Real Property has been leased by Seller, has been damaged by fire or other casualty, except for such damage as has been fully repaired and restored. Each of the buildings, structures and improvements situated on the Leased Real Property are located within the required set back, side yard and other conditions and requirements imposed by applicable Law with respect to such buildings, structures and improvements.

(f) Except as set forth on Schedule 3.9.1(f), all utilities servicing the Leased Real Property are publicly provided and maintained and such utilities are separately metered within each Leased Real Property. All of the driveways, parking areas, and loading docks located at the Leased Real Property are not shared with any third parties nor subject to any easements or common use agreements. To Seller's Knowledge, all of the streets, roads and avenues adjoining or adjacent to the Leased Real Property are publicly owned and maintained without assessment or charge to Seller.

(g) To Seller's Knowledge, no Leased Real Property, is subject to any options, purchase or sale contracts, leases or rights of occupancy or other agreements not otherwise identified in this Agreement.

3.9.2 Assets.

(a) Title. Except for the Permitted Liens or as set forth on Schedule 3.9.2, (i) the Acquired Assets are owned by Seller free and clear of all Liens, and (ii) there exists no condition affecting the title to or use of any part of the Acquired Assets which would prevent Buyer from using or enforcing its rights with respect to any part of the Acquired Assets to the same extent that Seller could continue to do so if the transactions contemplated hereby did not take place.

(b) Condition; Possession. All of the tangible assets included in the Acquired Assets, (i) are in good operating condition, normal wear and tear excepted, neither require, nor are reasonably expected to require, any special or extraordinary expenditures to remain in such condition beyond maintenance and repairs necessary in the ordinary course of business, (ii) are capable of being used for their intended purpose in connection with the Business, and (iii) are in the possession of Sellers and located at the Leased Real Property.

(c) Sufficiency of Assets. The Acquired Assets include all of the operating assets of Seller used in the operation of the Business and constitute all of the assets, tangible and intangible, of any nature whatsoever, (i) necessary to operate the Business in the manner presently operated by Seller, except for the Excluded Assets, and (ii) pertaining to technology, processes, plans, and other items under development for use in such Business.

3.10 Intellectual Properties. Schedule 3.10(i) sets forth (i) a complete and correct list of all patented or registered Intellectual Property and pending patent applications or other applications for registration of Intellectual Property, material unregistered Marks, Copyrights, internet domain names and software (other than Off-the-Shelf Software) owned by Seller and included in the Business Intellectual Property, and (ii) any Business Intellectual Property used but not owned by Seller and identifies the owner of such Business Intellectual Property. Schedule 3.10(ii) sets forth all licenses for which Seller is a party either as a licensee or licensor (specifying its status) and any other agreements under which Seller grants or receives any rights to Business Intellectual Property or is required to pay any royalty payments for use of any Business Intellectual Property (the “Licenses”). All fees due as of the date hereof associated with maintaining any Business Intellectual Property have been paid in full in a timely manner to the proper Governmental Authority, and all actions required as of the date hereof associated with maintaining any Business Intellectual Property have been taken, and no such fees are due, and no such actions are required, within the three (3) month period after the Closing Date. Except as set forth on Schedule 3.10(iii):

(a) (i) Seller owns and possesses all, right, title and interest in and to, or has a valid and enforceable right or license to use, the Business Intellectual Property as currently being used; (ii) Seller has not infringed, misappropriated or otherwise conflicted with any Intellectual Property of any third party in its operation of the Business; and (iii) the conduct of the Business as currently conducted by Seller does not infringe upon, misappropriate, or otherwise conflict with any Intellectual Property owned or controlled by any third party;

(b) the Business Intellectual Property is not subject to any Liens (other than Permitted Liens) and is not subject to any restrictions or limitations regarding use or disclosure, other than pursuant to a written License applicable thereto;

(c) (i) any issued Patent and registered Intellectual Property, and the applications therefor, included among the Business Intellectual Property owned or used by Seller are valid, subsisting, in full force and effect, and have not been cancelled, expired or abandoned; (ii) Seller has not abandoned, cancelled, or permitted to be abandoned, cancelled, or lapsed, any issued patents or registered Intellectual Property, or the applications therefor, that are currently included among the Business Intellectual Property or formerly owned or used by Seller in the operation of the Business, nor have there been any interference actions, re-examinations, cancellation proceedings, or other judicial, arbitration, or other adversarial proceedings with respect to any such Intellectual Property;

(d) except pursuant to a License set forth on Schedule 3.10(ii), Seller has not licensed or otherwise granted any right to any Person under any Business Intellectual Property owned by Seller;

(e) Seller has not received any written notice regarding, and there are currently no actions, suits, arbitrations, judgments, proceedings, investigations or claims of any kind whatsoever related to any of the foregoing (including, without limitation, any demands or offers to license any Business Intellectual Property from any third party, and any claims asserting the invalidity, misuse or unenforceability of any Business Intellectual Property now or formerly owned or used by Seller);

(f) (i) To Seller's Knowledge, no third party has infringed, misappropriated or otherwise conflicted with any of the Business Intellectual Property; and (ii) no such claims have been brought or threatened against any third party by Seller (including, without limitation, any demands or offers to license any Intellectual Property now or formerly owned or used by Seller related to the Business, and any claims asserting the invalidity, misuse or unenforceability of any Intellectual Property now or formerly owned or used by any third party);

(g) all royalties and other fees owed by Seller pursuant to the Licenses have been paid in full;

(h) (i) none of the Business Intellectual Property has been used, divulged or appropriated for the benefit of any past or present employee of Seller or any other Person, or to the detriment of Seller; (ii) each former employee and each current employee of Seller related to the Business has executed a written Contract prohibiting disclosure of Trade Secrets related to the Business; and (iii) Seller has taken commercially reasonable precautions to protect the secrecy and value of their its Trade Secrets related to the Business; and

(i) (i) each former employee and each current employee of Seller related to the Business has executed a written Contract assigning to Seller, all rights to any inventions made or other rights to the Business Intellectual Property inuring to such employee, during or derived from such employee's relationship with Seller; and (ii) no employee of Seller related to the Business has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign or disclose information concerning his or her work to anyone other than the Seller; and no employee of Seller related to the Business is, or is currently expected to be, in default under any term of any such Contract.

3.11 Contracts. Schedule 3.11 lists all of the following written Contracts to which Seller is a party that are related to its operation of the Business or by which any Acquired Asset is bound or is subject as of the date hereof:

(a) Contracts or group of related Contracts that involved during the 12-month period immediately preceding the date hereof or that involve (or could reasonably be expected to involve) during the 12-month period immediately following the date hereof commitments to make capital expenditures or which provide for the purchase of goods or services by Seller from any one Person or group of related Persons in excess of Ten Thousand Dollars (\$10,000);

(b) Contracts or group of related Contracts that involved during the 12-month period immediately preceding the date hereof or that involve (or could reasonably be expected to involve) during the 12-month period immediately following the date hereof the sale of goods or services by Seller to any one Person or group of related Persons in excess of Ten Thousand Dollars (\$10,000);

(c) Contracts relating to indebtedness or to the granting by Seller of a Lien on any of the Acquired Assets, or any guaranty by Seller of any obligation in respect of borrowed money or otherwise;

(d) Contracts with dealers, distributors or sales representatives;

(e) employment, confidentiality or non-competition Contracts with any employee, officer, consultant or management advisor;

(f) Contracts which limit the freedom of Seller to engage in any business or compete with any Person;

(g) Contracts pursuant to which Seller is a lessor or a lessee of any personal or real property (including the Leases), or holds or operates any tangible personal property owned by another Person;

(h) Contracts or group of Contracts for the purchase or sale of capital assets in excess of Ten Thousand Dollars (\$10,000);

(i) each partnership or joint venture Contract;

payments;
(j) each Contract not included in subsection (e) providing for severance, retention, change in control or other similar

(k) each Contract with any current or former officer, director, stockholder or Affiliate of Seller;

(l) Contracts under which Seller has made advances or loans to any other Person;

(m) management, consulting, or agency Contracts;

(n) each Contract containing a “most-favored nation” pricing agreement, special warranties, rebate arrangements, cooperative arrangements, mark-down arrangements, agreements to take back or exchange goods, consignment arrangements or similar understandings with a customer or supplier of Seller; and

(o) any other Contract (i) that requires Seller to make payments in excess of Ten Thousand Dollars (\$10,000) that is not terminable by Seller without penalty upon less than sixty (60) days' prior written notice, or (ii) is otherwise material to the Business.

Complete copies of each Contract required to be identified on Schedule 3.11, including amendments, waivers, or other changes thereto (collectively, the "Material Contracts") have been provided to Buyer. In the case of each oral Material Contract, Schedule 3.11 also includes a brief description of such Contract. Each of the Assumed Contracts is in full force and effect and is the legal, valid and binding obligation of Seller, and To Seller's Knowledge, the other party thereto, in each case enforceable in accordance with its respective terms, subject to the Enforceability Exceptions. Seller has performed in all material respects all obligations required to be performed by it pursuant to the Assumed Contracts, is not in breach or default thereunder (and no event has occurred that, with the giving of notice, lapse of time, or both, would constitute a breach or default), and, To Seller's Knowledge, no other party to any Assumed Contract is in breach or default thereunder. Each of the Assumed Contracts will remain in full force and effect upon the consummation of the transactions contemplated by this Agreement. Seller has not received any written notice of any Person's intent to terminate or materially amend any Assumed Contract. Seller has not amended, canceled, terminated, relinquished, waived or released any Assumed Contract or right thereunder, except in the ordinary course of business and which, in the aggregate, would not be material to Seller taken as a whole.

3.12 Litigation. Except as set forth on Schedule 3.12, (a) no claim, litigation or proceeding, investigation or Order involving Seller with respect to the Business is pending or has been concluded in the past five (5) years, (b) no claim, litigation, proceeding, investigation or Order has, To Seller's Knowledge, been threatened against Seller or involving Seller with respect to the Business in the past five (5) years; and (c) To Seller's Knowledge, no basis exists that could reasonably give rise to, a claim, litigation, a proceeding, an investigation or Order against Seller. No Order or similar restriction is outstanding against or relating to Seller, the Acquired Assets, the Business or products or services provided or sold by Seller relating to the Business.

3.13 Accounts Receivable; Inventory.

(a) The Accounts Receivable represent bona fide and valid accounts receivable arising from sales actually made or services actually performed. No customer of the Business has, and Seller has not permitted any customer to have, any rebates, deferred price or volume discounts, mark-downs, rights of contest, claim or setoff with respect to the Accounts Receivable, other than returns, discounts or allowances in the ordinary course of business described on Schedule 3.13(a).

(b) The Inventory is (i) in good and marketable condition, (ii) of a quality, quantity and condition usable and saleable in the ordinary course of the Business, (iii) fairly represented in the Financial Information in accordance with GAAP, based on the lower of cost or market value, consistently applied, and (iv) not subject to any material write-down or write-off.

3.14 **Brokerage.** Except as set forth on Schedule 3.14, except for fees or expenses which have already been paid, no Person is or will become entitled, by reason of any agreement or arrangement entered into or made by or on behalf of Seller, to receive any commission, brokerage, finder's fee or other similar compensation in connection with the consummation of the transactions contemplated by this Agreement.

3.15 **Products.**

3.15.1 Except as set forth on Schedule 3.15.1, in the past five (5) years, there have been no product warranty or service warranty claims in excess of Ten Thousand Dollars (\$10,000) made against Seller relating to the Business alleging that any products manufactured, distributed, sold, leased or delivered by Seller on or prior to the Closing Date are defective or improperly designed or manufactured, and no such claims are currently pending or, To Seller's Knowledge, threatened against Seller. There have been no product recalls by Seller related to the Business in the past five (5) years. Seller's standard terms and conditions of sale for the Business are attached to Schedule 3.15.1, and, except for such standard terms and conditions, Seller has not given a condition, guaranty, warranty, indemnity or made a representation in respect of products or services manufactured, distributed, sold, leased or delivered by Seller prior to Closing related to the Business. Each product manufactured, distributed, sold, leased or delivered by Seller prior to Closing related to the Business has been in conformity with all applicable contractual commitments and all express and implied warranties. Seller does not have any Liability related to the Business (and, To Seller's Knowledge, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against Seller giving rise to any Liability) for replacement or repair of any product manufactured, distributed, sold, leased or delivered by Seller or other damages in connection therewith.

3.15.2 No claims alleging bodily injury or property damage as a result of any defect in the design or manufacture of any product or the breach of any duty to warn, test, inspect or instruct of dangers therein (each a "Product Liability Claim") related to the Business have been made in the past five (5) years, are currently pending or, To Seller's Knowledge, threatened against Seller. There are no defects in the design or manufacture of products manufactured, distributed, sold, leased or delivered by Seller prior to the Closing related to the Business which could result in a Product Liability Claim, and there has not been any failure by Seller to warn, test, inspect or instruct of dangers which could form the basis for a product recall or any Product Liability Claim against Seller related to the Business.

3.16 **Environmental Matters.**

3.16.1 Except as set forth on Schedule 3.16, with respect to Seller and its operation of the Business:

- (a) Seller has complied and is in compliance in all material respects with all applicable Environmental Laws;
- (b) there has been no generation, Treatment, Storage, Disposal or transport of any Hazardous Material, regardless of quantity, at, on, under, or from any of the Leased Real Property or any other facility or property owned, occupied, or used by Seller now or in the past;

(c) Seller has not sent any Hazardous Material to a site that, pursuant to any Environmental Law: (i) has been placed or proposed for placement on the National Priorities List or any similar state list, or (ii) is subject to or the source of an Order, demand or request from a Governmental Authority to take any Removal, Remedial or Response action or to pay for the costs of any such action at any location;

(d) in the past five (5) years, Seller has not received any notice, Order, demand, inquiry, summons, complaint, directive, warning, request for information or other communication from any Governmental Authority, citizens' group, employee or other Person claiming that it or its business is or may be liable for: (A) any actual or alleged violation of or noncompliance with any Environmental Law; (B) any actual or alleged obligation to undertake or bear the cost of any liabilities under any Environmental Law with respect to the Leased Real Property or any other facility or property owned, occupied, or used by Seller, now or in the past, or any property or facility at or to which Hazardous Materials generated, manufactured, Stored, handled, imported, used or processed by Seller have been transported, Treated, Stored, transferred, Disposed, recycled or received; or (C) any personal injury or property damage related to any Release, Treatment, Storage or Disposal of, or exposure to, any Hazardous Material;

(e) there are no (A) underground storage tanks or related piping located at, on or under any of the Leased Real Property; or (B) To Seller's Knowledge, landfills, surface impoundments, sumps, septic systems, waste disposal areas, wastewater treatment systems, radioactive materials, underground injection wells or monitoring wells located on, under or at any of the Leased Real Property; and (ii) none of the structures, materials or features referenced in this Section 3.16.1(e) has been removed from any of the Leased Real Property;

(f) In its operation of the Business, Seller has never sold any product containing asbestos, lead, pentachlorophenol, silica, toluene or benzene and no raw material used by Seller related to the Business in the manufacture of its products contains or contained asbestos, lead, pentachlorophenol, silica, toluene or benzene; and

(g) Seller has not assumed, accepted responsibility for or retained, by contract or otherwise, any liability under any Environmental Law.

3.16.2 Schedule 3.16.2 contains an accurate and complete list of: (A) all environmental reports, audits, assessments, correspondence or other documents pertaining to Hazardous Materials prepared in the past seven (7) years by or for Seller or its shareholders or in the possession of Seller or its shareholders with respect to the Business, true and complete copies of which have been provided to Buyer; and (B) all Permits issued to Seller for the operation of the Business by any Governmental Authority pursuant to any Environmental Law, true and complete copies of which have been provided to Buyer.

3.17 Related Party Transactions. Except as set forth on Schedule 3.17, no shareholder, member, director, officer or employee of Seller nor, To Seller's Knowledge, any relative of any shareholder, member, director, officer or employee of Seller nor any affiliate of any of the foregoing, (a) owns, directly or indirectly, any interest in, or is an employee or agent of, any entity which is a competitor, lessor, lessee, customer or supplier of the Business, (b) owns, directly or indirectly, any interest in any tangible or intangible property, asset or right which Seller uses in the operation of the Business, or (c) is a party to any Contract with Seller related to the Business.

3.18 **Material Customers and Suppliers.** Schedule 3.18 sets forth the twenty (20) largest customers (the “Material Customers”) and the twenty (20) largest suppliers (the “Material Suppliers”) of the Business (and the dollar volumes related thereto), in each case for the twelve (12)-month period ended April 30, 2017. In the past twelve (12) months, no Material Customer has (i) canceled or otherwise terminated or, To Seller’s Knowledge, made any threats to cancel or otherwise terminate, its relationship with Seller, (ii) materially decreased or, To Seller’s Knowledge, threatened to materially decrease, its purchases from Seller, or (iii) changed or, To Seller’s Knowledge, threatened to change, its payment or pricing terms with respect to Seller or otherwise materially and adversely alter its current agreements, programs or commitments with Seller. In the past twelve (12) months, no Material Supplier has (i) canceled or otherwise terminated or, To Seller’s Knowledge, made any threats to cancel or otherwise terminate, its relationship with Seller, (ii) materially decreased or, To Seller’s Knowledge, threatened to materially decrease, its sales of supplies to Seller, or (iii) raised or, To Seller’s Knowledge, threatened to raise, its prices to Seller or otherwise materially and adversely alter its current agreements, programs or commitments with Seller. Seller has not experienced, and To Seller’s Knowledge, there do not exist, any material quality control or similar problems with the products currently being supplied or on order from the Material Suppliers.

3.19 **Insurance.** Schedule 3.19 lists all insurance policies maintained by Seller related to the Business. All such policies are in full force and effect, all premiums have been paid, and no written notice of denial of coverage, cancellation or termination has been received with respect to such policies. All such insurance policies will remain in full force and effect with respect to periods before the Closing. No event has occurred, including, without limitation, the failure by Seller to give any notice or information or Seller giving any inaccurate or erroneous notice or information, which limits or impairs the rights of Seller under any such insurance policies. Seller is not, and has not been at any time, subject to Liability as a self-insurer. Schedule 3.19 also sets forth a description of all claims pending under such insurance policies and all past claims submitted to Seller’s insurance carriers in the past (5) years.

3.20 **Full Disclosure.** No representation or warranty of Seller contained in this Agreement or in any other agreement delivered by Seller, or in connection with the transactions contemplated herein or therein, contains a material omission, untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

ARTICLE 4

Representations and Warranties of Buyer

Buyer represents and warrants to Seller that:

4.1 Organization; Authorization.

4.1.1 Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio.

4.1.2 Buyer has full legal power, authority and capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby and each other agreement, instrument and document to be delivered by Buyer in connection herewith (the “Buyer Ancillary Agreements”). The execution, delivery and performance of this Agreement and each Buyer Ancillary Agreement by Buyer has been duly and validly authorized and approved by all necessary corporate action on the part of Buyer. This Agreement and each Buyer Ancillary Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforcement may be limited by the Enforceability Exceptions.

4.2 Noncontravention.

4.2.1 Except with respect to filings which may be required by the United States Securities and Exchange Commission, no consent, approval or authorization of, or notice, report, permit or filing to or with, any Governmental Authority or any other Person is required to be obtained by Buyer in connection with its execution, delivery and performance of this Agreement or any other document, instrument or agreement to be executed and delivered by Buyer in connection herewith or the consummation of the transactions contemplated hereby or thereby.

4.2.2 Neither the execution and delivery of this Agreement, nor the consummation by Buyer of the transactions contemplated hereby, nor compliance by Buyer with any of the provisions hereof, will violate or breach, or otherwise constitute or give rise to a breach, default or violation under any provisions of the Charter Documents of Buyer.

4.3 Brokerage. No Person is or will become entitled, by reason of any agreement or arrangement entered into or made by or on behalf of Buyer to receive any commission, brokerage, finder's fee or other similar compensation in connection with the consummation of the transactions contemplated by this Agreement.

4.4 Litigation. There are no actions, suits, arbitrations, proceedings, investigations or claims of any kind whatsoever, at Law or in equity, pending or threatened against Buyer that could have a material adverse effect on its ability to consummate the transactions contemplated hereby.

ARTICLE 5

Closing Deliveries

5.1 Seller's Closing Deliveries. At or prior to the Closing, Seller shall deliver to Buyer:

- (a) duly executed counterparts of: (i) a bill of sale; and (ii) an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), each in a form acceptable to Buyer;
- (b) assignment(s) providing for the assignment to Buyer of the Business Intellectual Property (in a form acceptable to Buyer), duly executed by Seller;
- (c) evidence acceptable to Buyer that Seller has received all approvals and consents set forth on Schedule 5.1(c) from all applicable Persons;
- (d) a good standing certificate for Seller from the State of Delaware and in all applicable jurisdictions of qualification;
- (e) certificates of title for all vehicles and any other Acquired Asset the ownership of which is evidenced by a certificate of title, in each case duly endorsed for transfer to Buyer;
- (f) a certificate of the Secretary of Seller certifying, as complete and accurate as of the Closing, attached copies of the Charter Documents of Seller, certifying and attaching all requisite resolutions or actions of Seller's directors and members approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and certifying to the incumbency of the officers of Seller executing this Agreement and any other document relating to the transactions contemplated hereby;
- (g) a counterpart signature page to an amended and restated lease for the Akron Facility (the "Lease Agreement");
- (h) [Intentionally omitted]
- (i) [Intentionally omitted]
- (j) Restrictive Covenants Agreements (in a form acceptable to Buyer), duly executed by Joseph E. Miketo (the "Restrictive Covenant Agreements");
- (k) a complete set of the Disclosure Schedules hereto;

(l) evidence that any pledges, mortgages and security interests in and related to the Acquired Assets have been released, including appropriate evidence of such termination, cancellation or repayment (including UCC-3 termination statements or financing statements evidencing liens against the Acquired Assets) and the release of any rights in the Business Intellectual Property previously conveyed to the lenders of Seller to secure repayment of any Indebtedness of Seller; and

(m) evidence satisfactory to Buyer that Buyer has been named as an additional insured on all policies insuring Seller against product liability relating to the Business prior to the Closing.

5.2 Buyer's Closing Deliveries. At or prior to the Closing, Buyer shall deliver to Seller (or such other Person designated herein):

(a) the Purchase Price to the Seller's designated account; and

(b) the Assignment and Assumption Agreement, the Lease Agreement and the Restrictive Covenant Agreements, each duly executed by Buyer.

ARTICLE 6

The Closing

The consummation of the transactions contemplated herein (the "Closing") will take place simultaneously with the execution and delivery of this Agreement and shall take place at the offices of Calfree, Halter & Griswold LLP in Cleveland, Ohio or at such other time and place as to which Buyer and Seller may agree in writing, or electronically, through scanned signature pages. The date on which the Closing actually occurs is referred to herein as the "Closing Date." The transfers and deliveries described in Article 5 shall be mutually interdependent and shall be regarded as occurring simultaneously, and, any other provision of this Agreement notwithstanding, no such transfer or delivery shall become effective or shall be deemed to have occurred until all of the other transfers and deliveries provided for in Article 5 shall also have occurred or been waived in writing by the party entitled to waive the same. Such transfers and deliveries shall be deemed to have occurred and the Closing shall be effective as of 12:01 a.m. on the Closing Date.

ARTICLE 7

Additional Covenants and Agreements

7.1 Miscellaneous Covenants.

7.1.1 Expenses; Transfer Taxes. Buyer shall pay all fees and expenses incident to the transactions contemplated by this Agreement which are incurred by Buyer or its representatives or are otherwise expressly allocated to Buyer hereunder, and Seller Parties (on a joint and several basis) shall pay all fees and expenses incident to the transactions contemplated by this Agreement which are incurred by Seller, Seller's members or their representatives, or are otherwise expressly allocated to Seller or Seller's members hereunder. Seller shall pay all sales or other transfer Taxes, if any, which may be payable in connection with the transactions contemplated by this Agreement. Seller acknowledges and agrees that no such expenses of Seller or Seller's members shall be Assumed Liabilities hereunder. Seller shall pay any and all costs associated with the assignment or transfer of all Assumed Contracts.

7.1.2 No Assignments. No assignment of all or any part of this Agreement or any right or obligation hereunder may be made by any party hereto without the prior written consent of all other parties hereto, and any attempted assignment without such consent shall be void and of no force or effect; provided, however, that (a) Buyer may assign any of its rights or delegate any of its duties under this Agreement to any Affiliate of Buyer provided, further, that no such assignment shall relieve Buyer of its obligations hereunder; (b) Buyer may assign its rights, but not its obligations, under this Agreement to any of its financing sources; and (c) Buyer may assign any of its rights or delegate any of its duties under this Agreement to a purchaser of substantially all of the assets of Buyer or the Business.

7.1.3 Further Assurances and Assistance.

(a) Each Seller Party acknowledges and agrees that at any time and from time to time after the Closing, each will execute and deliver to Buyer such further conveyances, assignments or other written assurances as Buyer may reasonably request to perfect and protect Buyer's title to the Acquired Assets. In addition to the foregoing, Seller appoints Buyer, effective as of the Closing, the attorney of Seller with full power of substitution, in the name of Buyer, or the name of Seller, on behalf of and for the benefit of Buyer, to collect items hereby transferred and assigned to Buyer, to endorse, without recourse, all checks and negotiable instruments in the name of Seller the proceeds of which Buyer is entitled to hereunder and to prosecute, in the name of Seller, all proceedings which Buyer may deem proper to enforce any claim of any kind in or to the Acquired Assets. Seller agrees that the foregoing powers are coupled with an interest, shall be irrevocable, and shall not be affected by the dissolution of Seller or for any other reason. Seller further agrees that Buyer shall retain for its own account any amounts collected pursuant to the foregoing powers, and Seller shall pay or transfer to Buyer, if and when received, any amounts which shall be received by Seller after the Closing in respect of any assets or rights hereby transferred to Buyer, and Seller shall deliver to Buyer any notices it receives related to same. To the extent Buyer receives any payments that constitute Excluded Assets after the Closing Date, Buyer will promptly remit any such payments to Seller.

(b) Seller shall use its commercially reasonable efforts to provide all cooperation reasonably requested by the Buyer in connection with enabling Buyer to prepare financial statements in compliance with the requirements of Rule 8-04 of Regulation S-X promulgated under the Exchange Act and enable Buyer's accountants to audit such financial statements. Within 15 days of the Closing Date, Seller shall provide to Buyer reviewed financial statements of Seller as of and for the fiscal year ended December 31, 2016 prepared by Seller's external accountants.

7.1.4 Post-Closing Access to Information and Personnel.

(a) Buyer acknowledges that certain books and records and other materials in the possession of Seller or that otherwise constitute Acquired Assets may contain information relating to, or which may be applicable to or used in connection with, the Excluded Assets, the Retained Liabilities and the Retained Businesses, and that Buyer shall only acquire an undivided, one-half interest in and to any such books and records and other materials pursuant to Section 2.1.1(e) to the extent relating to the Acquired Assets, the Assumed Liabilities and the Business and that Seller may retain copies, and shall own an undivided, one-half interest in and to, and shall have the right to access, any such books and records and other materials, including any consumer, customer, manufacturer and vendor lists and market research to the extent relating to, or which may be applicable to or used in connection with, the Retained Businesses (whether or not the same also constitutes Acquired Assets). Conversely, Seller acknowledges that certain books and records and other materials in the possession of Seller that constitute Excluded Assets may contain information relating to, or which may be applicable to or used in connection with, the Acquired Assets, the Assumed Liabilities or the Business, and that Buyer shall have the right, upon reasonable advance notice, to access any such books and records and other materials, including any consumer, customer, manufacturer and vendor lists and market research to the extent relating to, or which may be applicable to or used in connection with, the Business (whether or not the same also constitutes Excluded Assets).

(b) Throughout the seven (7) year period after Closing, subject to each party's reasonable confidentiality precautions, Seller, on the one hand, and Buyer on the other hand, will allow the other party, during normal business hours and upon reasonable notice: (a) to have reasonable access to the books and records (including financial and Tax records, Tax Returns, files, papers and related items) related to the Acquired Assets or the Business, either acquired or retained hereunder, as applicable, to the extent necessary or reasonably desirable to (i) defend or pursue any claim, litigation, proceeding, investigation or Order (other than claims directly between Seller and Buyer), (ii) defend or pursue indemnification matters hereunder (other than claims directly between Seller and Buyer), (iii) prepare or audit financial statements, (iv) prepare or file Tax Returns, or (v) address other Tax, accounting, financial or legal matters or respond to any investigation or other inquiry by or under the control of any Governmental Authority; and (b) permit any party and such party's representatives to make copies of such books and records for the foregoing purposes, at such party's expense. Unless otherwise consented to in writing by the other party (which consent shall not be unreasonably withheld, conditioned or delayed), no party shall, for a period of seven (7) years following the Closing Date, destroy, alter or otherwise dispose of any material books and records of the Business, or any portions thereof, relating to periods prior to the Closing Date without first offering to surrender to the other party such books and records or such portions thereof. Buyer and Seller agree to provide such assistance as is reasonably necessary for the preparation and filing of all Tax Returns related to the Acquired Assets, the Assumed Liabilities or the Business, the making of any election related to such Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any such Tax Return at the cost of the requesting party. Seller and Buyer shall reasonably cooperate with each other in the conduct of any audit or other proceeding related to Taxes involving the Acquired Assets, the Assumed Liabilities or the Business and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 7.1.4 (b) at the cost of the requesting party.

7.2 Restrictive Covenants.

7.2.1 Confidential Information. In consideration of the consummation of the transactions contemplated herein, each Seller Party covenants and agrees at all times to hold as secret and confidential (unless disclosure is required pursuant to a final, non-appealable court order, in which case such party will provide Buyer reasonable notice prior to such disclosure and shall take all reasonable steps to prevent or limit disclosure) any and all knowledge, information or documents of a confidential or proprietary nature or not generally known to the public with respect to the Acquired Assets, the Business, this Agreement (or the transactions contemplated herein) or Buyer ("Confidential Information"). Each Seller Party further agrees not to use such Confidential Information for its own benefit or for the benefit of others or disclose any such Confidential Information without the prior written consent of Buyer.

7.2.2 Non-Competition. In further consideration of the consummation of the transactions contemplated herein, each Seller Party covenants and agrees that until the fifth (5th) anniversary of the Closing Date (the "Non-Competition Period"), neither it nor its Affiliates, shall, without the prior written consent of Buyer, either directly or indirectly, whether or not for consideration, (a) solicit business from, or otherwise compete with Buyer for the business of, any current or prospective customer of the Business for the purchase of services or products the same as or substantially similar to, or which may be otherwise used in substitution for, products or services manufactured, sold or provided by the Business anywhere in North America or any other territory in which Seller sold products through the Business during the two (2) years prior to the Closing Date; (b) operate, control, advise, be engaged by, perform any consulting services for, invest in or otherwise become associated in any capacity with, any business, company, partnership, organization, proprietorship, or other entity, who or which, at any time during the Non-Competition Period, competes with the Business anywhere in North America or any other territory in which the Seller sold products through the Business during the two (2) years prior to the Closing Date; or (c) engage in any practice the purpose of which is to evade the provisions of this covenant; provided, however, that nothing contained herein shall prevent any Seller Party from acquiring an equity interest of up to two percent (2%) of an entity whose shares are traded on a national securities exchange or over-the-counter market. The Buyer covenants and agrees that during the Non-Competition Period, neither it nor its Affiliates, shall, without the prior written consent of Seller, either directly or indirectly, whether or not for consideration, (a) solicit business from, or otherwise compete with Seller for the business of, any current or prospective customer of KyotoCooling for the purchase of services or products the same as or substantially similar to, or which may be otherwise used in substitution for, products or services manufactured, sold or provided by KyotoCooling anywhere in North America or any other territory in which Seller sold products through KyotoCooling during the two (2) years prior to the Closing Date; or (b) engage in any practice the purpose of which is to evade the provisions of this covenant; provided, however, that nothing contained herein shall prevent Buyer or any of its Affiliates from acquiring an equity interest of up to two percent (2%) of an entity whose shares are traded on a national securities exchange or over-the-counter market.

7.2.3 Non-Interference. In further consideration of the consummation of the transactions contemplated herein, during the Non-Competition Period, no Seller Party nor any of their respective Affiliates, shall, without the prior written consent of Buyer, directly or indirectly, (a) hire, solicit, induce or attempt to hire, solicit or induce any employee or agent of Buyer to terminate his, her or its relationship with Buyer; or (b) induce or attempt to induce any supplier, contractor, licensor or customer related to the Business to terminate or adversely change its relationship with Buyer or otherwise interfere with any relationship between Buyer and any of such suppliers, contractors, licensors or customers.

7.2.4 Remedy for Certain Breaches. Each Seller Party acknowledges and agrees that the covenants in Section 7.2 were negotiated at arm's length, are required for the fair and reasonable protection of Buyer, that Buyer would not have purchased the Acquired Assets had each Seller Party not agreed to these covenants, that the restrictions contained herein are designed to protect the business of Buyer, and that the obligations of Buyer in this Agreement constitute adequate consideration for the obligations of each Seller Party under Section 7.2. Each Seller Party further acknowledges and agrees that a breach of any of the covenants, obligations or agreements set forth in Section 7.2, will result in irreparable and continuing damage to Buyer and its business and property for which there may be no adequate remedy at Law, and each Seller Party agrees that in the event of any such breach, Buyer shall be entitled to injunctive relief to restrain such breach by such Seller Party, and to such other and further relief (including damages) as is proper under the circumstances.

7.2.5 Reformation of Agreement; Severability. The parties intend the covenants set forth in Section 7.2 to be enforced as written. However, in the event that any provision set forth in Section 7.2 is held by a court of competent jurisdiction to be invalid or unenforceable to any extent, such court shall exercise its discretion in reforming such provision to the end that shall be subject to such restrictions and obligations as the court deems reasonable under the circumstances and enforceable by Buyer. In the event that a provision or term of this Agreement is found to be void or unenforceable to any extent and such court does not exercise its discretion to reform such provision, it is the agreed upon intent of the parties hereto that all remaining provisions or terms of this Agreement shall remain in full force and effect to the maximum extent permitted by Law and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

7.3 Employment Matters.

7.3.1 Buyer shall offer employment to the individuals listed on Schedule 7.3.1 (the "Offered Employees"). Those Offered Employees who accept such offers of employment shall be referred to herein as the "Transferred Employees," and the Offered Employees who do not accept such offers of employment and the employees of Seller not included in the Offered Employees shall collectively be referred to herein as "Excluded Employees." No provision of this Agreement shall be construed to prohibit Buyer from having the right to terminate the employment of any Transferred Employee, with or without cause. Seller shall terminate effective as of the Closing Date all employment agreements it has with any of the Transferred Employees.

7.3.2 . Seller shall be responsible for complying with the requirements of COBRA for all of its employees (including the Transferred Employees and the Excluded Employees) and their “qualified beneficiaries” whose “qualifying event” (as such terms are defined in Code Section 4980B or the applicable state law or regulation) occurs prior to the Closing Date or occurs in connection with the purchase and sale of the Acquired Assets under this Agreement. Buyer shall have no liability under COBRA for any employee of Seller or the “qualified beneficiary” of any other employee of Seller that does not become a Transferred Employee, including the Excluded Employees. In addition, Buyer shall have no liability under COBRA for any Transferred Employees or the “qualified beneficiary” of any Transferred Employee whose “qualifying event” occurs prior to the date the Transferred Employee becomes a Transferred Employee in accordance with Section 7.3.1.

7.3.3. From and after the Closing Date, Seller shall remain solely responsible for any and all Liabilities to or in respect of any Transferred Employee relating to or arising in connection with any and all claims for workers’ compensation benefits arising in connection with any occupational injury or disease occurring or existing on or prior to the Closing Date.

7.3.4. Buyer does not accept assignment of and shall not sponsor any of Seller’s Plans, nor shall any Liabilities related thereto (including but not limited to any right to severance payments or parachute payments) be deemed to be Assumed Liabilities under this Agreement.

7.4 Contracts; Permits. To the extent that there are Permits or Assumed Contracts relating to the Business which are not assignable without the consent or approval of Persons other than Seller (the “Non-Transferable Assets”), and such consents or approvals are not obtained on or prior to the Closing Date, this Agreement and the Closing shall not constitute an assignment or agreement to assign such Permits or Contracts without such consent or approval. Following the Closing Date, Seller agrees to cooperate in good faith with Buyer to enter into any reasonable arrangement designed to provide Buyer the benefit of such Non-Transferable Assets, including the enforcement for the benefit of any rights previously enjoyed by Seller in connection with any such assets. To the extent Buyer is provided the benefits pursuant to this Section 7.4 of any such Permit or Contract, Buyer shall perform the obligations of Seller under or in connection with any such Permit or Contract.

7.5 Publicity. Unless required by Law or the rules of any stock exchange or trading system, no party will make any public announcements with respect to the specific details of this Agreement or the transactions contemplated hereby without the written consent of the other parties. No party shall be prohibited from making public announcements of a general nature (e.g., that a transaction between the parties has been consummated).

7.6 Payment of Retained Liabilities After the Closing, Seller shall pay in full or otherwise discharge all of the Retained Liabilities in accordance with their respective terms. Seller shall refer to Buyer all inquiries from or relating to any customers of vendors, or potential customers or vendors, of the Business.

7.7 Product Warranty. Although Buyer does not expressly or by implication assume any of the product or service warranty obligations of any Seller related to products manufactured or sold or services provided by Seller on or prior to the Closing Date, Buyer shall have the right after the Closing Date, on Seller’s behalf, to perform Seller’s obligations under their product warranties in accordance with the contract terms and the past practice of the Business. Any product or service warranty obligations that Buyer performs shall be at direct cost and with no markup. Neither this Agreement, nor the performance by Buyer of any of Seller’s product warranty obligations shall give rise to any rights in Seller or any third party. All costs that are incurred by Buyer related to the performance of warranty obligations described in this Section 7.7 shall be considered indemnifiable Losses under Section 8.1 hereof.

ARTICLE 8

Indemnification

8.1 **Indemnification of Buyer.** Following the Closing, Seller Parties, on a joint and several basis, shall indemnify and hold harmless Buyer and its Affiliates and each of their respective stockholders, directors, officers, employees and agents (collectively, the “Buyer Indemnitees”), from (a) any and all Losses resulting from, relating to, arising out of or caused by any inaccuracy in or breach of any representation or warranty made by any Seller Party in this Agreement, or Losses resulting from, relating to or arising out of any third party claim alleging facts or circumstances that would constitute an inaccuracy in or breach of any representation and warranty made by any Seller Party in this Agreement (provided, that for purposes of calculating Losses hereunder, any materiality, Material Adverse Effect or other similar qualifications in such representations and warranties shall be disregarded); (b) any and all Losses resulting from, relating to or arising out of any breach of any covenant or obligation made or incurred by any Seller Party in this Agreement; (c) any and all Losses resulting from, related to, or arising out of any Retained Liability or the imposition (including by operation of any bulk transfer or other Law) or attempted imposition upon Buyer by a third party of any Retained Liability; (d) any Losses resulting from, relating to or arising out of the claims of any broker, finder, or other Person acting in a similar capacity purportedly on behalf of Seller or Seller’s members in connection with the transactions herein contemplated; (e) any and all Losses resulting from, relating to, arising out of or caused by any Accounts Receivable that are not collected within one (1) year following the Closing Date; (f) any and all Losses resulting from, relating to, arising out of or caused by any retainage Accounts Receivable not collected within the later of (i) one year following the Closing Date or (ii) nine (9) months past the completion date for the underlying project. The right of the Buyer Indemnitees to indemnification or payment of Losses based on Seller’s representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the Closing, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

8.2 **Indemnification of Seller.** Following the Closing, Buyer shall indemnify and hold harmless Seller (collectively, the “Seller Indemnitees”), from (a) any and all Losses resulting from, relating to, arising out of or caused by any inaccuracy in or breach of any representation or warranty made by Buyer in this Agreement, or Losses resulting from, relating to or arising out of any third party claim alleging facts or circumstances that would constitute an inaccuracy in or breach of any representation and warranty made by Buyer in this Agreement; (b) any and all Losses resulting from, relating to or arising out of any breach of any covenant or obligation made or incurred by Buyer in this Agreement; and (c) any Losses resulting from, relating to or arising out of the claims of any broker, finder, or other Person acting in a similar capacity purportedly on behalf of Buyer in connection with the transactions herein contemplated. The right of the Seller Indemnitees to indemnification or payment of Losses based on Buyer’s representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the Closing, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

8.3 Limitations on Indemnification. Notwithstanding any other provision of this Agreement, except in the event of Fraud Claims, the indemnification obligations provided for in this Agreement shall be subject to the limitations and conditions set forth in this Section 8.3. To the extent that any matter is both a breach of a representation or warranty and a breach of a covenant or a Retained Liability, such matter shall be deemed to be a breach of a covenant or a Retained Liability, as applicable, for purposes of this Article 8, and the limitations set forth in this Section 8.3 shall not apply.

8.3.1 Limitations of Indemnification of Buyer.

(a) Any claim by a Buyer Indemnitee for indemnification pursuant to Section 8.1(a) shall be required to be made by delivering notice to Seller no later than the eighteen (18) month anniversary of the Closing Date. Notwithstanding the foregoing, (i) the representations and warranties made by Seller in Section 3.1 [Organization; Authority and Enforceability], Section 3.9.2(a) [Title] and Section 3.14 [Brokerage] (collectively, the “Seller Fundamental Reps”) and Fraud Claims shall survive indefinitely; (ii) the representations and warranties made by Seller in Section 3.5 [Taxes] and Section 3.7 [Employee Benefit Plans] shall survive until the ninetieth (90th) day following the expiration of the applicable statute of limitations (including valid extensions thereof); and (iii) the representations and warranties made by Seller in Section 3.9.2(c) [Sufficiency of Assets], Section 3.15 [Products], Section 3.10 [Intellectual Property] and Section 3.16 [Environmental Matters] shall survive until the third (3rd) anniversary of the Closing Date.

(b) Except with respect to Fraud Claims or any inaccuracy in or breach of any of the Seller Fundamental Reps, the Buyer Indemnitees shall not be entitled to indemnification for any Losses arising under Section 8.1(a) until the aggregate amount of all of the Buyer Indemnitees’ claims for indemnification exceeds Fifty Thousand Dollars (\$50,000) (the “Indemnification Threshold”), and thereafter Buyer Indemnitees shall be entitled to indemnification for the full amount of Losses with respect to such indemnification claims (including the amount of the Indemnification Threshold).

(c) Buyer Indemnitees shall not be entitled to indemnification for any Losses arising under Section 8.1(c) with respect to any product or service warranty claims until the aggregate amount of Losses with respect to such product or service warranty claims exceeds Two Hundred Thousand Dollars (\$200,000).

(d) Except for Fraud Claims or claims for indemnification with respect to any inaccuracy in or breach of any of the Seller Fundamental Reps, the maximum indemnification amount to which the Buyer Indemnitees may be entitled under Section 8.1(a) shall be an amount equal to Two Million Five Hundred Sixty Two Thousand Five Hundred Dollars (\$2,562,500) (the “Cap”).

8.3.2 Limitations on Indemnification of Seller.

(a) Any claim by a Seller Indemnitee for indemnification pursuant to Section 8.2(a) shall be required to be made by delivering notice to Buyer no later than the eighteen (18) month anniversary of the Closing Date. Notwithstanding the foregoing, the representations and warranties made by Buyer in Section 4.1 [Organization; Authority] and Section 4.3 [Brokerage] (the “Buyer Fundamental Reps”) and Fraud Claims shall survive indefinitely.

(b) Except for Fraud Claims or claims for indemnification with respect to any inaccuracy in or breach of the Buyer Fundamental Reps, Seller Indemnitees shall not be entitled to indemnification for any Losses under Section 8.2(a) until the aggregate amount of all of the Seller Indemnitees claims for indemnification exceeds the Indemnification Threshold, and thereafter Seller Indemnitees shall be entitled to indemnification for the full amount of indemnification claims (including the amount of the Indemnification Threshold).

(c) Except for Fraud Claims or for claims for indemnification with respect to any inaccuracy in or breach of the Buyer Fundamental Reps, the maximum indemnification amount to which the Seller Indemnitees may be entitled under Section 8.2(a) shall be an amount equal to the Cap.

8.4 Procedures Relating to Indemnification. No claim for indemnification will arise until notice thereof is given to the party from whom indemnity is sought. In the event that any legal proceedings shall be instituted or any claim or demand be asserted by any third party in respect of which Seller on the one hand, or Buyer on the other hand, may have an obligation to indemnify the other(s), the party asserting such right to indemnity shall give or cause to be given to the party from whom indemnity may be sought written notice thereof (including the facts constituting the basis therefor) and such party shall have the right, at its option and expense, to be present at the defense of such proceeding, claim or demand, but not to control the defense, negotiation or settlement thereof, which control shall at all times rest with the party asserting such right to indemnity, unless the party from whom indemnity is sought irrevocably acknowledges full and complete responsibility for indemnification of the party asserting such right to indemnity, in which case such party may assume such control through counsel of its choice. The parties agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such third party legal proceeding, claim or demand; provided, however, if the indemnifying party has assumed the defense of such a third party claim, the indemnifying party shall not, without the written consent of the indemnified party, enter into any settlement, compromise or discharge or consent to the entry of any judgment which imposes any expense, obligation or restriction upon the indemnified party, includes any obligations on the part of the indemnified party to take any future actions, or requires the indemnified party to admit or acknowledge to any fact or event, including any violation of law.

8.5 Limitation of Remedies. Each party acknowledges and agrees that from and after the Closing, the sole and exclusive remedy with respect to any and all claims relating to this Agreement or the transactions contemplated hereby (other than causes of action for which the remedy sought is equitable relief or causes of action arising from Fraud Claims) shall be pursuant to the indemnification provisions set forth in this Article 8.

ARTICLE 9

Certain Definitions

When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Article 9, or elsewhere in this Agreement as indicated in this Article 9:

“Accounts Receivable” is defined in Section 2.1.1(a).

“Acquired Assets” is defined in Section 2.1.1.

“Acquired Permits” is defined in Section 2.1.1(h).

“Acquisition Balance Sheet” is defined in Section 3.3.2.

An “Affiliate” of a specified Person means any other Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person. For purposes of this definition, “control” of any Person means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting capital stock, by contract, or otherwise.

“Agreement” means this Asset Purchase Agreement, as may be amended from time to time.

“Akron Facilities” means the facilities of Seller used in its operation of the Business located at 735 Glaser Parkway, Akron, Ohio 44306.

“Assignment and Assumption Agreement” is defined in Section 5.1(a).

“Assumed Accrued Liabilities” is defined in Section 2.1.3(c).

“Assumed Contracts” is defined in Section 2.1.1(e).

“Assumed Liabilities” is defined in Section 2.1.3.

“Business” is defined in the Recitals.

“Business Intellectual Property” is defined in Section 2.1.1(d).

“Buyer” is defined in the preamble of this Agreement.

“Buyer Ancillary Agreements” is defined in Section 4.1.2.

“Buyer Fundamental Reps” is defined in Section 8.3.2(a).

“Buyer Indemnitees” is defined in Section 8.1.

“Charter Documents” means the articles of incorporation, articles of organization, certificate of incorporation, limited partnership agreement, limited liability company operating agreement, and bylaws (or equivalent documents) of any business entity.

“Closing” and “Closing Date” are defined in Article 6.

“Code” means the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“Confidential Information” is defined in Section 7.2.1.

“Contract” means any written contract, agreement, commitment, purchase order, note, bond, mortgage, indenture, lease, license and other legally binding arrangement to which Seller is bound as of the date hereof which arose out of Seller’s operation of the Business.

“Disclosure Schedule” means the Disclosure Schedules annexed hereto and made a part hereof.

“Disposal,” “Storage” and “Treatment” shall have the meanings assigned them in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et. seq.* (“RCRA”) or any similar state or local Law, provided, however, that such terms shall be applied to all “Hazardous Materials,” not solely to “hazardous waste,” as defined in RCRA.

“Employment Agreement” is defined in Section 5.1(i).

“Enforceability Exceptions” is defined in Section 3.1.2.

“Environmental Law” means all Laws relating to pollution, contamination or pertaining to protection of the environment (including soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), ground waters, drinking water supply, stream sediments, ambient air, indoor air, plant and animal life and any other environmental medium or natural resource or public or worker health and safety).

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

“ERISA Affiliate” means, with respect to Seller, any Person which is or has ever been a member of a “controlled group of corporations” with, or under “common control” with, Seller (within the meaning of Section 414(b) or (c) of the Internal Revenue Code) or which is or has ever been a member of an “affiliated service group” with Seller (within the meaning of Section 414(m) of the Internal Revenue Code) or any Person which is or has ever been required to be aggregated with Seller under Section 4001(b) of ERISA.

“Excluded Assets” is defined in Section 2.1.2.

“Excluded Contracts” is defined in Section 2.1.2(k).

“Excluded Employees” is defined in Section 7.3.1.

“Excluded Records” is defined in Section 2.1.2(i).

“Financial Information” is defined in Section 3.3.2.

“Fixed Assets” is defined in Section 2.1.1(c).

“Fraud Claims” means claims relating to fraud, criminal activity, bad faith, intentional misrepresentation or intentional misconduct.

“GAAP” means United States generally accepted accounting principles as in effect either from time to time as applied to periods prior to the Closing Date or as applied on the Closing Date, as applicable, and in either case, applied on a basis consistent with the past practices of Seller.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of any such government or political subdivision, or any self-regulated organization or other non-governmental regulating authority (to the extent that the rules, regulations or orders of such authority have the force of law), or any arbitrator, tribunal or court of competent jurisdiction.

“Hazardous Material” means any chemical, substance, waste, material, pollutant, or contaminant, the use, management, handling, generation, importing, distribution, manufacturing, processing, production, recycling, reclaiming, Storage, Disposal, Treatment, transportation or Release of which is regulated under Law, or which is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor (including, without limitation, crude oil or any fraction thereof, gasoline, diesel fuel and other petroleum hydrocarbons), polychlorinated biphenyls and asbestos, regardless of whether specifically listed or designated as a hazardous substance under any Environmental Law.

“Indemnification Threshold” is defined in Section 8.3.1(b).

“Intellectual Property” means all rights arising from or in respect of any of the following in any jurisdiction throughout the world: (i) patents, patent applications, patent disclosures and inventions, including any continuations, divisionals, continuations-in-part, renewals and reissues for any of the foregoing (collectively “Patents”), (ii) internet domain names, trademarks, service marks, service names, trade dress rights, trade names, brand names, slogans, logos and corporate names and registrations and applications for registration thereof, together with all of the goodwill associated therewith (collectively, “Marks”), (iii) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof, and mask works and registrations and applications for registration thereof (“Copyrights”), (iv) computer software, (specifically excluding all shrink wrap software), data, data bases and documentation thereof, (v) trade secrets and other confidential and proprietary information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information) (collectively, “Trade Secrets”), and (vi) copies and tangible embodiments thereof (in whatever form or medium).

“Inventory” is defined in Section 2.1.1(b).

“Law” means any common law decision and any federal, state, regional, local or foreign law, statute, ordinance, code, rule, regulation or Order.

“Leases” is defined in Section 3.9.1.

“Lease Agreement” is defined in Section 5.1(g).

“Leased Real Property” means all real property leased by Seller in the operation of the Business, together with all improvements, buildings and fixtures located thereon and appurtenant rights and interests associated therewith.

“Liability” and “Liabilities” means any responsibility, obligation, duty, commitment, claim or liability, whether known or unknown, accrued, absolute, contingent or otherwise.

“License” is defined in Section 3.10.

“Lien” means any lien, charge, mortgage, pledge, easement, encumbrance, security interest, matrimonial or community interest, tenancy by the entirety claim, adverse claim, or any other title defect or restriction of any kind.

“Loss” or “Losses” means any and all losses, Liabilities, damages, costs, expenses, penalties, actions, notices of violation, and notices of liability and any claims in respect thereof (including, without limitation, amounts paid in settlement and reasonable costs of investigation and legal expenses).

“Material Adverse Effect” means any state of facts, change, event, effect or occurrence that would be (or could reasonably be expected to be), individually or in the aggregate, materially adverse to the condition (financial or otherwise), results of operations, assets (considered in the aggregate), Liabilities, equity, business or prospects of Seller relating to the Business.

“Material Contracts” is defined in Section 3.11.

“Material Customers and Suppliers” is defined in Section 3.18.

“Multiemployer Plan” means any multiemployer plan within the meaning of Sections 3(37) or 4001(a)(3) of ERISA.

“Non-Competition Period” is defined in Section 7.2.2.

“Non-Transferable Assets” is defined in Section 7.4.

“Offered Employees” is defined in Section 7.3.1.

“Off-the-Shelf Software” means off-the-shelf personal computer software as such term is commonly understood, that is commercially available under non-discriminatory pricing terms on a retail basis for less than \$300 per seat and used solely on the desktop personal computers of the Business.

“Order” means any judgment, injunction, award, decision, decree, ruling, verdict, writ or order of any nature of any Governmental Authority.

“Pension Plan” means an employee benefit plan, program or arrangement subject to Section 302 or Title IV of ERISA or Section 412 of the Internal Revenue Code.

“Permits” is defined in Section 3.8.

“Permitted Liens” means (a) all liens for current Taxes, assessments, fees and other charges by Governmental Authorities that are not due and payable, (b) mechanics’, workmens’, repairmens’, warehousemens’, carriers’ or other statutory liens arising or incurred in the ordinary course of business for amounts not yet due and payable, and (c) in the case of real property, liens of record or other minor defects of title that do not and are not reasonably expected to materially interfere with the use of such real property or materially diminish the value thereof.

“Person” means an individual, a corporation, a limited liability company, a partnership, a trust, an unincorporated association, a government or any agency, instrumentality or political subdivision of a government, or any other entity or organization.

“Plan” means (i) all employee benefit plans (as defined in Section 3(3) of ERISA), (ii) all bonus (including transaction bonus), incentive compensation, equity or equity-based, stock appreciation right, phantom stock, restricted stock, restricted stock unit, performance stock, performance stock unit, employee stock ownership, stock purchase, deferred compensation, change in control, employment, noncompetition, nondisclosure, vacation, holiday, sick leave, retention, severance, retirement, savings, pension, money purchase, target benefit, cash balance, excess benefit, supplemental executive retirement, profit sharing, life insurance, cafeteria (Section 125), adoption assistance, dependent care assistance, voluntary employees beneficiary, multiple employer welfare, medical, dental, vision, severance, change in control, multiple employer welfare, supplemental unemployment compensation, accident, disability, fringe benefit, welfare benefit, paid time off, employee loan, and salary continuation plans, programs, policies, agreements, arrangements, commitments, practices, contracts, associations and understandings (written or unwritten) including, without limitation, any trust, escrow or other agreement related thereto and any similar plans, programs, policies, agreements, arrangements, commitments, practices, contracts and understandings (written or unwritten), and (iii) all employee benefit plans pursuant to foreign Laws.

“Prepaid Assets” is defined in Section 2.1.1(h).

“Product Liability Claim” is defined in Section 3.15.2.

“Purchase Price” is defined in Section 2.2.1(a).

“Removal,” “Remedial” and “Response” actions shall include the types of activities covered by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., RCRA and other comparable Laws, whether the activities are those that might be taken by a Governmental Authority or those that a Governmental Authority might seek to require of third parties under “removal,” “remedial” or other “response” actions.

“Retained Businesses” means Seller’s data center product line (*i.e.*, KyotoCooling), and Seller’s Thermotech division.

“Retained Liabilities” is defined in Section 2.1.4.

“Restrictive Covenant Agreements” is defined in Section 5.1(j).

“Seller” is defined in the preamble of this Agreement.

“Seller Ancillary Agreements” is defined in Section 3.2.1.

“Seller Fundamental Reps” is defined in Section 8.3.1(a).

“Seller Indemnitees” is defined in Section 8.2.

“Seller Plan” means any Plan to which Seller contributes to, is a party to, is bound by or could reasonably be expected to have liability (whether known, accrued, absolute, contingent, liquidated or otherwise) with respect to, and under which directors, employees, independent contracts, consultants or other members of the workforce of Seller are or have been eligible to participate or derive a benefit, in each case related to the Business.

“Tax” or “Taxes” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, FICA, withholding, excise, severance, stamp, occupation, premium, windfall profits, customs duties, capital stock, franchise, profits, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“To Seller’s Knowledge” means (a) the actual knowledge of Joseph E. Miketo, Thomas Elmore, Donna Drumheller, and Walter Himmelman and (b) the knowledge that the persons set forth in the preceding clause (a) would reasonably be expected to have after reasonable inquiry of his or her direct reports and Seller’s books and records.

“Trade Payables” is defined in Section 2.1.3(a).

“Transferred Employees” is defined in Section 7.3.1.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended, and any and all rules and regulations adopted pursuant thereto.

"WARN Act" is defined in Section 3.6.

ARTICLE 10

Construction; Miscellaneous Provisions

10.1 Notices. Any notice to be given or delivered pursuant to this Agreement shall be ineffective unless given or delivered in writing, and shall be given or delivered in writing as follows:

10.1.1 If to Buyer:

Hickok Incorporated
10514 Dupont Ave,
Cleveland, OH 44108
Attention: Brian Powers
E-mail: bpowers@hickok-inc.com

with a copy to:

Calfree, Halter & Griswold LLP
1405 East Sixth Street
Cleveland, Ohio 44114
Attention: John Jenkins
E-mail: jjenkins@calfree.com

10.1.2 If to Seller Parties, to:

Data Cooling Technologies LLC
1777 Miller Parkway
Streetsboro, Ohio 44121
Attention: Joseph Miketo

With a copy to:

Mansour Gavin LPA
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114
Attention: Jeffrey Embleton
E-Mail: jembleton@mggmlpa.com

or in any case, to such other address for a party as to which notice shall have been given to Buyer and Seller in accordance with this Section. Notices so addressed shall be deemed to have been duly given (i) on the third business day after the day of registration, if sent by registered or certified mail, postage prepaid, (ii) on the next business day following the documented acceptance thereof for next-day delivery by a national overnight air courier service, if so sent, or (iii) on the date sent by facsimile transmission or electronic mail, if electronically confirmed. Otherwise, notices shall be deemed to have been given when actually received at such address.

10.2 Entire Agreement. This Agreement and the schedules and exhibits hereto constitute the exclusive statement of the agreement among Buyer and Seller Parties concerning the subject matter hereof, and supersedes all other prior agreements, oral or written, among or between any of the parties hereto concerning such subject matter. All negotiations among or between any of the parties hereto are superseded by this Agreement, and there are no representations, warranties, promises, understandings or agreements, oral or written, in relation to the subject matter hereof among or between any of the parties hereto other than those expressly set forth or expressly incorporated herein.

10.3 Modification. No amendment, modification, or waiver of this Agreement or any provision hereof, including the provisions of this sentence, shall be effective or enforceable as against a party hereto unless made in a written instrument that specifically references this Agreement and that is signed by the party waiving compliance.

10.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Buyer, Seller Parties, and the respective successors and permitted assigns of Buyer and of Seller Parties.

10.5 Headings. The article and section headings used in this Agreement are intended solely for convenience of reference, do not themselves form a part of this Agreement, and may not be given effect in the interpretation or construction of this Agreement.

10.6 Number and Gender; Inclusion. Whenever the context requires in this Agreement, the masculine gender includes the feminine or neuter, the neuter gender includes the masculine or feminine, the singular number includes the plural, and the plural number includes the singular. In every place where it is used in this Agreement, the word "including" is intended and shall be construed to mean "including, without limitation."

10.7 Counterparts. This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile or other copy of a signature shall be deemed an original for purposes of this Agreement.

10.8 Third Parties. Except as may otherwise be expressly stated herein, no provision of this Agreement is intended or shall be construed to confer on any Person, other than the parties hereto, any rights hereunder. Buyer Indemnitees and Seller Indemnitees who are not otherwise parties to this Agreement shall be third party beneficiaries of this Agreement.

10.9 Time Periods. Any action required hereunder to be taken within a certain number of days shall, except as may otherwise be expressly provided herein, be taken within that number of calendar days; provided, however, that if the last day for taking such action falls on a Saturday, a Sunday, or a legal holiday, the period during which such action may be taken shall automatically be extended to the next business day.

10.10 Governing Law; Jurisdiction. This Agreement shall be construed under and governed by the Laws of the State of Ohio, without giving effect to choice of laws principles that would require or permit application of the Laws of another jurisdiction. Each party hereto agrees that any claim relating to this Agreement shall be brought solely in the state or federal courts located in Cuyahoga County, Ohio, and all objections to personal jurisdiction and venue in any action, suit or proceeding so commenced are hereby expressly waived by all parties hereto. The parties waive personal service of any and all process on each of them and consent that all such service of process shall be made in the manner, to the party and at the address set forth in Section 10.1 of this Agreement, and service so made shall be complete as stated in such Section.

[Signature page follows]

IN WITNESS WHEREOF, Buyer and Seller Parties have executed and delivered this Asset Purchase Agreement as of the date first written above.

BUYER:

HICKOK ACQUISITION A LLC

By: /s/ Brian E. Powers

Name: Brian E. Powers

Its: President

SELLER:

**AIR ENTERPRISES ACQUISITION
LLC**

By: /s/Joseph E. Miketo

Name: Joseph E. Miketo

Its: CEO/President

MEMBER:

/s/A. Malachi Mixon, III

A. Malachi Mixon, III

/s/ William M. Weber

William M. Weber



CREDIT AGREEMENT

dated as of

June 1, 2017

among

HICKOK INCORPORATED
HICKOK ACQUISITION A LLC
SUPREME ELECTRONICS CORP.
FEDERAL HOSE MANUFACTURING LLC
WAEKON CORPORATION
HICKOK OPERATING LLC

and

JPMORGAN CHASE BANK, N.A.

TABLE OF CONTENTS

	Page
ARTICLE I. Definitions	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Classification of Loans and Borrowings.	25
SECTION 1.03. Terms Generally.	26
SECTION 1.04. Accounting Terms; GAAP	26
SECTION 1.05. Status of Obligations	27
ARTICLE II. The Credits	27
SECTION 2.01. Commitments	27
SECTION 2.02. Loans and Borrowings	27
SECTION 2.03. Borrowing Procedures; Requests for Revolving Borrowings	28
SECTION 2.06. Letters of Credit	28
SECTION 2.05. Funding of Borrowings.	31
SECTION 2.06. Interest Elections.	31
SECTION 2.07. Termination of Commitment	32
SECTION 2.08. Repayment and Amortization of Loans; Evidence of Debt.	32
SECTION 2.09. Prepayment of Loans	33
SECTION 2.10. Fees.	35
SECTION 2.11. Interest	35
SECTION 2.12. Alternate Rate of Interest.	36
SECTION 2.13. Increased Costs.	36
SECTION 2.14. Break Funding Payments.	37
SECTION 2.15. Taxes	37
SECTION 2.16. Payments Generally; Allocation of Proceeds	39
SECTION 2.17. Indemnity for Returned Payments	40
ARTICLE III. Representations and Warranties	40
SECTION 3.01. Organization; Powers	40
SECTION 3.02. Authorization; Enforceability	40
SECTION 3.03. Governmental Approvals; No Conflicts.	40
SECTION 3.04. Financial Condition; No Material Adverse Change	41
SECTION 3.05. Properties	41
SECTION 3.06. Litigation and Environmental Matters.	41
SECTION 3.07. Compliance with Laws and Agreements; No Default.	42
SECTION 3.08. Investment Company Status.	42
SECTION 3.09. Taxes.	42
SECTION 3.10. ERISA	42
SECTION 3.11. Disclosure.	42
SECTION 3.12. Material Agreements	43
SECTION 3.13. Solvency.	43
SECTION 3.14. Insurance.	43
SECTION 3.15. Capitalization and Subsidiaries.	43
SECTION 3.16. Security Interest in Collateral	43
SECTION 3.17. Employment Matters	44
SECTION 3.18. Federal Reserve Regulations	44

SECTION 3.19. Use of Proceeds	44
SECTION 3.20. No Burdensome Restrictions	44
SECTION 3.21. Anti-Corruption Laws and Sanctions	44
SECTION 3.22. FFC Subordinated Debt Documents	44
SECTION 3.23. Air Enterprises Acquisition Documents	45
ARTICLE IV. Conditions	45
SECTION 4.01. Effective Date	45
SECTION 4.02. Each Credit Event.	48
ARTICLE V. Affirmative Covenants	49
SECTION 5.01. Financial Statements; Borrowing Base and Other Information	49
SECTION 5.02. Notices of Material Events; Name Change.	51
SECTION 5.03. Existence; Conduct of Business	52
SECTION 5.04. Payment of Obligations.	52
SECTION 5.05. Maintenance of Properties	52
SECTION 5.06. Books and Records; Inspection Rights	53
SECTION 5.07. Compliance with Laws and Material Contractual Obligations.	53
SECTION 5.08. Use of Proceeds.	53
SECTION 5.09. Accuracy of Information	53
SECTION 5.10. Insurance	54
SECTION 5.11. Appraisals	54
SECTION 5.12. Casualty and Condemnation	54
SECTION 5.13. Depository Banks	54
SECTION 5.14. Additional Collateral; Further Assurances	54
ARTICLE VI. Negative Covenants	55
SECTION 6.01. Indebtedness.	55
SECTION 6.02. Liens.	57
SECTION 6.03. Fundamental Changes.	58
SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions	59
SECTION 6.05. Asset Sales	60
SECTION 6.06. Sale and Leaseback Transactions	60
SECTION 6.07. Swap Agreements	61
SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness.	61
SECTION 6.09. Transactions with Affiliates.	62
SECTION 6.10. Restrictive Agreements.	62
SECTION 6.11. Amendment of Material Documents	62
SECTION 6.12. Financial Covenants	62
ARTICLE VII. Events of Default	63
ARTICLE VIII. Miscellaneous	66
SECTION 8.01. Notices	66
SECTION 8.02. Waivers; Amendments.	67
SECTION 8.03. Expenses; Indemnity; Damage Waiver.	68
SECTION 8.04. Successors and Assigns	69
SECTION 8.05. Survival	70
SECTION 8.06. Counterparts; Integration; Effectiveness; Electronic Execution.	71
SECTION 8.07. Severability	71
SECTION 8.08. Right of Setoff.	71
SECTION 8.09. Governing Law; Jurisdiction; Consent to Service of Process.	71
SECTION 8.10. WAIVER OF JURY TRIAL.	72
SECTION 8.11. Headings.	72
SECTION 8.12. Confidentiality.	73
SECTION 8.13. Nonreliance; Violation of Law	73

SECTION 8.14. USA PATRIOT Act	73
SECTION 8.15. Disclosure	73
SECTION 8.16. Interest Rate Limitation	73
SECTION 8.17. Marketing Consent	73
SECTION 8.18. Confession of Judgment	74
ARTICLE IX. Loan Guaranty	74
SECTION 9.01. Guaranty.	74
SECTION 9.02. Guaranty of Payment	74
SECTION 9.03. No Discharge or Diminishment of Loan Guaranty	75
SECTION 9.04. Defenses Waived.	75
SECTION 9.05. Rights of Subrogation	76
SECTION 9.06. Reinstatement; Stay of Acceleration.	76
SECTION 9.07. Information	76
SECTION 9.08. Termination	76
SECTION 9.09. Taxes.	76
SECTION 9.10. Maximum Liability	76
SECTION 9.11. Contribution	77
SECTION 9.12. Liability Cumulative	77
SECTION 9.13. Keepwell	78
ARTICLE X. The Borrower Representative	78
SECTION 10.01. Appointment; Nature of Relationship	78
SECTION 10.02. Powers	78
SECTION 10.03. Employment of Agents	78
SECTION 10.04. Notices	78
SECTION 10.05. Successor Borrower Representative	79
SECTION 10.06. Execution of Loan Documents; Borrowing Base Certificate	79
SECTION 10.07. Reporting	79

SCHEDULES:

- Schedule 3.05 – Properties
- Schedule 3.06 – Disclosed Matters
- Schedule 3.12 – Material Agreements
- Schedule 3.14 – Insurance
- Schedule 3.15 – Capitalization and Subsidiaries
- Schedule 4.01 – Customer Consents
- Schedule 6.01 – Existing Indebtedness
- Schedule 6.02 – Existing Liens
- Schedule 6.04 – Existing Investments
- Schedule 6.10 – Existing Restrictions

EXHIBITS:

- Exhibit A - Opinion of Counsel for the Loan Parties
- Exhibit B - Borrowing Base Certificate
- Exhibit C - Compliance Certificate
- Exhibit D - Joinder Agreement

CREDIT AGREEMENT dated as of June 1, 2017 (as it may be amended or modified from time to time, this “Agreement”), among HICKOK INCORPORATED, an Ohio corporation (“Hickok”), HICKOK ACQUISITION A LLC, an Ohio limited liability company, which will be changing its name on or about the Effective Date to Air Enterprises LLC (“Hickok Air Enterprises”), SUPREME ELECTRONICS CORP., a Mississippi corporation (“Supreme”), FEDERAL HOSE MANUFACTURING LLC, an Ohio limited liability company (“Federal”), HICKOK OPERATING LLC, an Ohio limited liability company (“Hickok Operating”), WAEKON CORPORATION, an Ohio corporation (“Waekon”, and together with Hickok, Hickok Air Enterprises, Supreme, Federal and Hickok Operating, collectively “Borrowers” and each individually a “Borrower”), the other Loan Parties party hereto, and JPMORGAN CHASE BANK, N.A., as Lender.

The parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Account” has the meaning assigned to such term in the Security Agreement.

“Account Debtor” means any Person obligated on an Account.

“Adjusted LIBOR Rate” means, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFN Borrowing, the quotient of (a) the LIBOR Rate applicable to such Interest Period, divided by (b) one minus the Reserve Requirement (expressed as a decimal) applicable to such Interest Period.

“Adjusted One Month LIBOR Rate” means, for any day, an interest rate per annum equal to the sum of (i) 2.50% per annum plus (ii) the Adjusted LIBOR Rate for a one-month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBOR Rate for any day shall be based on the LIBOR Screen Rate at approximately 11:00 a.m. London time on such day.

“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 specified Person.

“Air Enterprises” means Air Enterprises LLC, a Delaware limited liability company.

“Air Enterprises Acquisition” means the acquisition by Hickok Air Enterprises of substantially all of the assets of Air Enterprises on the Effective Date pursuant to the Air Enterprises Acquisition Documents.

“Air Enterprises Acquisition Documents” means the Air Enterprises Purchase Agreement and all agreements, instruments and documents executed pursuant thereto or in connection therewith, as any of the foregoing may from time to time be amended, restated or otherwise modified.

“Air Enterprises Assignment of Rights” shall mean the Assignment of Rights relating to Hickok Air Enterprises’ rights under the Air Enterprises Acquisition Documents, executed and delivered to Lender by Hickok Air Enterprises and Air Enterprises in connection with this Agreement, as the same may from time to time be amended, restated or otherwise modified.

Air Enterprises Purchase Agreement” means that certain Asset Purchase Agreement, dated as of June 1, 2017, among Hickok Air Enterprises, Air Enterprises and certain equity holders of Air Enterprises party thereto, as amended and as the same may from time to time be further amended, restated or otherwise modified.

Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

Applicable Rate” means, for any day, the applicable rate per annum equal to:

- (a) with respect to Revolving Loans (i) 0.00% for CBRF Loans, and (ii) 2.00% for Eurodollar Loans; and
- (b) with respect to the Term A Loan (i) 0.25% for CBFR Loans, and (ii) 2.25% for Eurodollar Loans.

Approved Fund” has the meaning assigned to such term in Section 8.04(b).

Availability” means, at any time, an amount equal to (a) the lesser of (i) the Revolving Commitment and (ii) the Borrowing Base *minus* (b) the Revolving Exposure.

Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Revolving Credit Maturity Date and the date of termination of the Revolving Commitment.

Banking Services” means each and any of the following bank services provided to any Loan Party or any Subsidiary by the Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services).

Banking Services Obligations” means any and all obligations of the Loan Parties or their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assigned for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Lender, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board” means the Board of Governors of the Federal Reserve System of the U.S.

“Borrower” or “Borrowers” shall have the meaning given to such term in the opening paragraph of this Agreement.

“Borrower Representative” has the meaning assigned to such term in Section 10.01.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect and (b) Term Loans made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Base” means, at any time, the sum of (a) 80% of the Borrowers’ Eligible Accounts at such time, plus (b) 50% of the Borrowers’ Eligible Progress Billing Accounts at such time, plus (c) 50% of the Borrowers’ Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, minus (d) Reserves. The maximum amount of Eligible Progress Billing Accounts which may be included as part of the Borrowing Base is \$1,000,000. The Lender may, in its Permitted Discretion, reduce the advance rates set forth above, adjust Reserves or reduce one or more of the other elements used in computing the Borrowing Base.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit B or another form which is acceptable to the Lender in its sole discretion.

“Borrowing Request” means a request by the Borrower Representative for a Borrowing in accordance with Section 2.03.

“Burdenome Restrictions” means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.10.

“Business Day” means a day (other than a Saturday or Sunday) on which banks generally are open in Ohio and/or New York for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market.

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP but excluding in each case any such expenditures that (i) are made to restore, repair, replace or rebuild property to the condition of such property immediately prior to any casualty event, to the extent such expenditure is made with insurance proceeds, condemnation awards or damage recover proceeds relating to any such casualty event or (ii) are financed with the proceeds of any Disposition of fixed or capital assets to the extent such expenditure is permitted under Section 6.05 hereof.

“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.

“CB Floating Rate” means the Prime Rate; provided that the CB Floating Rate shall never be less than the Adjusted One Month LIBOR Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CB Floating Rate due to a change in the Prime Rate or the Adjusted One Month LIBOR Rate shall be effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

“CBFR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the CB Floating Rate.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were neither (i) directors of the Company on the date of this Agreement, (ii) nominated, appointed or approved by the board of directors of the Company nor (iii) nominated, appointed or approved by directors so nominated, appointed or approved; or (c) the Company shall cease to own, free and clear of all Liens or other encumbrances, 100% of the outstanding voting Equity Interests of the other Borrowers on a fully diluted basis.

“Change in Law” means the occurrence after the date of this Agreement of any of the following: (a) the adoption of 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 or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.13(b), by any lending office of the Lender or by the Lender’s holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. 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, issued or implemented.

“Charges” has the meaning assigned to such term in Section 8.16.

“Class”, when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or a Term A Loan, and (b) any Commitment, refers to whether such Commitment is a Revolving Commitment or a Term A Commitment.

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

“Collateral” means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that is at any time, becomes or is intended to be, subject to a security interest or Lien in favor of the Lender, on behalf of the Secured Parties, to secure the Secured Obligations.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the Air Enterprises Assignment of Rights, and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Lender.

“Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers.

“Commitment” means the sum of the Revolving Commitment and Term Commitments.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Commitment Fee Applicable Rate” means 0.25%.

“Company” means Hickok.

“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.

“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.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Disclosed Matters” means the actions, suits, proceedings and environmental matters disclosed in Schedule 3.06.

“Distributions” means all dividends and other distributions made to shareholders, partners, owners or members, as the case may be, other than salary, bonuses, and other compensation for services expended in the current accounting period.

“Document” has the meaning assigned to such term in the Security Agreement.

“Dollars”, “dollars” or “\$” refers to lawful money of the U.S.

“EBITDA” means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any non-recurring non-cash charges for such period, and (v) any non-recurring fees, cash charges and other cash expenses (including severance costs) made or incurred in connection with the Transactions that are paid or otherwise accounted for within 90 days of the consummation of the Transactions in an amount not to exceed \$1,000,000, *minus* (b) without duplication and to the extent included in Net Income, any non-recurring non-cash gains for such period, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 8.02).

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, web portal access for the Borrower, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Eligible Accounts" means, at any time, the Accounts of a Borrower which the Lender determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and the issuance of Letters of Credit. Without limiting the Lender's discretion provided herein, Eligible Accounts shall not include any Account of a Borrower:

- (a) which is not subject to a first priority perfected security interest in favor of the Lender;
- (b) which is subject to any Lien other than (i) a Lien in favor of the Lender and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Lender;
- (c) (i) which is unpaid more than 90 days after the date of the original invoice therefor, or (ii) which has been written off the books of such Borrower or otherwise designated as uncollectible;
- (d) which is owing by an Account Debtor for which more than 25% of the Accounts owing from such Account Debtor and its Affiliates are ineligible hereunder;
- (e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to (i) such Borrower exceeds 50% of the aggregate amount of Eligible Accounts of such Borrower or (ii) all Borrowers exceeds 50% of the aggregate amount of Eligible Accounts of all Borrowers but in either case such Accounts shall be ineligible only to the extent of such excess;
- (f) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been, in any material respect (without duplication of any materiality qualifier) breached or is not true;
- (g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Lender which has been sent to the Account Debtor, (iii) represents a progress billing, whether an Eligible Progress Billing Account or otherwise (iv) is contingent upon such Borrower's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and acceptable to the Lender in its Permitted Discretion), (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or substantially all of its assets;

(l) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S. or the District of Columbia, Canada, or any province of Canada unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Lender which is in the possession of, and is directly drawable by, the Lender;

(m) which is owed in any currency other than U.S. dollars;

(n) which is owed by (i) any Governmental Authority of any country other than the U.S., unless such Account is backed by a Letter of Credit acceptable to the Lender which is in the possession of, and is directly drawable by, the Lender, or (ii) any Governmental Authority of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 *et seq.* and 41 U.S.C. § 15 *et seq.*), and any other steps necessary to perfect the Lien of the Lender in such Account, have been complied with to the Lender's satisfaction;

(o) which is owed by any Affiliate of any Loan Party or any employee, officer, director, agent or stockholder of any Loan Party or any of its Affiliates;

(p) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(q) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(r) which is evidenced by any promissory note, chattel paper or instrument;

(s) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Borrower to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Borrower has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(t) with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business but only to the extent of any such reduction, or any Account which was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;

(u) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(v) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or which indicates any party other than such Borrower as payee or remittance party;

(w) which was created on cash on delivery terms; or

(x) which the Lender determines may not be paid by reason of the Account Debtor's inability to pay or which the Lender otherwise determines is unacceptable in its commercially reasonable credit judgment.

In the event that an Account of a Borrower which was previously an Eligible Account ceases to be an Eligible Account hereunder (other than by payment), such Borrower or the Borrower Representative shall notify the Lender thereof on and at the time of submission to the Lender of the next Borrowing Base Certificate. In determining the amount of an Eligible Account of a Borrower, the face amount of an Account may, in the Lender's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account.

"Eligible Inventory" means, at any time, the Inventory of a Borrower which the Lender determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and the issuance of Letters of Credit hereunder. Without limiting the Lender's discretion provided herein, Eligible Inventory of a Borrower shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Lender;

(b) which is subject to any Lien other than (i) a Lien in favor of the Lender and (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Lender;

(c) which is, in the Lender's opinion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation or warranty contained in this Agreement or in the Security Agreement has been, in any material respect (without duplication of any materiality qualifier) breached or is not true and which does not conform in any material respect to all applicable standards imposed by any Governmental Authority;

(e) in which any Person other than such Borrower shall (i) have any direct or indirect ownership, interest or title or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which is not finished goods or raw materials or which constitutes work-in-process, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or is in transit with a common carrier from vendors and suppliers;

(h) which is located in any location leased by such Borrower unless (i) the lessor has delivered to the Lender a Collateral Access Agreement or (ii) a Reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by the Lender in its Permitted Discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless such warehouseman or bailee has delivered to the Lender a Collateral Access Agreement and such other documentation as the Lender may require;

(j) which is being processed offsite at a third party location or outside processor, or is in transit to or from such third party location or outside processor;

(k) which is a discontinued product or component thereof;

(l) which is the subject of a consignment by such Borrower as consignor;

(m) which is perishable;

(n) which contains or bears any intellectual property rights licensed to such Borrower unless the Lender is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties, other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

- (o) which is not reflected in a current perpetual inventory report of such Borrower;
- (p) for which reclamation rights have been asserted by the seller;
- (q) which has been acquired from a Sanctioned Person; or
- (r) which the Lender otherwise determines is unacceptable in its commercially reasonable credit judgment.

In the event that Inventory of a Borrower which was previously Eligible Inventory ceases to be Eligible Inventory hereunder, such Borrower or the Borrower Representative shall notify the Lender thereof on and at the time of submission to the Lender of the next Borrowing Base Certificate.

"Eligible Progress Billing Account" means, at any time, the Accounts of a Borrower which represent progress billings, that satisfy all the requirements set forth in the definition of "Eligible Accounts" (other than the requirement set forth in clause (g)(iii) of the definition of Eligible Accounts) and that the Lender determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and the issuance of Letters of Credit. Without limiting the Lender's discretion provided herein, Eligible Progress Billing Accounts shall not include any Account of a Borrower:

- (a) which are generated under a contract which will take greater than 180 days to complete, whether by the terms of the contract or otherwise;
- (b) which is due as a deposit or upon signing of a contract and not based upon a Borrower's completion of specific services as required by such contract;
- (c) which the Lender determines in its Permitted Discretion is in excess of the services performed or completed, but only the extent of such excess;
- (d) which exceeds the costs incurred by such Borrower in connection with the services performed or completed, but only to the extent of such excess; or
- (e) which the Lender otherwise determines is unacceptable in its commercially reasonable credit judgment.

In the event that an Account of a Borrower which was previously an Eligible Progress Billing Account ceases to be an Eligible Progress Billing Account hereunder (other than by payment), such Borrower or the Borrower Representative shall notify the Lender thereof on and at the time of submission to the Lender of the next Borrowing Base Certificate. In determining the amount of an Eligible Progress Billing Account of a Borrower, the face amount of an Account may, in the Lender's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” has the meaning assigned to such term in the Security Agreement.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 (b), (c), (m), (o) or (t) of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA) with respect to any Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans under Section 4041, Section 4042 or Section 4041A of ERISA or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Adjusted LIBOR Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Collateral” has the meaning assigned to such term in the Security Agreement.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any 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 Guarantor’s failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. 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.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender: (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 the Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) the Lender acquires such interest in the Loan, Letter of Credit or Commitment or (ii) the Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.15, amounts with respect to such Taxes were payable either to the Lender’s assignor immediately before the Lender acquired the applicable interest in such Loan, Letter of Credit or Commitment or to the Lender immediately before it changed its lending office, and (c) any U.S. federal withholding Taxes imposed under FATCA.

“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 agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depositary institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate.

“FFC” means First Francis Company Inc., an Ohio corporation.

“FFC Security Agreement” means that certain All Assets Security Agreement, dated July 1, 2016, among Hickok Incorporated, Federal, Supreme and FFC.

“FFC Subordinated Debt” means the Indebtedness of certain of the Loan Parties owed to FFC pursuant to the FFC Subordinated Debt Documents in the aggregate current principal amount, as of the Effective Date, of \$3,995,600.

“FFC Subordinated Debt Documents” means the FFC Subordinated Notes, the FFC Security Agreement, and the other documents, agreements, instruments and writings executed by any of the Loan Parties to FFC in connection with or related to the FFC Subordinated Debt, as any of the same may be amended, restated or otherwise modified from time to time.

"FFC Subordinated Payment Conditions" means (a) FFC is not in breach or violation of the FFC Subordination Agreement, (b) no Default or Event of Default has occurred and is continuing (or has not been waived by the Lender) under this Agreement or any other Loan Document, (c) no Default or Event of Default will occur as a result of any such payment, (d) after giving effect to any such payment Borrowers are in pro forma compliance with the financial covenants set forth in and calculated in accordance with Section 6.12 of this Agreement, and (e) after giving effect to any such payment, Availability is greater than or equal to \$500,000 as evidenced by a Borrowing Base Certificate delivered by the Loan Parties to the Lender.

"FFC Subordinated Notes" means, together, (i) that certain Promissory Note, dated July 1, 2016, by Hickok Incorporated in favor of First Francis Company Inc., in the original principal amount of \$2,768,662 and (ii) that certain Promissory Note, dated July 1, 2016, by Hickok Incorporated in favor of First Francis Company Inc., in the original principal amount of \$2,000,000.

"FFC Subordination Agreement" means the Subordination Agreement entered into among the Loan Parties, FFC (as subordinated lender), and the Lender (as senior lender) in connection with the FFC Subordinated Debt, as such agreement may be amended, restated or otherwise modified from time to time.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of a Borrower.

"Financial Statements" has the meaning assigned to such term in Section 5.01.

"Fixed Charges" means, for any period, without duplication, cash Interest Expense, *plus* scheduled principal payments on Indebtedness (excluding Subordinated Indebtedness) actually made, *plus* principal payments made after the Effective Date on Subordinated Indebtedness, *plus* Distributions, *plus* scheduled Capital Lease Obligation payments, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Fixed Charge Coverage Ratio" means, for any period, the ratio of (a) EBITDA *minus* (i) income tax expense for such period and (ii) Maintenance Capital Expenditures to (b) Fixed Charges, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Fixtures" has the meaning assigned to such term in the Security Agreement.

"Funding Account" has the meaning assigned to such term in Section 4.01(h).

"GAAP" means generally accepted accounting principles in the U.S.

"Governmental Authority" means the government of the U.S., any other nation or 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.

“Guaranteee” 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 or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; **provided** that the term **Guaranteee** shall not include (i) warranties or indemnities made in trade contracts, asset sale agreements, acquisition agreements, commitment letters, engagement letters and brokerage and deposit agreements in the ordinary course of business and not otherwise prohibited hereunder, and warranties and indemnities to lenders in any documents evidencing Indebtedness permitted pursuant to Section 6.01 with respect to the **guarantor**, (ii) any indemnities made in connection with liability of a Person’s directors, officers and employees in their capacities as such as permitted by applicable law so long as the same is in the ordinary course of business and consistent with such Person’s past practices and, (iii) any contingent liability arising from the endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business, and (iv) any continuing liability of Hickok or its Subsidiaries as a lessee under a real property or equipment lease after such lease has been assigned or subleased by such Person.

“Guaranteed Obligations” has the meaning assigned to such term in Section 9.01.

“Guarantors” means all Loan Guarantors and all non-Loan Parties who have delivered an Obligation Guaranty, and the term “**Guarantor**” means each or any one of them individually.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“Hickok Air Enterprises Name Change” shall mean the name change which will occur on or about the date hereof, whereby Hickok Air Enterprises will change its name to Air Enterprises, LLC.

“Hickok Air Enterprises Name Change Documents” shall mean the documentation filed with the Secretary of State of the State of Delaware in order to effectuate the Hickok Air Enterprises Name Change and all other agreements, instruments and documents executed pursuant thereto or in connection therewith.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, provided, in the case of any such obligations that are non-recourse to such Person, that the amount of obligations counted as Indebtedness shall be no greater than the fair market value of the assets subject to such Lien, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, and (k) obligations under any liquidated earn-out and (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“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 Loan Party under any Loan Document and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 8.03(b).

“Information” has the meaning assigned to such term in Section 8.12.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.06.

“Interest Expense” means, with reference to any period, total interest expense (including that attributable to Capital Lease Obligations) of the Company and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Company and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates, to the extent such net costs are allocable to such period in accordance with GAAP), calculated for the Company and its Subsidiaries on a consolidated basis for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any CBFM Loan, the first Business Day of each calendar month and the Revolving Credit Maturity Date or the Term A Maturity Date, as applicable, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Revolving Credit Maturity Date or the Term A Maturity Date, as applicable.

“Interest Period” means, with respect to any Eurodollar Borrowing, each consecutive one month period, the first of which shall commence on the date of this Agreement, ending on the day which corresponds numerically to such date one (1) month thereafter, provided, however, that if there is no such numerically corresponding day in such first succeeding month, such Interest Period shall end on the last Business Day of such first succeeding month. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, provided, however, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

“Inventory” has the meaning assigned to such term in the Security Agreement.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit D.

“LC Collateral Account” has the meaning assigned to such term in Section 2.04(h).

“LC Disbursement” means any payment made by the Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time.

“LC Sublimit” means \$3,000,000.

“Lender” means JPMorgan Chase Bank, N.A., its successors and assigns.

“Letters of Credit” means the letters of credit issued pursuant to this Agreement, and the term **“Letter of Credit”** means any one of them or each of them singularly, as the context may require.

“LIBOR Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as shall be selected by the Lender in its reasonable discretion; in each case, the **“LIBOR Screen Rate”**) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; *provided that*, if any LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Note. If no LIBOR Screen Rate is available to the Lender, the applicable LIBOR Rate for the relevant Interest Period shall instead be the rate determined by the Lender to be the rate at which the Lender offers to place U.S. dollar deposits having a maturity equal to such Interest Period with first-class banks in the London interbank market at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means, collectively, this Agreement, each promissory note issued pursuant to this Agreement, any Letter of Credit application, each Collateral Document, the Loan Guaranty, any Obligation Guaranty, the FFC Subordination Agreement, the Roundball Subordination Agreement, and each other agreement, instrument, document and certificate identified in Section 4.01 executed and delivered to, or in favor of, the Lender and including each other pledge, power of attorney, consent, assignment, contract, notice, letter of credit agreement, letter of credit application and each other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means each Loan Party other than the Borrowers’ foreign Subsidiaries.

“Loan Guaranty” means **Article IX** of this Agreement.

“Loan Parties” means, collectively, the Borrowers, the Borrowers’ domestic Subsidiaries and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lender pursuant to this Agreement.

“Maintenance Capital Expenditures” means Capital Expenditures that are made in connection with the replacement, substitution, restoration or repair of existing assets in order to maintain existing operational capacities (it being agreed that Maintenance Capital Expenditures does not include Capital Expenditures made in connection with an acquisition of a new asset that seeks to expand existing operational capacities).

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Company and its Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under the Loan Documents to which it is a party, (c) the Collateral, or the Lender’s Liens (on behalf of itself and the other Secured Parties) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Lender under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties in an aggregate principal amount exceeding \$250,000. For purposes of determining Material Indebtedness, the “principal amount of the obligations” of the Loan Parties in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Swap Agreement were terminated at such time.

“Maximum Rate” has the meaning assigned to such term in Section 8.16.

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

“Mortgage” means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Lender, on real property of a Loan Party, including any amendment, restatement, modification or supplement thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any period, the consolidated net income (or loss) determined for the Company and its Subsidiaries, on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Company or any Subsidiary, and (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Company or any Subsidiary has an ownership interest, except to the extent that any such income is actually received by the Company or such Subsidiary in the form of dividends or similar distributions, and (c) the undistributed earnings of any Subsidiary, to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

“NYFRB” means the Federal Reserve Bank of New York.

“Obligated Party” has the meaning assigned to such term in Section 9.02.

“Obligation Guaranty” means any Guarantee of all or any portion of the Secured Obligations executed and delivered to the Lender for the benefit of the Secured Parties by a guarantor who is not a Loan Party.

“Obligations” “ means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to the Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases).

“Other Connection Taxes” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Taxes (other than a connection arising from the Lender 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, Letter of Credit, or any Loan Document.

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

“Parent” means, with respect to the Lender, the Person of which the Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 8.04(c).

“Participant Register” has the meaning assigned to such term in Section 8.04(c).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured lender) business judgment.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

“Permitted Investments” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;
- (c) investments in certificates of deposit, bankers’ acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and
- (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Prepayment Event” means:

- (a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or any Subsidiary, other than dispositions described in Section 6.05(a); or
- (b) subject to Section 2.09(c), any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party or any Subsidiary with a fair value immediately prior to such event equal to or greater than \$100,000; or
- (c) the issuance by the Company of any Equity Interests, or the receipt by the Company of any capital contribution, (other than the offering or exercise of stock options or other equity awards pursuant to management incentive plans); or
- (d) the incurrence by any Loan Party or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by the Lender as its prime rate in effect at its principal offices in New York City. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Projections” has the meaning assigned to such term in Section 5.01(e).

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Property” means all real property that was, is now or may hereafter be owned, occupied or otherwise controlled by any Loan Party pursuant to any contract of sale, lease or other conveyance of any legal interest in any real property to any Loan Party.

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f).

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

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

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any substance into the environment.

“Report” means reports prepared by the Lender or another Person showing the results of appraisals, field examinations or audits pertaining to a Borrower’s assets from information furnished by or on behalf of such Borrower, after the Lender has exercised its rights of inspection pursuant to this Agreement.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means any and all reserves which the Lender deems necessary, in its Permitted Discretion, to maintain with respect to the Collateral or any Loan Party.

“Reserve Requirement” means, with respect to an Interest Period, the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in any Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interests.

“Revolving Commitment” means the commitment of the Lender to make Revolving Loans and issue Letters of Credit hereunder, as such commitment may be reduced from time to time pursuant to Section 2.07. The initial amount of the Lender’s Revolving Commitment is \$8,000,000.

“Revolving Credit Maturity Date” means June 1, 2020 (if the same is a Business Day, or if not then the immediately next succeeding Business Day), or any earlier date on which the Revolving Commitment is reduced to zero or otherwise terminated pursuant to the terms hereof.

“Revolving Exposure” means, at any time, the sum of the aggregate outstanding principal amount of the Lender’s Revolving Loans and its LC Exposure at such time.

“Revolving Loan” means a Loan made pursuant to Section 2.01(a).

“Roundball” means Roundball LLC, an Ohio limited liability company.

“Roundball Subordinated Note” means (a) the Convertible Promissory Note, dated December 30, 2015, made by Hickok in favor of Roundball in the original principal amount of \$466,879.87, and referred to in the Roundball Subordinated Loan Agreement as the “Roundball/Borrower Option Note”, as amended, restated or otherwise modified from time to time.

“Roundball Subordinated Debt” means the Indebtedness of Hickok owed to Roundball pursuant to the Roundball Subordinated Debt Documents in the aggregate current principal amount, as of the Effective Date, of \$200,000 for Roundball.

“Roundball Subordinated Debt Documents” means the Roundball Subordinated Loan Agreement, the Roundball Subordinated Note and the other documents, agreements, instruments and writings executed by any of the Loan Parties to Roundball in connection with or related to the Roundball Subordinated Debt, as any of the same may be amended, restated or otherwise modified from time to time.

“Roundball Subordinated Loan Agreement” means that certain Convertible Loan Agreement, dated as of December 30, 2011, among Hickok (as borrower) and Roundball (as lender), as amended, restated or otherwise modified from time to time.

“Roundball Subordinated Payment Conditions” means (a) Roundball is not in breach or violation of the Roundball Subordination Agreement, (b) no Default or Event of Default has occurred and is continuing (or has not been waived by the Lender) under this Agreement or any other Loan Document, (c) no Default or Event of Default will occur as a result of any such payment, (d) after giving effect to any such payment Borrowers are in pro forma compliance with the financial covenants set forth in and calculated in accordance with Section 6.12 of this Agreement, and (e) after giving effect to any such payment, Availability is greater than or equal to \$500,000 as evidenced by a Borrowing Base Certificate delivered by the Loan Parties to the Lender.

“Roundball Subordination Agreement” means the Subordination Agreement entered into among the Loan Parties, Roundball (as subordinated lender), and the Lender (as senior lender) in connection with the Roundball Subordinated Debt, as such agreement may be amended, restated or otherwise modified from time to time.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations, together with all (i) Banking Services Obligations and (ii) Swap Agreement Obligations owing to the Lender or its Affiliates; provided, however, that the definition of “Secured Obligations” shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Lender, (b) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (c) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (e) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Lender, for the benefit of the Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Lender, on behalf of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Senior Funded Indebtedness” means, at any date, the aggregate principal amount of total liabilities of the Company and its Subsidiaries on a consolidated basis, minus the sum of (a) accounts payable arising from the purchase of goods and services in the ordinary course of business, (b) accrued expenses or losses, (c) deferred revenues or gains, and (d) Subordinated Indebtedness, determined for the Company and its Subsidiaries on a consolidated basis at such date, in accordance with GAAP.

“Senior Funded Indebtedness to EBITDA Ratio” means, at any date, the ratio of (a) Senior Funded Indebtedness for such date to (b) EBITDA for the period of four fiscal quarters ended on or most recently prior to such date; provided, however, for purposes of calculating EBITDA above, the EBITDA of Hickok Air Enterprises shall be deemed to be (i) the actual EBITDA of Hickok Air Enterprises for the one month period ending June 30, 2017 *plus* \$736,887, (ii) the actual EBITDA of Hickok Air Enterprises for the fourth month period ending September 30, 2017 *plus* \$586,394, (iii) the actual EBITDA of Hickok Air Enterprises for the seventh month period ending December 31, 2017 *plus* \$761,155, and (iv) the actual EBITDA of Hickok Air Enterprises for the ten month period ending March 31, 2018 *plus* \$286,739.

“Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time *plus* (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of a Borrower at such time.

“Statement” has the meaning assigned to such term in Section 2.16(d).

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person, the payment of which is subordinated to payment of the Obligations to the written satisfaction of the Lender.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of the Company, a Borrower or of any other Loan Party, as applicable.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or any option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or their Subsidiaries shall be a Swap Agreement.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties or their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any Swap Agreement permitted hereunder with the Lender or an Affiliate of the Lender, and (b) any cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with the Lender or an Affiliate of the Lender.

“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 or any rules or regulations promulgated thereunder.

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

Term A Commitment means the commitment of the Lender to make a Term A Loan, expressed as an amount representing the maximum principal amount of the Term A Loan to be made by the Lender. The amount of the Lender's Term A Commitment on the Effective Date is \$2,000,000.

Term A Loan means a Loan made pursuant to Section 2.01(b).

Term A Maturity Date means June 1, 2021; provided, however, that if the Revolving Commitment shall be terminated for any reason, the unpaid amounts owing on the Term Loans shall be immediately due and payable in full.

Term Commitments means the Term A Commitment.

Term Loans means the Term A Loans.

Transactions means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the Air Enterprises Acquisition, the borrowing of Loans and other credit extensions hereunder, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

Type, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the CB Floating Rate.

UCC means the Uniform Commercial Code as in effect from time to time in the State of Ohio or in any other state, the laws of which are required to be applied in connection with the issue of perfection of security interests.

Unliquidated Obligations means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

U.S. means the United States of America.

USA PATRIOT Act means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

Withdrawal Liability means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. **Classification of Loans and Borrowings**. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Revolving Borrowing").

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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, (e) 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, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Lender that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Lender notifies the Borrower Representative that the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Board Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

SECTION 1.05. Status of Obligations. In the event that any Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Lender to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lender may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

ARTICLE II

The Credits

SECTION 2.01. Commitments. (a) Subject to the terms and conditions set forth herein, the Lender agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (i) the Revolving Exposure exceeding the lesser of (x) the Revolving Commitment and (y) the Borrowing Base. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

(b) Subject to the terms and conditions set forth herein, the Lender agrees to make a Term A Loan in dollars to the Borrowers, on the Effective Date, in a principal amount not to exceed the Lender’s Term A Commitment. Amounts prepaid or repaid in respect of Term A Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type.

(b) Subject to Section 2.12, each Revolving Borrowing and Term Loan Borrowing shall be comprised entirely of CBFR Loans or Eurodollar Loans as the Borrower Representative may request in accordance herewith, provided that all Revolving Borrowings and Term Loan Borrowings made on the Effective Date must be made as CBFR Borrowings but may be converted into Eurodollar Borrowings in accordance with Section 2.06. The Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of the Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.12, 2.13, 2.14 and 2.15 shall apply to such Affiliate to the same extent as to the Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) [Reserved].

(d) Notwithstanding any other provision of this Agreement, the Borrowers shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Credit Maturity Date or the Term A Maturity Date.

SECTION 2.03. Borrowing Procedures; Requests for Revolving Borrowings. To request a Borrowing, the Borrower Representative shall notify the Lender of such request either in writing (delivered by hand or fax) in a form reasonably satisfactory to the Lender and signed by the Borrower Representative or by telephone or through Electronic System, if arrangements for doing so have been approved by the Lender, not later than noon, Eastern Standard Time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(d) may be given not later than 9:00 a.m., Eastern Standard Time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or a communication through Electronic System to the Lender of a written Borrowing Request in a form approved by the Lender and signed by the Borrower Representative. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

- (i) the Class of Borrowing, the aggregate amount of the requested Borrowing, and a breakdown of the separate wires comprising such Borrowing;
- (ii) name of the applicable Borrower(s);
- (iii) the date of such Borrowing, which shall be a Business Day; and
- (iv) whether such Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing;

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a CBFR Borrowing.

SECTION 2.04. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower Representative, on behalf of a Borrower, may request the issuance of Letters of Credit denominated in dollars as the applicant thereof for the support of the obligations of any Borrower or any Subsidiary thereof, in a form reasonably acceptable to the Lender, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrowers to, or entered into by the Borrowers with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Each Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, such Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.10(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (each Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing such Letter of Credit, or any Requirement of Law relating to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Lender in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements 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 not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall hand deliver or fax (or transmit through Electronic System, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three (3) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the applicable Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed the LC Sublimit, and (ii) the Revolving Exposure shall not exceed the lesser of the Revolving Commitment and the Borrowing Base.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, including, without limitation, any automatic renewal provision, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Revolving Credit Maturity Date.

(d) Reimbursement. If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 11:00 a.m., Eastern Standard Time, on (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Eastern Standard Time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m., Eastern Standard Time on the day of receipt; provided that, the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with a CBFR Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting CBFR Revolving Borrowing.

(e) Obligations Absolute. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of any (i) lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly notify the Borrower Representative by telephone (confirmed by fax) of such demand for payment and whether the Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) Interim Interest. If the Lender shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is due; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (d) of this Section, then Section 2.11(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Lender.

(h) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the “LC Collateral Account”), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. The Borrowers also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Section 2.09(b). Each such deposit shall be held by the Lender as collateral for the payment and performance of the Secured Obligations. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrowers’ risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

(i) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

SECTION 2.05. Funding of Borrowings. The Lender shall make each Loan to be made by it hereunder on the proposed date thereof available to the Borrowers by promptly crediting the amounts in immediately available funds, to the Funding Account(s); provided that CBFR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(d) shall be remitted to the Lender.

SECTION 2.06. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Lender of such election by telephone or through Electronic System, if arrangements for doing so have been approved by the Lender, by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, Electronic System or fax to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower Representative.

(c) Each telephonic and written Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

- (i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day; and
- (iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing.

Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.07. Termination of Commitment.

(a) Unless previously terminated, (i) the Term Commitments shall terminate at 5:00 p.m., Eastern Standard Time, on the Effective Date and (ii) the Revolving Commitment shall terminate on the Revolving Credit Maturity Date.

(b) The Borrowers may at any time terminate the Revolving Commitment upon (i) the payment in full of all outstanding Revolving Loans and LC Disbursements, together with accrued and unpaid interest thereon, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Lender of a cash deposit (or at the discretion of the Lender a backup standby letter of credit satisfactory to the Lender) in an amount equal to 105% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees, and (iv) the payment in full of all reimbursable expenses and other Obligations together with accrued and unpaid interest thereon.

(c) The Borrower Representative shall notify the Lender of any election to terminate the Revolving Commitment under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination, specifying such election and the effective date thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitment delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination of the Revolving Commitment shall be permanent.

SECTION 2.08. Repayment and Amortization of Loans: Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to pay the Lender the then unpaid principal amount of each Revolving Loan on the Revolving Credit Maturity Date.

(b) The Borrowers hereby unconditionally promise to repay the Term A Loan to the Lender in consecutive monthly installments of \$41,666.67 on the first Business Day of each month, commencing on July 1, 2017, and continuing on the first Business Day of each month thereafter, with a final payment of all unpaid amounts owing on the Term A Loan to be paid in full in cash by the Borrowers on the Term A Maturity Date.

(c) Prior to any repayment of any Term Loan Borrowings of any Class under this Section, the Borrowers shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Lender by telephone (confirmed by fax) of such selection not later than 11:00 a.m., Eastern Standard Time, three (3) Business Days before the scheduled date of such repayment. Each repayment of a Term Loan Borrowing shall be applied ratably to the Loans included in the repaid Term Loan Borrowing. Repayments of Term Loan Borrowings shall be accompanied by accrued interest on the amounts repaid.

(d) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to the Lender resulting from each Loan made by the Lender, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder.

(e) The Lender shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, if any, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to the Lender hereunder and (iii) the amount of any sum received by the Lender hereunder.

(f) The entries made in the accounts maintained pursuant to paragraph (d) or (e) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(g) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to the Lender a promissory note payable to the Lender (or, if requested by the Lender, to the Lender and its registered assigns) and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 8.04) be represented by one or more promissory notes in such form.

SECTION 2.09. Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (e) of this Section and, if applicable, payment of any break funding expenses under Section 2.14.

(b) In the event and on such occasion that the Revolving Exposure exceeds the lesser of (A) the Revolving Commitment and (B) the Borrowing Base, the Borrowers shall promptly prepay (and in any event within one Business Day) the Revolving Loans and/or LC Exposure (or, if no such Borrowings are outstanding, deposit cash collateral in the LC Collateral Account in an aggregate amount equal to such excess, in accordance with Section 2.04(h)).

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by any Loan Party or Subsidiary, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.09(d) below in an aggregate amount equal to 100% of such Net Proceeds, provided that, in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", if the Borrower Representative shall deliver to the Lender a certificate of a Financial Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 120 days after receipt of such Net Proceeds, to acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties, and certifying that no Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate, provided that to the extent of any such Net Proceeds that have not been so applied by the end of such 120-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied; provided further that the Borrowers shall not be permitted to make elections to use Net Proceeds to acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) with respect to Net Proceeds in any fiscal year in an aggregate amount in excess of \$100,000.

(d) All prepayments required to be made pursuant to Section 2.09(c) shall be applied, first to prepay the Term Loans (and in the event Term Loans of more than one Class shall be outstanding at the time, shall be allocated among the Term Loans pro rata based on the aggregate principal amounts of outstanding Term Loans of each such Class) as so allocated, and shall be applied to reduce the subsequent scheduled repayments of Term Loans of each Class to be made pursuant to Section 2.08 in inverse order of maturity, and second to prepay the Revolving Loans without a corresponding reduction in the Revolving Commitment and third to cash collateralize outstanding LC Exposure; provided that all prepayments required to be made pursuant to Section 2.09(c) (with respect to Net Proceeds arising from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding, to the extent they arise from casualties or losses to cash or Inventory) shall be applied, first, to prepay the Revolving Loans without a corresponding reduction in the Revolving Commitment and second, to cash collateralize outstanding LC Exposure, and third, to prepay the Term Loans (allocated and applied to subsequent scheduled repayments as set forth above).

(e) The Borrower Representative shall notify the Lender by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Lender, of any prepayment under this Section: (i) in the case of prepayment of a Eurodollar Borrowing, not later than 10:00 a.m., Eastern Standard Time, three (3) Business Days before the date of prepayment, or (ii) in the case of prepayment of a CBFR Borrowing, not later than 10:00 a.m., Eastern Standard Time on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitment as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Each partial prepayment of any Revolving Borrowing or Term Loan shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.11 and (ii) break funding payments pursuant to Section 2.14.

SECTION 2.10. Fees.

(a) The Borrowers agree to pay to the Lender a commitment fee, which shall accrue at the Commitment Fee Applicable Rate on the daily amount of the undrawn portion of the Revolving Commitment of the Lender during the period from and including the Effective Date to but excluding the date on which the Lender's Revolving Commitment terminates; it being understood that the LC Exposure shall be included in the drawn portion of the Revolving Commitment for purposes of calculating the commitment fee. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Revolving Commitment terminates, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay (i) to the Lender a letter of credit fee with respect to Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the daily amount of the Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which the Lender's Revolving Commitment terminates and the date on which the Lender ceases to have any LC Exposure, and (ii) the Lender's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Letter of credit fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitment terminates and any such fees accruing after the date on which the Revolving Commitment terminates shall be payable on demand. Any other fees payable to the Lender pursuant to this paragraph shall be payable within ten (10) days after demand. All letter of credit fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) [Reserved].

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Lender. Fees paid shall not be refundable under any circumstances.

SECTION 2.11. Interest.

(a) The Loans comprising each CBFR Borrowing shall bear interest at the CB Floating Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Lender may, at its option, by written notice to the Borrower Representative, declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(d) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitment; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable CB Floating Rate, Adjusted LIBOR Rate or LIBOR Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

SECTION 2.12. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) Lender determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate or the LIBOR Rate, as applicable, for such Interest Period; or

(b) The Lender determines the Adjusted LIBOR Rate or the LIBOR Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loan included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrower Representative by telephone, fax or through Electronic System as provided in Section 8.01 as promptly as practicable thereafter and, until the Lender notifies the Borrower Representative that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and any such Eurodollar Borrowing shall be repaid on the last day of the then current Interest Period applicable thereto, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a CBFR Borrowing.

SECTION 2.13. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate); or

(ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender or any Letter of Credit; or

(iii) subject the Lender 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;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company as a consequence of this Agreement, the Commitment or the Loans made by Letters of Credit issued by the Lender to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 210 days prior to the date that the Lender notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 210-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.09), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.07(c) and is revoked in accordance therewith), then, in any such event, the Borrowers shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.15. Taxes.

(a) **Withholding Taxes; Gross-Up; Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan 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 Loan 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 2.15), the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender, timely reimburse it for, Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.15, such Loan Party shall deliver to the Lender 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 Lender.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify the Lender, within ten (10) days after 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 the Lender or required to be withheld or deducted from a payment to the Lender 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 delivered to the Borrower Representative by the Lender shall be conclusive absent manifest error.

(e) Treatment of Certain Refunds. If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.15 (including by the payment of additional amounts pursuant to this Section 2.15), 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 2.15 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender 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 the Lender, shall repay to the Lender the amount paid to the Lender (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to any indemnifying party pursuant to this paragraph (e), the payment of which would place the Lender in a less favorable net after-Tax position than the Lender 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 giving rise to such refund had never been paid. This paragraph (e) shall not be construed to require the Lender 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.

(f) Survival. Each party's obligations under this Section 2.15 shall survive the resignation or replacement of the Lender or any assignment of rights by, or the replacement of, the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(g) Defined Terms. For purposes of this Section 2.15, the term "applicable law" includes FATCA.

SECTION 2.16. Payments Generally; Allocation of Proceeds.

(a) The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.13, 2.14 or 2.15, or otherwise) prior to 2:00 p.m., Eastern Standard Time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 1300 East Ninth Street - 13th floor, Cleveland, OH 44114-1573. Unless otherwise provided for herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Any proceeds of Collateral received by the Lender (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.09) or (ii) after an Event of Default has occurred and is continuing and the Lender so elects, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Lender from the Borrowers, second, to pay interest then due and payable on the Loans ratably, third, to prepay principal on the Loans and unreimbursed LC Disbursements and to pay any amounts owing with respect to Swap Agreement Obligations, ratably (with amounts allocated to the Term Loans of any Class applied to reduce the subsequent scheduled repayments of the Term Loans of such Class to be made pursuant to Section 2.08 in inverse order of maturity, fourth, to pay an amount to the Lender equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, fifth, to the payment of any amounts owing with respect to Banking Services Obligations, and sixth, to the payment of any other Secured Obligation due to the Lender from the Borrowers or any other Loan Party. The Lender shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Lender, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 8.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder, whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Lender. The Borrowers hereby irrevocably authorize (i) the Lender to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agree that all such amounts charged shall constitute Loans, and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03 and (ii) the Lender to charge any deposit account of any Borrower maintained with the Lender for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) The Lender may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the “Statements”). The Lender is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers’ convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Lender of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Lender’s right to receive payment in full at another time.

SECTION 2.17. Indemnity for Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Lender. The provisions of this Section 2.17 shall be and remain effective notwithstanding any contrary action which may have been taken by the Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.17 shall survive the termination of this Agreement.

ARTICLE III

Representations and Warranties

Each Loan Party represents and warrants to the Lender that (and where applicable, agrees):

SECTION 3.01. Organization; Powers. Each Loan Party and each Subsidiary is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, including, without limitation, the FFC Subordinated Debt Documents and the Roundball Subordinated Debt Documents, or give rise to a right thereunder to require any payment to be made by any Loan Party or any Subsidiary, except in the case of subparts (b) and (c) to the extent that such violation or default, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change.

(a) The Company has heretofore furnished to the Lender its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended September 30, 2016, reported on by Meaden & Moore, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended March 31, 2017, certified by a Financial Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments all of which, when taken as a whole, would not be materially adverse and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since September 30, 2016.

SECTION 3.05. Properties.

(a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, except to the extent the foregoing would not reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and each Subsidiary has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement (other than (i) restrictions relating to software licenses that may limit such Loan Party's ability to transfer or assign any such agreement to a third party and (ii) licensing agreements or similar agreements that do not materially impair the ability of the Lender to avail itself of its rights of disposal and other rights granted under the Collateral Documents in respect of Inventory).

SECTION 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters set forth on Schedule 3.06) or (ii) that directly involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters, (i) no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability which would reasonably be expected to have a Material Adverse Effect and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (i) all Requirements of Law applicable to it or its property and (ii) all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. No Loan Party or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each Loan Party and each Subsidiary has timely filed or caused to be filed all federal, state and other Tax returns and reports required to have been filed and has paid or caused to be paid all federal, state and other Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not be expected to result in a Material Adverse Effect. No tax liens have been filed and no claims are being asserted with respect to any such taxes.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$100,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Disclosure. The Loan Parties have disclosed to the Lender all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, it being understood that projections are subject to inherent uncertainties and contingencies which may be outside the control of any Loan Party and that no assurance can be given that such projected financial information will be realized.

SECTION 3.12. **Material Agreements.** All material agreements and contracts to which any Loan Party is a party or is bound as of the date of this Agreement are listed on Schedule 3.12. Except as would not reasonably be expected to have a Material Adverse Effect, no Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any material agreement to which it is a party or (ii) any agreement or instrument evidencing or governing Indebtedness.

SECTION 3.13. **Solvency.**

(a) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(b) No Loan Party intends to, nor will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.14. **Insurance.** Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. The Loan Parties believe that the insurance maintained by or on behalf of the Loan Parties and their Subsidiaries is adequate and is customary for companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15. **Capitalization and Subsidiaries.** Schedule 3.15 sets forth (a) a correct and complete list of the name and relationship to the Company of each Subsidiary, (b) other than with respect to Hickok, a true and complete listing of each class of each Loan Parties' authorized Equity Interests, of which all of such issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (c) the type of entity of the Company and each Subsidiary. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

SECTION 3.16. **Security Interest in Collateral.** The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Lender, for the benefit of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Lender pursuant to any applicable law and (b) Liens perfected only by possession (including possession of any certificate of title), to the extent the Lender has not obtained or does not maintain possession of such Collateral.

SECTION 3.17. Employment Matters. As of the Effective Date, there are no strikes, lockouts or organized slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

SECTION 3.18. Federal Reserve Regulations. No part of the proceeds of any Loan or Letter of Credit has been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 3.19. Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.20. No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

SECTION 3.21. Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and employees and to the knowledge of such Loan Party its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or, to the knowledge of any such Loan Party or Subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.22. FFC Subordinated Debt Documents. The Loan Parties have delivered and the Lender has received complete copies of the FFC Subordinated Debt Documents (including, in each case, all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any) and, in each case, all amendments thereto and other side letters or agreements affecting the terms thereof. Since the date hereof, none of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to the Lender or which would not be adverse to the interests of the Lender under the Loan Documents. Each of the representations made by each Loan Party in the FFC Subordinated Debt Documents is true and correct in all material respects.

SECTION 3.23. Air Enterprises Acquisition Documents. The Loan Parties have delivered and the Lender has received complete copies of the Air Enterprises Acquisition Documents (including, in each case, all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any) and, in each case, all amendments thereto and other side letters or agreements affecting the terms thereof. Since the date hereof, none of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to the Lender or which would not be adverse to the interests of the Lender under the Loan Documents. Each of the representations made by each Loan Party in the Air Enterprises Acquisition Documents is true and correct in all material respects.

SECTION 3.24. Roundball Subordinated Debt Documents. The Loan Parties have delivered and the Lender has received complete copies of the Roundball Subordinated Debt Documents (including, in each case, all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any) and, in each case, all amendments thereto and other side letters or agreements affecting the terms thereof. Since the date hereof, none of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to the Lender or which would not be adverse to the interests of the Lender under the Loan Documents. Each of the representations made by each Loan Party in the Roundball Subordinated Debt Documents is true and correct in all material respects.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 8.02):

(a) **Credit Agreement and Loan Documents**. The Lender (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Lender (which may include fax or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the Loan Documents and such other certificates, documents, instruments and agreements as the Lender shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including a written opinion of the Loan Parties' counsel, addressed to the Lender in substantially the form of Exhibit A.

(b) **Financial Statements and Projections**. The Lender shall have received (i) audited consolidated financial statements of the Company for the 2015 and 2016 fiscal years, (ii) unaudited interim consolidated financial statements of the Company for each fiscal quarter ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are available, and such financial statements shall not, in the reasonable judgment of the Lender, reflect any material adverse change in the consolidated financial condition of the Loan Parties, as reflected in the audited, consolidated financial statements described in clause (i) of this paragraph, and (iii) satisfactory Projections through 2019.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Lender shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of a Borrower, its Financial Officers, and (C) contain appropriate attachments, including the charter, articles or certificate of organization or incorporation of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its bylaws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a long form good standing certificate for each Loan Party from its jurisdiction of organization.

(d) No Default Certificate. The Lender shall have received a certificate, signed by a Financial Officer of each other Loan Party, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Lender.

(e) Fees. The Lender shall have received all fees required to be paid, and all expenses required to be reimbursed for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Lender on or before the Effective Date.

(f) Lien Searches. The Lender shall have received the results of a recent lien search in the jurisdiction of organization of each Loan Party and each jurisdiction where assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Lender.

(g) Pay-off Letter. The Lender shall have received satisfactory pay-off letters for all existing Indebtedness required to be repaid and which confirms that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with such payment and all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized or supported by a Letter of Credit.

(h) Funding Account. The Lender shall have received a notice setting forth the deposit account of the Borrowers (the “Funding Account”) to which the Lender is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(i) Collateral Access and Control Agreements. The Lender shall have received each of (i) a Collateral Access Agreement required to be provided pursuant to the Security Agreement and (ii) a deposit account control agreement required to be provided pursuant to the Security Agreement.

(j) Solvency. The Lender shall have received a solvency certificate signed by a Financial Officer of the Company dated the Effective Date in form and substance reasonably satisfactory to the Lender.

(k) Borrowing Base Certificate. The Lender shall have received a Borrowing Base Certificate which calculates the Borrowing Base as of the end of the week immediately preceding the Effective Date.

(l) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date and the issuance of any Letters of Credit on the Effective Date and payment of all fees and expenses due hereunder, and with all of the Loan Parties' Indebtedness, the Borrowers' Availability shall not be less than \$500,000.

(m) Pledged Equity Interests; Stock Powers; Pledged Notes. The Lender shall have received (i) the certificates representing the Equity Interests pledged pursuant to the Security Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Lender pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(n) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Lender to be filed, registered or recorded in order to create in favor of the Lender, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(o) Air Enterprises Acquisition. In connection with the Air Enterprises Acquisition, Borrowers shall have delivered to Lender:

(i) a fully executed Air Enterprises Assignment of Rights;

(ii) copies of the Air Enterprises Acquisition Documents having been certified by a Financial Officer of the Company as true and correct;

(iii) any other evidence that Lender reasonably requests, in form and substance satisfactory to Lender, that the Air Enterprises Acquisition has been completed;

(iv) evidence that all necessary documents or instruments have been filed with all appropriate Governmental Authorities;

(v) evidence that all necessary approvals have been obtained, other than the consents of certain customers as described on Schedule 4.01; and

(vi) satisfactory evidence that no Person has or is threatening to oppose or challenge the Air Enterprises Acquisition or has or threatened to file any litigation or similar action opposing or challenging the Air Enterprises Acquisition or alleging that such acquisition violates any applicable laws; and

(vii) all legal opinions, if any, delivered by any party in connection with the Air Enterprises Acquisition (including from company counsel or buyer's counsel), with an agreement from each opinion giver allowing Lender to rely on such opinions.

(p) FFC Subordinated Debt Documents. The Lender shall have received (i) fully signed copies of the FFC Subordinated Debt Documents, certified to the Lender as true and correct, which such documents shall be in form and substance satisfactory to the Lender and its counsel, and (ii) the FFC Subordination Agreement fully signed by all parties, which such agreement shall be in form and substance satisfactory to the Lender and its counsel.

(q) Insurance. Subject to Section 5.15 hereof, the Lender shall have received evidence of insurance coverage in compliance with the terms of Section 5.10 of this Agreement and Section 4.12 of the Security Agreement.

(r) Hickok Holdings Dissolution. The Lender shall have received evidence that Hickok Holdings LLC, an Ohio limited liability company, has been dissolved.

(s) Legal Due Diligence. The Lender and its counsel shall have completed all legal due diligence, including without limitation, appraisals and field exams, the results of which shall be satisfactory to Lender in its sole discretion.

(t) USA PATRIOT Act, Etc. The Lender shall have received all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including USA PATRIOT Act, and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(u) Roundball Subordinated Debt Documents. The Lender shall have received (i) fully signed copies of the Roundball Subordinated Debt Documents, certified to the Lender as true and correct, which such documents shall be in form and substance satisfactory to the Lender and its counsel, and (ii) the Roundball Subordination Agreement fully signed by all parties, which such agreement shall be in form and substance satisfactory to the Lender and its counsel.

(v) Other Documents. The Lender shall have received such other documents as the Lender or its counsel may have reasonably requested.

The Lender shall notify the Borrowers of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 8.02) at or prior to 2:00 p.m., Eastern Standard Time, on June 1, 2017 (and, in the event such conditions are not so satisfied or waived, the Commitment shall terminate at such time).

SECTION 4.02. Each Credit Event. The obligation of the Lender to make a Loan on the occasion of any Borrowing, and to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) After giving effect to any Borrowing or the issuance, amendment, renewal or extension of any Letter of Credit, Availability shall not be less than zero.

(d) No event shall have occurred and no condition shall exist which has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a) and (b) and (d) of this Section.

ARTICLE V

Affirmative Covenants

Until the Commitment shall have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full (other than contingent or indemnity obligations for which no claim has been made) and all Letters of Credit shall have expired or terminated (or have been cash collateralized pursuant to the terms hereof), in each case without any pending draw, and all LC Disbursements shall have been reimbursed, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lender that:

SECTION 5.01. Financial Statements; Borrowing Base and Other Information. The Borrowers will furnish to the Lender:

(a) within 120 days after the end of each fiscal year of the Company, if not filed electronically with the SEC and publicly available for retrieval by the Lender after notice from the Company as described below, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants acceptable to the Lender (without a "going concern" or like qualification, commentary or exception, and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants; provided that notice by the Company to Lender that the Company has filed with the SEC its Form 10-K annual report of the Company for such annual period within such time period shall be deemed to satisfy the requirements of this subsection (a), so long as such financial statements and reports shall be readily available to Lender.

(b) within 45 days after the end of each of the first three fiscal quarters of the Company, if not filed electronically with the SEC and publicly available for retrieval by the Lender after notice from the Company as described below, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; provided that notice by the Company to Lender that the Company has filed with the SEC its Form 10-Q quarterly report of the Company for such quarterly period within such time period shall be deemed to satisfy the requirements of this subsection (b), so long as such financial statements and reports shall be readily available to Lender.

(c) concurrently with any delivery of financial statements under clause (a) or (b) above (collectively or individually, as the context requires, the “Financial Statements”), a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit C (i) certifying, in the case of the Financial Statements delivered under clause (a) or (b) above, as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Sections 6.12, and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the Financial Statements accompanying such certificate;

(d) [reserved];

(e) as soon as available, but in any event no later than 60 days after the end of each fiscal year of the Company, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and cash flow statement) of the Company for each month of the upcoming fiscal year (the “Projections”) in form reasonably satisfactory to the Lender;

(f) as soon as available but in any event within 30 days of the end of each calendar month, and at such other times as may be necessary to re-determine Availability hereunder or as may be reasonably requested by the Lender, as of the period then ended, a Borrowing Base Certificate, and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as the Lender may reasonably request;

(g) as soon as available but in any event within 30 days of the end of each calendar month and at such other times as may be reasonably requested by the Lender, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Lender:

(i) a detailed aging of the Borrowers’ Accounts including all invoices aged by invoice date and due date (with an explanation of the terms offered) prepared in a manner reasonably acceptable to the Lender, together with a summary specifying the name, address, and balance due for each Account Debtor;

(ii) a schedule detailing the Borrowers’ Inventory, in form satisfactory to the Lender, (1) by location (showing Inventory in transit and any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a first-in, first-out basis) or market and adjusted for Reserves as the Lender has previously indicated to the Borrower Representative are deemed by the Lender to be appropriate, and (2) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by Borrowers and material complaints and claims made against the Borrowers);

(iii) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(iv) a detailed jobs-in-progress report in form and substance reasonably satisfactory to the Lender, including for each contract (1) contract name or number, (2) total value of the contract, (3) amount billed to date, (4) total costs incurred to date, (5) total expected cost, (6) total expected gross profits, and (7) revenue earned to date and total expected revenues;

(h) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above, (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (g) above as of such date;

(i) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by the Company to its shareholders generally, as the case may be; provided that prompt notice by the Company to Lender that the Company has filed any such reports, proxy statements or other materials with the SEC or any succeeding Governmental Authority shall be deemed to satisfy the requirements of this subsection (i), so long as such reports, proxy statements or other materials shall be readily available to Lender; and

(j) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Loan Party, or compliance with the terms of this Agreement, as the Lender may reasonably request.

SECTION 5.02. Notices of Material Events; Name Change. The Loan Parties will furnish to the Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) the occurrence of any Default;

(b) receipt of any notice of any investigation by a Governmental Authority or any litigation or proceeding commenced or, to a Loan Party's knowledge, threatened against any Loan Party or any Subsidiary that (i) seeks damages in excess of \$100,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of \$100,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$100,000;

(d) within two (2) Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment to a Swap Agreement, together with copies of all agreements evidencing such Swap Agreement or amendment;

(e) the occurrence of, or alleged occurrence of, any event of default under the FFC Subordinated Debt Documents, the Roundball Subordinated Debt Documents or the Air Enterprises Acquisition Documents; and

(f) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

In addition, the Loan Parties will furnish to Lender the Hickok Air Enterprises Name Change Documents after such documents have been filed with the Secretary of the State of Delaware.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, except as would not reasonably be expected to have a ‘Material Adverse Effect, the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04. Payment of Obligations. Each Loan Party will pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

SECTION 5.05. Maintenance of Properties. Except as permitted under this Agreement, each Loan Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by the Lender (including employees of the Lender or any consultants, accountants, lawyers, agents and appraisers retained by the Lender), upon reasonable prior notice (and so long as no Event of Default exists, no more than one time in any calendar year), to visit and inspect its properties, conduct at the Loan Party's premises field examinations of the Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. The Loan Parties acknowledge that the Lender, after exercising its rights of inspection, may prepare certain Reports pertaining to the Loan Parties' assets for internal use by the Lender.

SECTION 5.07. Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including, without limitation, Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds.

(a) The proceeds of the Loans and the Letters of Credit will be used only to consummate the Air Enterprises Acquisition, to refinance existing indebtedness of the Loan Parties and for general working capital purposes of the Loan Parties. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (i) for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X or (ii) to make any Acquisition other than Air Enterprises Acquisition.

(b) The Borrowers will not request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or the European Union, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Lender in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Loan Parties on the date thereof as to the matters specified in this Section 5.09; provided that, with respect to the Projections, the Borrowers will cause the Projections to be prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to inherent uncertainties and contingencies which may be outside the control of any Loan Party and that no assurance can be given that such projected financial information will be realized).

SECTION 5.10. Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lender information in reasonable detail as to the insurance so maintained.

SECTION 5.11. Appraisals. At any time that the Lender requests, each Loan Party will provide the Lender with appraisals or updates thereof of their Inventory and Equipment from an appraiser selected and engaged by the Lender, and prepared on a basis satisfactory to the Lender, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law; provided, however, that if no Event of Default has occurred and is continuing, only one such appraisals per calendar year shall be at the sole expense of the Loan Parties.

SECTION 5.12. Casualty and Condemnation. The Borrowers (a) will furnish to the Lender prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.13. Depository Banks. Subject to Section 4.14 of the Security Agreement, each Loan Party will maintain the Lender as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business.

SECTION 5.14. Additional Collateral; Further Assurances.

(a) Subject to applicable Requirements of Law, each Loan Party will cause each of its domestic Subsidiaries formed or acquired after the date of this Agreement to become a Loan Party by executing a Joinder Agreement. Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor or Borrower hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Lender, for the benefit of the Secured Parties, in any property of such Loan Party which constitutes Collateral, including any parcel of real property located in the U.S. owned by any Loan Party.

(b) Each Loan Party will cause (i) 100% of the issued and outstanding Equity Interests of each of its domestic Subsidiaries and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each foreign Subsidiary directly owned by any Borrower or any domestic Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Lender, for the benefit of the Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Lender shall reasonably request.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Lender such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by any Requirement of Law or which the Lender may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Loan Parties.

(d) If any material assets (including any real property or improvements thereto or any interest therein) are acquired by any Loan Party after the Effective Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon acquisition thereof), the Borrower Representative will (i) notify the Lender and, if requested by the Lender, cause such assets to be subjected to a Lien securing the Secured Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Lender to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

SECTION 5.15. Post-Closing Covenant. Within 10 Business Days after the Effective Date, Borrowers shall provide to Lender updated insurance certificates reasonably satisfactory to Lender showing coverage at the location of the Loan Parties in Houston, Texas disclosed on Exhibit A to the Security Agreement.

ARTICLE VI

Negative Covenants

Until the Commitment shall have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document shall have been paid in full (other than contingent or indemnity obligations for which no claim has been made) and all Letters of Credit shall have expired or terminated (or have been cash collateralized pursuant to the terms hereof), in each case without any pending draw, and all LC Disbursements shall have been reimbursed, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lender that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 (excluding, however, following the making of the initial Loan hereunder, the Indebtedness to be repaid with the proceeds of such Loans as indicated on Schedule 6.01) and any extensions, renewals, refinancings and replacements of any such Indebtedness in accordance with clause (f) hereof;

(c) Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Lender;

(d) Guarantees by any Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations;

(e) Indebtedness of any Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) below; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) below, shall not exceed \$200,000 at any time outstanding;

(f) Indebtedness which represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the “Refinance Indebtedness”) of any of the Indebtedness described in clauses (b), and (e) hereof (such Indebtedness being referred to herein as the “Original Indebtedness”); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not less favorable to the obligor thereunder than the original terms of such Original Indebtedness and (vi) if such Original Indebtedness was subordinated in right of payment to the Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Lender as those that were applicable to such Original Indebtedness;

(g) Indebtedness owed to any Person providing workers’ compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) the FFC Subordinated Debt as long as such Indebtedness remains at all times subject to the FFC Subordination Agreement,

(j) the Roundball Subordinated Debt as long as such Indebtedness remains at all times subject to the Roundball Subordination Agreement and such Indebtedness does not increase from the outstanding principal amount existing on the date hereof;

(k) Indebtedness in respect of Swap Agreements permitted under Section 6.07;

- (l) other unsecured Indebtedness in an aggregate principal amount not exceeding \$25,000 at any time outstanding;
- (m) the endorsement of negotiable instruments payable to the Loan Parties for deposit or collection in the ordinary course of business; and
- (n) contingent obligations arising with respect to real property leases for property leased by a Loan Party.

SECTION 6.02. Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of any Borrower or any Subsidiary;

(e) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(h) Liens granted by a Subsidiary that is not a Loan Party in favor of a Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(i) Liens (other than any Lien created by Section 4068 of ERISA and securing an obligation of any employer or employers which is delinquent) under workers compensation, unemployment, insurance and other types of social security so long as not incurred in connection with the borrowing of money or the obtaining of advances or credits to finance the purchase price of property;

(j) the interests of lessors or sublessors under operating leases and non-exclusive licensors under license agreements, in each case in the ordinary course of business and not interfering with the business of the Loan Parties in any material respect;

(k) Liens arising from precautionary UCC financing statement filings regarding operating leases entered into by any Loan Party in the ordinary course of business;

(l) other statutory Liens incidental to the conduct of its business or the ownership of its property and assets which (i) were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and (ii) which do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business; and

(m) Liens in favor of FFC to secure the FFC Subordinated Debt as long as such Liens remain at all times subject to the FFC Subordination Agreement.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (i) Accounts, other than those permitted under clause (a) of the definition of Permitted Encumbrances and clause (a) and (i) above and (ii) Inventory, other than those permitted under clauses (a) and (b) of the definition of Permitted Encumbrances and clause (a) and (i) above.

SECTION 6.03. Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (i) any Subsidiary of any Borrower may merge into a Borrower in a transaction in which a Borrower is the surviving entity, (ii) any Borrower may merge into another Borrower, (iii) any Loan Party (other than any Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party and (iv) any Subsidiary that is not a Loan Party may liquidate or dissolve if the Borrowers determine in good faith that such liquidation or dissolution is in the best interests of the Borrowers and is not materially disadvantageous to the Lender; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date hereof and businesses reasonably related thereto.

(c) No Loan Party will, nor will it permit any Subsidiary to change its fiscal year or any fiscal quarter from the basis in effect on the Effective Date.

(d) No Loan Party will change the accounting basis upon which its financial statements are prepared.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

- (a) Permitted Investments, subject to control agreements in favor of the Lender or otherwise subject to a perfected security interest in favor of the Lender;
- (b) investments in existence on the date hereof and described in Schedule 6.04;
- (c) investments by the Loan Parties and the Subsidiaries in Equity Interests in their respective Subsidiaries, provided that (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement (subject to the limitations applicable to Equity Interests of a foreign Subsidiary referred to in Section 5.14) and (ii) the aggregate amount of investments by Loan Parties in Subsidiaries that are not Loan Parties (together with outstanding intercompany loans permitted under Section 6.04(d) and outstanding Guarantees permitted under Section 6.04(e)) shall not exceed \$100,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);
- (d) loans or advances made by any Loan Party to any Subsidiary and made by any Subsidiary to a Loan Party or any other Subsidiary, provided that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the Security Agreement and (ii) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties (together with outstanding investments permitted under Section 6.04(c) and outstanding Guarantees permitted under Section 6.04(e)) shall not exceed \$100,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);
- (e) Guarantees constituting Indebtedness permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d)) shall not exceed \$100,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);
- (f) [reserved];
- (g) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;
- (h) investments in the form of Swap Agreements permitted by Section 6.07;
- (i) investments of any Person existing at the time such Person becomes a Subsidiary of a Borrower or consolidates or merges with a Borrower or any party's Subsidiary (including in connection with a permitted acquisition), so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

- (j) investments received in connection with the disposition of assets permitted by Section 6.05; and
- (k) investments constituting deposits described in clauses (c) and (d) of the definition of the term “Permitted Encumbrances”; and
- (l) the Air Enterprises Acquisition.

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

- (a) sales, transfers and dispositions of (i) Inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus Equipment or property in the ordinary course of business;
- (b) , transfers and dispositions of assets to any Borrower or any Subsidiary, provided that any such sales, transfers or dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;
- (c) sales, transfers and dispositions of Accounts (excluding sales or dispositions in a factoring arrangement) in connection with the compromise, settlement or collection thereof;
- (d) sales, transfers and dispositions of Permitted Investments;
- (e) Sale and Leaseback Transactions permitted by Section 6.06;
- (f) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and
- (g) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this paragraph (g) shall not exceed \$50,000 during any fiscal year of the Company;

provided that all sales, transfers, leases and other dispositions permitted under this Section 6.05 (other than those permitted by paragraphs (b), (d) and (f) above) shall be made for fair value and for at least 75% cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Leaseback Transaction”), except for any such sale of any fixed or capital assets by any Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after such Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any Subsidiary), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Borrower or any Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness.

(a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) each of the Borrowers may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, and (iii) so long as no Event of Default exists, the Borrowers may make Restricted Payments, not exceeding \$200,000 during any fiscal year of the Company, pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrowers and their Subsidiaries.

(b) Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment of Indebtedness created under the Loan Documents;

(ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01, other than payments in respect of the Subordinated Indebtedness (other than the FFC Subordinated Debt and the Roundball Subordinated Debt) prohibited by the subordination provisions thereof;

(iii) with respect to the FFC Subordinated Debt, commencing January 1, 2018, payments of regularly scheduled quarterly payments of principal and interest so long as the FFC Subordinated Payment Conditions are satisfied;

(iv) with respect to the Roundball Subordinated Debt, commencing January 1, 2018, payments of regularly scheduled payments of interest so long as the Roundball Subordinated Payment Conditions are satisfied

(v) refinancings of Indebtedness to the extent permitted by Section 6.01; and

(vi) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05.

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Loan Parties not involving any other Affiliate, (c) any investment permitted by Sections 6.04(c) or 6.04(d), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of such Borrower or any Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrowers or their Subsidiaries in the ordinary course of business, and (g) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by a Borrower's board of directors.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any Equity Interests or to make or repay loans or advances to any Borrower or any other Subsidiary or to Guarantee Indebtedness of any Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, including the FFC Subordinated Debt and the Roundball Subordinated Debt, or (b) its charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents, or (c) the Air Enterprises Acquisition Documents, to the extent any such amendment, modification or waiver would be adverse to the Lender.

SECTION 6.12. Financial Covenants.

(a) **Fixed Charge Coverage Ratio.** The Company will not permit the Fixed Charge Coverage Ratio, for any period of four consecutive fiscal quarters ending on the last day of any fiscal quarter, to be less than 1.20 to 1.00.

(b) **Senior Funded Indebtedness to EBITDA Ratio.** The Company will not permit the Senior Funded Indebtedness to EBITDA Ratio, on the last day of any fiscal quarter to be greater than (i) 4.00 to 1.00 as of the fiscal quarters ending June 30, 2017 and September 30, 2017, (ii) 3.75 to 1.00 as of the fiscal quarters ending December 31, 2017 and March 31, 2018, (iii) 3.50 to 1.00 as of the fiscal quarters ending June 30, 2018 and September 30, 2018, (iv) 3.25 to 1.00 as of the fiscal quarters ending December 31, 2018 and March 31, 2019, and (v) 3.00 to 1.00 as of the fiscal quarter ending June 30, 2019 and on each fiscal quarter ending thereafter.

ARTICLE VII

Events of Default

If any of the following events ("Events of Default") shall occur:

- (a) the Borrowers shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) days;
- (c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially incorrect when made or deemed made;
- (d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to a Loan Party's existence) or 5.08 or in Article VI;
- (e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d)), and such failure shall continue unremedied for a period of (i) 5 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Lender if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.03 through 5.07, 5.10, 5.11 or 5.13 of this Agreement or (ii) 15 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Lender if such breach relates to terms or provisions of any other Section of this Agreement;
- (f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;
- (g) (i) any default or event of default, or alleged default or event of default, occurs under the FFC Subordinated Debt Documents or the Roundball Subordinated Debt Documents which, in each case, shall not have been cured or waived within any applicable grace period, or (ii) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Subsidiary of any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary shall become unable, admit in writing its inability, or publicly declare its intention not to, or fail generally, to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$250,000 and not fully covered by insurance shall be rendered against any Loan Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary to enforce any such judgment or any Loan Party or any Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal and being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Lender, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrowers and their Subsidiaries in an aggregate amount exceeding (i) \$100,000 in any year or (ii) \$200,000 for all periods;

(m) a Change in Control shall occur;

(n) the occurrence of any "default", as defined in any Loan Document (other than this Agreement), or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace therein provided;

(o) the Loan Guaranty or any Obligation Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty or any Obligation Guaranty, or any individual Guarantor dies or a guardian or conservator is appointed for any individual Guarantor or all or any portion of their property, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty or any Obligation Guaranty to which it is a party, or any Guarantor shall deny that it has any further liability under the Loan Guaranty or any Obligation Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 9.08 or any notice of termination delivered pursuant to the terms of any Obligation Guaranty;

(p) except as permitted by the terms of any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document; or

(r) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms); or

(s) any Loan Party is criminally indicted or convicted under any law that may reasonably be expected to lead to a forfeiture of any property of such Loan Party having a fair market value in excess of \$25,000;

then, and in every such event (other than an event with respect to the Borrowers described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Lender may, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, whereupon the Commitment shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and in the case of any event with respect to the Borrowers described in clause (h) or (i) of this Article, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Lender may increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Lender under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII

Miscellaneous

SECTION 8.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to 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 fax, as follows:

- (i) if to any Loan Party, to it in care of the Borrower Representative at:

10514 Dupont Avenue
Cleveland, Ohio 44108
Attention: Chief Financial Officer
Fax No: 216-761-9879

With copy to (which shall not constitute notice):

Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
Attention: Terrence F. Doyle
Fax No: 216-241-0816

- (ii) if to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
Middle Market Servicing
10 South Dearborn, Floor L2
Suite IL1-0480
Chicago, IL, 60603-2300
Attention: Wholesale Loan Operations
Fax No: (877) 242-0998

With a copy to:

JPMorgan Chase Bank, N.A.
1300 East Ninth Street, Floor 13
Cleveland, Ohio 44114
Attention: Michael P. Lepro
Fax No: (216) 781-2271

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by fax shall be deemed to have been given when sent, provided that if not given during normal business hours for the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through electronic communication to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communications (including e-mail and internet or intranet websites) pursuant to procedures approved by the Lender; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Default certificates delivered pursuant to Sections 5.01(c) and 5.01(d) unless otherwise agreed by the Lender. Each of the Lender or the Borrower Representative (on behalf of the Loan Parties) 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. All such notices and other communications (i) 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), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) 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, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 8.02. Waivers; Amendments.

(a) No failure or delay by the Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Lender or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Lender and the Loan Party or Loan Parties that are parties thereto.

SECTION 8.03. Expenses; Indemnity; Damage Waiver.

(a) The Loan Parties, jointly and severally, shall pay all (i) reasonable and documented out-of-pocket expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender (whether outside counsel or the allocated costs of its internal legal department), in connection with the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable and documented out-of-pocket expenses incurred by the Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) reasonable and documented out-of-pocket expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender (whether outside counsel or the allocated costs of its internal legal department), in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or 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. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

- (A) appraisals (subject to the limitations set forth in Section 5.11) and insurance reviews;
- (B) field examinations and the preparation of Reports based on the fees charged by a third party retained by the Lender or the internally allocated fees for each Person employed by the Lender with respect to each field examination (subject to the limitations set forth in Section 5.06);
- (C) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Lender;
- (D) Taxes, fees and other charges for (i) lien and title searches and title insurance and (ii) recording mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Lender's Liens;
- (E) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and
- (F) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.16(c).

(b) The Loan Parties, jointly and severally, shall indemnify the Lender, and each Related Party of the Lender (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, incremental taxes, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the 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 a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or Subsidiary, (iv) the failure of a Loan Party to deliver to the Lender the required receipts or other required documentary evidence with respect to a payment made by such Loan Party for Taxes pursuant to Section 2.15, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related 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 Indemnitee. This Section 8.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(c) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), or (ii) 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 or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this paragraph (c) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(d) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 8.04. Successors and Assigns.

(a) 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 (including any Affiliate of the Lender that issues any Letter of Credit), except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by a Borrower without such consent 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 (including any Affiliate of the Lender that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may 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 Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Lender within five (5) Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative shall be required for an assignment to an Affiliate of the Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

For the purposes of this Section 8.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

(c) The Lender may, without the consent of the Borrowers, sell participations to one or more banks or other entities (a "Participant") in all or a portion of the Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and Letters of Credit and the Loans owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged; (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrowers shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 (subject to the requirements and limitations therein) to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.15, 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.

To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.08 as though it were the Lender. If the Lender shall sell a participation, it shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that the Lender shall have no 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 Commitment, 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 U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the 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.

(d) The 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 the Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

SECTION 8.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitment has not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15 and Section 8.03 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitment or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 8.06. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Lender 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 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by fax, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries 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, physical delivery thereof 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 8.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 8.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Lender or any Affiliate to or for the credit or the account of any Loan Party against any of and all the Secured Obligations, irrespective of whether or not the Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which the Lender may have.

SECTION 8.09. Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of Ohio, but giving effect to federal laws applicable to national banks.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any U.S. federal or Ohio State court sitting in Cleveland, Ohio in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such state court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, 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 law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 8.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY 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, 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 OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 8.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 8.12. Confidentiality. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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 requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (x) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (y) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative, or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender on a non-confidential basis from a source other than the Borrowers. For the purposes of this Section, "Information" means all information received from the Loan Parties relating to the Loan Parties or their business, other than any such information that is available to the Lender on a non-confidential basis prior to disclosure by the Loan Parties; provided that, in the case of information received from the Borrowers after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 8.13. Nonreliance; Violation of Law. The Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, the Lender shall not be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 8.14. USA PATRIOT Act. The Lender is subject to the requirements of the USA PATRIOT Act and hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow the Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 8.15. Disclosure. Each Loan Party hereby acknowledges and agrees that the Lender and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with, any of the Loan Parties and their respective Affiliates.

SECTION 8.16. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to the Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by the Lender.

SECTION 8.17. Marketing Consent. The Borrowers hereby authorize the Lender, at its sole expense, but without any prior approval by any Borrower, to include the Borrowers' names and logos in advertising slicks posted on the Lender's internet site, in pitchbooks or sent in mailings to prospective customers and to give such other publicity to this Agreement as it may from time to time determine in its sole discretion. Notwithstanding the foregoing, the Lender shall not publish any Borrower's name in a newspaper or magazine without obtaining the Borrowers' prior written approval. The foregoing authorization shall remain in effect unless the Borrower Representative notifies the Lender in writing that such authorization is revoked.

SECTION 8.18. Confession of Judgement. THE LOAN PARTIES HEREBY AUTHORIZE ANY ATTORNEY-AT-LAW TO APPEAR IN ANY COURT OF RECORD IN ANY COUNTY IN THE STATE OF OHIO OR ELSEWHERE WHERE A LOAN PARTY HAS A PLACE OF BUSINESS, SIGNED THIS AGREEMENT OR CAN BE FOUND, AFTER THE LENDER DECLARES A DEFAULT AND ACCELERATES THE BALANCES DUE UNDER THIS AGREEMENT, TO WAIVE THE ISSUANCE OF SERVICE OF PROCESS AND CONFESS JUDGMENT AGAINST THE LOAN PARTIES IN FAVOR OF THE LENDER FOR THE AMOUNTS THEN APPEARING DUE, TOGETHER WITH THE COSTS OF SUIT, AND THEREUPON TO RELEASE ALL ERRORS AND WAIVE ALL RIGHT OF APPEAL AND STAY OF EXECUTION. THE LOAN PARTIES AGREE AND CONSENT THAT THE ATTORNEY CONFESSING JUDGMENT ON BEHALF OF THE LOAN PARTIES HEREUNDER MAY ALSO BE COUNSEL TO THE LENDER OR ANY OF ITS RESPECTIVE AFFILIATES, WAIVES ANY CONFLICT OF INTEREST WHICH MIGHT OTHERWISE ARISE, AND CONSENTS TO THE LENDER PAYING SUCH CONFESSING ATTORNEY A LEGAL FEE OR ALLOWING SUCH ATTORNEY'S FEES TO BE PAID FROM ANY PROCEEDS OF COLLECTION OF THIS AGREEMENT OR COLLATERAL SECURITY THEREFOR.

ARTICLE IX

Loan Guaranty

SECTION 9.01. Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely and unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all reasonable and documented costs and expenses including, without limitation, all court costs and reasonable attorneys' and paralegals' fees (including allocated reasonable and documented costs of in-house counsel and paralegals) and expenses paid or incurred by the Lender in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"); provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of the Lender that extended any portion of the Guaranteed Obligations.

SECTION 9.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 9.03. No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets, or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

SECTION 9.04. Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor or any other Obligated Party, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Lender may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty, except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 9.05. Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Lender.

SECTION 9.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Lender.

SECTION 9.07. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that the Lender shall not have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 9.08. Termination. The Lender may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lender for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 9.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Lender may have in respect of, any Default or Event of Default that shall exist under Article VII hereof as a result of any such notice of termination.

SECTION 9.09. Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Lender receives the amount it would have received had no such withholding been made.

SECTION 9.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 9.11. Contribution.

(a) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a “Guarantor Payment”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor’s “Allocable Amount” (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations that have not yet arisen), and the Commitment and all Letters of Credit have terminated or expired or, in the case of all Letters of Credit, are fully collateralized on terms reasonably acceptable to the Lender, and this Agreement, the Swap Agreement Obligations and the Banking Services Obligations have terminated, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “Allocable Amount” of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 9.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 9.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 9.11 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations that have not yet arisen) and the termination or expiry (or, in the case of all Letters of Credit, full cash collateralization), on terms reasonably acceptable to the Lender, of the Commitment and all Letters of Credit issued hereunder and the termination of this Agreement, the Swap Agreement Obligations and the Banking Services Obligations.

SECTION 9.12. Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article IX is in addition to and shall be cumulative with all liabilities of each Loan Party to the Lender under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 9.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 9.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 9.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 9.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 9.13 constitute, and this Section 9.13 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18) (A)(v)(II) of the Commodity Exchange Act.

ARTICLE X

The Borrower Representative.

SECTION 10.01. Appointment; Nature of Relationship. Hickok is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “Borrower Representative” hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article X. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount shall not exceed Availability. The Lender, and its respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 10.01.

SECTION 10.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lender to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 10.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 10.04. Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default or Event of Default hereunder, refer to this Agreement, describe such Default or Event of Default, and state that such notice is a “notice of default”. In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Lender. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

SECTION 10.05. Successor Borrower Representative. Upon the prior written consent of the Lender, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative.

SECTION 10.06. Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Lender the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including the Borrowing Base Certificate and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

SECTION 10.07. Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Borrowing Base Certificate and Compliance Certificate required pursuant to the provisions of this Agreement.

[Signature Page Follows]

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

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

HICKOK INCORPORATED

By: s/ Kelly J. Marek

Name: Kelly J. Marek

Title: Vice President Finance and CFO

STATE OF Ohio)
) SS:
COUNTY OF Cuyahoga)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Vice President Finance and CFO of HICKOK INCORPORATED, who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers

Notary Public

My commission expires: My commission does not expire

[Signature page – Credit Agreement – Chase/Hickok et . al]

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

HICKOK ACQUISITION A LLC, which will be changing its name on or about the date hereof to Air Enterprises LLC

By: /s/ Kelly J. Marek
Name: Kelly J. Marek
Title: Secretary and Treasurer

STATE OF Ohio _____)
) SS:
COUNTY OF Cuyahoga _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Secretary and Treasurer of HICKOK ACQUISITION A LLC, who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers
Notary Public
My commission expires: My commission does not expire

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

SUPREME ELECTRONICS CORP.

By:/s/ Kelly J. Marek _____
Name: Kelly J. Marek
Title: Secretary and Treasurer

STATE OF Ohio _____)
) SS:
COUNTY OF Cuyahoga _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Secretary and Treasurer of SUPREME ELECTRONICS CORP., who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers _____
Notary Public
My commission expires: My commission does not expire

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

FEDERAL HOSE MANUFACTURING LLC

By:/s/ Kelly J. Marek
Name: Kelly J. Marek
Title: Secretary and Treasurer

STATE OF Ohio _____)
) SS:
COUNTY OF Cuyahoga _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Secretary and Treasurer of FEDERAL HOSE MANUFACTURING LLC, who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers
Notary Public
My commission expires: My commission does not expire

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

WAEKON CORPORATION

By:/s/ Kelly J. Marek
Name: Kelly J. Marek
Title: Secretary and Treasurer

STATE OF Ohio _____)
) SS:
COUNTY OF Cuyahoga _____)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Secretary and Treasurer of WAEKON CORPORATION, who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers
Notary Public
My commission expires: My commission does not expire

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

HICKOK OPERATING LLC

By:/s/ Kelly J. Marek
Name: Kelly J. Marek
Title: Secretary and Treasurer

STATE OF Ohio _____)
) SS:
COUNTY OF Cuyahoga)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Kelly J. Marek, the Secretary and Treasurer of HICKOK OPERATING LLC who did respectively acknowledge that he/she signed the foregoing instrument that the same was his/her free act and deed on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 31st day of May 2017.

/s/ Brian Powers
Notary Public
My commission expires: My commission does not expire

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

JPMORGAN CHASE BANK, N.A.

By:/s/ Michael P. Lepro

Name: Michael P. Lepro

Title: Authorized Officer

[Signature page continued – Credit Agreement – Chase/Hickok et . al]

Schedule 3.05

Properties

Real Property

<u>Company</u>	<u>Owned Property</u>
Hickok Operating LLC	None
Hickok Incorporated	10514 Dupont Avenue, Cleveland, Ohio 44108
Hickok Acquisition A LLC	None
Federal Hose Manufacturing LLC	None
Waekon Corporation	None
Supreme Electronics Corp.	1716 Carrollton Avenue, Greenwood, Mississippi 38930 (This location is part owned and part leased - Supreme Electronics Corp. owns the Quonset huts and the large metal warehouse (combined approx. 24,000 sq. ft.) and the land they are situated on. The City of Greenwood owns the brick building (approx. 38,000 sq. ft.) and the land it is situated on.)

<u>Company</u>	<u>Leased Property</u>
Hickok Operating LLC	None
Hickok Incorporated	None
Hickok Acquisition A LLC	735 Glaser Parkway, Akron, Ohio 44306
Federal Hose Manufacturing LLC	25 Florence Avenue, Painesville, Ohio 44077
Waekon Corporation	None
Supreme Electronics Corp.	1716 Carrollton Avenue, Greenwood, Mississippi 38930 (This location is part owned and part leased - Supreme Electronics Corp. owns the Quonset huts and the large metal warehouse (combined approx. 24,000 sq. ft.) and the land they are situated on. The City of Greenwood owns the brick building (approx. 38,000 sq. ft.) and the land it is situated on.)

Intellectual property

Company	Patents	Registration Number
Hickok Operating LLC	None	None
Hickok Incorporated	Fuel tank tester Electronic fuel injector tester Fuel cap tester Fuel injection system tester (in assignee name Hickok Electrical Instrument Company)	6,840,089 6,668,633 6,298,712 5,020,362
	Electrical test probe Capacitive electronic sensor head	D441,310 D369,983
Hickok Acquisition A LLC	None	None
Federal Hose Manufacturing LLC	None	None
Waekon Corporation	None	None
Supreme Electronics Corp.	None	None

Company	Copyrights	Registration Number
Hickok Operating LLC	None	None
Hickok Incorporated	None	None
Hickok Acquisition A LLC	None	None
Federal Hose Manufacturing LLC	None	None
Waekon Corporation	None	None
Supreme Electronics Corp.	None	None

Company	Trademarks, Trade Name and Service Marks	Registration Number
Hickok Operating LLC	None	None
Hickok Incorporated	None	None
Hickok Acquisition A LLC	SITEBILT	3641435
	FACTORYBILT	4489715
	AIR ENTERPRISES	3380481
Federal Hose Manufacturing LLC	None	None
Waekon Corporation	None	None
Supreme Electronics Corp.	None	None

Schedule 3.06

Disclosed Matters

None.

Schedule 3.12

Material Agreements

- 1 Convertible Loan Agreement, as Lenders, dated December 30, 2011, by and among Hickok Incorporated, Roundball LLC, and The Aplin Family Trust, as amended.
 - 2 Promissory Note, dated July 1, 2016, by Hickok Incorporated in favor of First Francis Company Inc., for the original principal amount of \$2,000,000.
 - 3 Promissory Note, dated July 1, 2016, by Hickok Incorporated in favor of First Francis Company Inc., for the original principal amount of \$2,768,662.
-

Schedule 3.14

Insurance

On file with Lender

Schedule 3.15

Capitalization and Subsidiaries

Company	Type of Entity	Authorized Equity Interests	Issued Equity Interests	Owner of Issued Equity Interests
Hickok Operating LLC	Limited liability company	N/A	N/A	Hickok Incorporated (100% of the Percentage Interest)
Hickok Incorporated	Corporation	---	---	Publicly traded
Hickok Acquisition A LLC	Limited liability company	N/A	N/A	Hickok Incorporated (100% of the Percentage Interest)
Federal Hose Manufacturing LLC	Limited liability company	N/A	N/A	Hickok Incorporated (100% of the Percentage Interest)
Waekon Corporation	Corporation	850 common shares, without par value	100 common shares, without par value	Hickok Incorporated (100%)
Supreme Electronics Corp.	Corporation	5,000 Common Shares	100 Common Shares	Hickok Incorporated (100%)

Schedule 4.01

Customer Consents

- 1 Project #5544
 - 2 Project #5372
 - 3 Project #5457
 - 4 Project #5286
 - 5 Project #5425
 - 6 Project #5405
 - 7 Project #5200
 - 8 Project #5411
 - 9 Project #5061
 - 10 Project #5225
 - 11 Project #5455
 - 12 Project #5261
 - 13 Project #5047
 - 14 Project #5080
 - 15 Lease Agreement dated May 2, 2016 with CIT Bank, N.A.
 - 16 Letter Agreement dated June 30, 2016 with Seifert Technologies, Inc.
 - 17 Sublease between Air Enterprises Realty, LLC and Hickok Acquisition A LLC
 - 18 Project #5246
 - 19 PNC fork lift lease
 - 20 Pitney Bowes lease
 - 21 Leaf Capital lease for compressors
 - 22 Leases for five (5) Nissan vehicles
-

Schedule 6.01

Existing Indebtedness

Company	Material Indebtedness
Hickok Operating LLC	None
Hickok Incorporated	In connection with the acquisition of Federal Hose on July 1, 2016, the Company also issued to First Francis two promissory notes in the aggregate principal amount of \$4,768,662, which are secured by all of the assets of Hickok and certain of its subsidiaries, bear interest at a rate of 4.0% per annum, are amortized over a ten year period, and will be due full six years after the issue date. At September 30, 2016, the outstanding balance on these notes was \$4,768,662. In December 2016, management entered into Amendment No. 5 of the Convertible Loan Agreement which provides up to \$467,000 of liquidity to meet on going working capital requirements. The Convertible Loan Agreement, as amended, is between the Company and a major shareholder who is also affiliated with two Directors. This amended agreement modified the terms of the previously amended agreement by extending the due date of the loan agreement from December 30, 2016 to December 30, 2017, and continues to allow \$250,000 of borrowing on the agreement at the Company's discretion. At September 30, 2016, the outstanding balance on the loan was \$200,000.
Hickok Acquisition A LLC	None
Federal Hose Manufacturing LLC	None
Waekon Corporation	None
Supreme Electronics Corp.	None

Schedule 6.02

Existing Liens

DEBTOR	SECURED PARTY	JURISDICTION	THROUGH DATE	FILE DATE	LAPSE DATE	FILE NUMBER	DESCRIPTION OF COLLATERAL
Federal Hose Manufacturing LLC	First Francis Company Inc.	Ohio Secretary of State	05.10.17	07.01.16	07.01.21	OH00202322238	all assets
Supreme Electronics Corp.	First Francis Company Inc.	Mississippi Secretary of State	05.12.17	07.01.16	07.01.21	20162010178A	all assets
Hickok Incorporated	IBM Credit LLC	Ohio Secretary of State	05.10.17	12.21.15	12.21.20	OH00195821731	specific equipment and related software
Hickok Incorporated	First Francis Company Inc.	Ohio Secretary of State	05.10.17	07.01.16	07.01.21	OH00202316376	all assets
Air Enterprises Acquisition LLC & Air Enterprises*	PNC Equipment Finance, LLC	Delaware Secretary of State	04/25/17	05.25.16	05.25.21	2016 3129556	Equipment, other goods, software, general intangibles described on Lease Agreement No. 197777000, cash, non-cash, insurance proceeds, chattel, general intangibles, goods or instruments and equipment list*

* The collateral is being acquired by Hickok Acquisition A LLC.

Schedule 6.04

Existing Investments

Hickok Incorporated owns the subsidiaries disclosed on Schedule 3.15 Capitalization and Subsidiaries.

<u>Company</u>	<u>Accounts</u>
Hickok Operating LLC	None
Hickok Incorporated	PNC Bank accounts: <ul style="list-style-type: none"> • Corporate Operating Account * • Corporate Disbursement Account * • Money Market Account * JP Morgan account: <ul style="list-style-type: none"> • Hickok Account (LOC & sweep)
Hickok Acquisition A LLC	JP Morgan accounts just opened for Hickok Acquisition A LLC: <ul style="list-style-type: none"> • Operating Account • Payroll account (ZBA)
Federal Hose Manufacturing LLC	JP Morgan Chase Bank 1300 East Ninth Street Cleveland, OH 44114 Account – Commercial Checking Account – zero balance clearing account (payroll)
Waekon Corporation	None
Supreme Electronics Corp.	Trustmark National Bank Account *

* To be closed within 90 days of the Effective Date.

Schedule 6.10

Existing Restrictions

- 1 Convertible Loan Agreement, as Lenders, dated December 30, 2011, by and among Hickok Incorporated, Roundball LLC, and The Aplin Family Trust, as amended.
-

EXHIBIT A

OPINION OF COUNSEL FOR THE LOAN PARTIES

On file with Lender

EXHIBIT B
BORROWING BASE CERTIFICATE

On file with Lender

EXHIBIT C

COMPLIANCE CERTIFICATE

To: JPMorgan Chase Bank, N.A.

This Compliance Certificate (“Certificate”), for the period ended _____, 201_____, is furnished pursuant to that certain Credit Agreement dated as of June 1, 2017 (as amended, modified, renewed or extended from time to time, the “Agreement”) among HICKOK INCORPORATED, an Ohio corporation (“Hickok”), HICKOK ACQUISITION A LLC, an Ohio limited liability company, which will be changing its name on about the Effective Date to Air Enterprises LLC (“Hickok Air Enterprises”), SUPREME ELECTRONICS CORP., an Ohio corporation (“Supreme”), FEDERAL HOSE MANUFACTURING LLC, an Ohio limited liability company (“Federal”), HICKOK OPERATING LLC, an Ohio limited liability company (“Hickok Operating”), WAEKON CORPORATION, an Ohio corporation (“Waekon”, and together with Hickok, Hickok Air Enterprises, Supreme, Federal, and Hickok Operating, collectively “Borrowers” and each individually a “Borrower”), the other Loan Parties, and JPMORGAN CHASE BANK, N.A., as Lender. Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the _____ of the Borrower Representative and I am authorized to deliver this Certificate on behalf of the Borrowers and their Subsidiaries in my capacity as an officer of the Borrower Representative;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the compliance of the Borrowers and their Subsidiaries with the Agreement during the accounting period covered by the attached financial statements (the “Relevant Period”);
3. The attached financial statements of the Borrowers and, as applicable, their Subsidiaries and/or Affiliates for the Relevant Period: (a) have been prepared on an accounting basis (the “Accounting Method”) consistent with the requirements of the Agreement and, except as may have been otherwise expressly agreed to in the Agreement, in accordance with GAAP consistently applied, and (b) to the extent that the attached are not the Borrowers’ annual fiscal year end statements, are subject to normal year-end audit adjustments and the absence of footnotes;
4. The examinations described in paragraph 2 did not disclose and I have no knowledge of, except as set forth below, (a) the existence of any condition or event which constitutes a Default or an Event of Default under the Agreement or any other Loan Document during or at the end of the Relevant Period or as of the date of this Certificate or (b) any change in the Accounting Method or in the application thereof that has occurred since the date of the annual financial statements delivered to the Lender in connection with the closing of the Agreement or subsequently delivered as required in the Agreement;
5. I hereby certify that, except as set forth below, no Loan Party has changed (i) its name, (ii) its chief executive office, (iii) its principal place of business, (iv) the type of entity it is or (v) its state of incorporation or organization without having given the Lender the notice required by Section 4.15 of the Security Agreement;

6. The representations and warranties of the Loan Parties set forth in the Loan Documents are true and correct in all material respects as of the date hereof, except (i) to the extent that any such representation or warranty specifically refers to an earlier date, in which case it is true and correct in all material respects only as of such earlier date, and (ii) that any representation or warranty which is subject to any materiality qualifier is true and correct in all respects;

7. Schedule I attached hereto sets forth financial data and computations evidencing the Borrowers' compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct; and

Described below are the exceptions, if any, referred to in paragraph 4 hereof by listing, in detail, the (i) nature of the condition or event, the period during which it has existed and the action which the Borrowers have taken, are taking, or propose to take with respect to each such condition or event or (ii) change in the Accounting Method or the application thereof and the effect of such change on the attached financial statements:

The foregoing certifications, together with the computations set forth in Schedule I and Schedule II hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this _____ day of _____.

HICKOK INCORPORATED,
as the Borrower Representative

By: _____
Name: _____
Title: _____

Schedule I to Compliance Certificate

Compliance as of _____, ____ with
Provisions of ___ and ___ of the Agreement

EXHIBIT D

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this “Agreement”), dated as of [____], 20[____] is entered into between _____, a _____ (the “New Subsidiary”) and JPMORGAN CHASE BANK, N.A. (the “Lender”) under that certain Credit Agreement dated as of June 1, 2017 (as the same may be amended, modified, extended or restated from time to time, the “Credit Agreement”) among HICKOK INCORPORATED, an Ohio corporation (“Hickok”), HICKOK ACQUISITION A LLC, an Ohio limited liability company, which will be changing its name on about the Effective Date to Air Enterprises LLC (“Hickok Air Enterprises”), SUPREME ELECTRONICS CORP., an Ohio corporation (“Supreme”), FEDERAL HOSE MANUFACTURING LLC, an Ohio limited liability company (“Federal”), HICKOK OPERATING LLC, an Ohio limited liability company (“Hickok Operating”), WAEKON CORPORATION, an Ohio corporation (“Waekon”), and together with Hickok, Hickok Air Enterprises, Supreme, Federal, and Hickok Operating, collectively “Borrowers” and each individually a “Borrower”), the other Loan Parties party thereto, and the Lender. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Lender, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a Loan Party under the Credit Agreement and a “[Loan Guarantor]” for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a [Loan Guarantor] thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, (b) all of the covenants set forth in Articles V and VI of the Credit Agreement and (c) all of the guaranty obligations set forth in Article IX of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Section 9.10 and 9.13 of the Credit Agreement, hereby guarantees, jointly and severally with the other Loan Guarantors, to the Lender, as provided in Article IX of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other [Loan Guarantors], promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Lender in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 8.01 of the Credit Agreement is as follows:

4. The New Subsidiary hereby waives acceptance by the Lender of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Lender, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name: _____
Title: _____

Acknowledged and accepted:

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

