

# **APPENDIX B**

**\$10,000,000**

**SENIOR, SECURED, SUPER-PRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT  
dated as of September 10, 2012**

**among**

**LAST MILE INC.,  
as Borrower,**

**and**

**THE LENDERS PARTY HERETO**

**and**

**GLOBAL LEVERAGED CAPITAL ADVISORS, LLC,  
as Agent**

Brown Rudnick LLP  
Seven Times Square  
New York, NY 10036

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**SENIOR, SECURED, SUPER-PRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

This SENIOR, SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “**Agreement**”), dated as of September 10, 2012, among LAST MILE INC., a Pennsylvania corporation (the “**Borrower**”), the Lenders (as defined herein), and GLOBAL LEVERAGED CAPITAL ADVISORS, LLC, a Delaware limited liability company, as administrative and collateral agent for the Lenders (in such capacity, the “**Agent**”).

**WITNESSETH:**

WHEREAS, on October 12, 2011 (the “**Petition Date**”), the Borrower (the “**Debtor**”) commenced a Chapter 11 Case No. 11-14769 (SHL) (the “**Chapter 11 Case**”) by filing a voluntary petition for reorganization under Chapter 11, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

WHEREAS, from and after the Petition Date, Debtor has continued to operate its business and manage its property as a debtor and a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the date of this Agreement, the Prior Lender (as defined herein) provided financing to the Borrower pursuant to that certain Revolving Loan Agreement dated as of May 19, 2008, between Borrower, as borrower, and the Prior Lender, as lender (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “**Prior Credit Agreement**”).

WHEREAS, the Borrower has requested that the Lenders provide a senior, secured, super priority debtor-in-possession credit facility to the Borrower in an aggregate principal amount of \$10,000,000 (which amount includes OID (as defined herein) in the amount of \$600,000) to repay in full certain existing Indebtedness on the Closing Date, to fund the working capital requirements and other financing needs of the Borrower during the pendency of the Chapter 11 Case and to be otherwise be used in accordance with Section 3.12 herein.

WHEREAS, the Lenders are willing to provide such financing subject to the terms and conditions hereof, including, without limitation, provided that (i) a portion of such new loans are used to pay off and fully satisfy the loans and other obligations outstanding under the Prior Credit Agreement and Prior Loan Documents (as defined herein); and (ii) all of the Prior Agent’s and Prior Lenders’ security interests, Liens and mortgages granted by the Borrower under the Prior Credit Agreement and the other Prior Loan Documents are released.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

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

“**13-Week Budget**” shall mean a 13-week cash flow forecast (including, without limitation, of all expenditures and Capital Expenditures) for the Borrower substantially in the form attached hereto as Exhibit I or such other form as shall be reasonably acceptable to the Agent. As used herein, “**13-Week Budget**” shall initially refer to the “13-Week Budget” delivered by the Borrower to the Agent and the Lenders on the Closing Date as authorized by the Interim Order and, thereafter, the most recent 13-Week Budget delivered by the Borrower to the Agent in accordance with Section 5.01(g).

“**363 Sale**” shall mean a sale of all or substantially all of the assets of the Borrower pursuant to Section 363 of the Bankruptcy Code.

“**ABR**” when used in reference to any Loan or Borrowing, is used when such Loan, or Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternative Base Rate.

“**ABR Borrowing**” shall mean a Borrowing comprised of ABR Loans.

“**ABR Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Alternative Base Rate in accordance with the provisions of Article II.

“**Adjusted LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the result of (i) an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) determined by the Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (ii) 1 minus the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period.

“**Agent**” shall have the meaning assigned to such term in the preamble hereto and includes each other person appointed as the successor pursuant to Article X.

“**Agent Fee**” shall have the meaning assigned to such term in Section 2.05(a).

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form as may be supplied from time to time by the Agent.

“**Advisors**” shall mean outside legal counsel (including local counsel), auditors, accountants, consultants, appraisers or other advisors of the Agent.

“**Affiliate**” shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; *provided, however*, that, for purposes of Section 6.08, the term “Affiliate” shall also include (i) any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified or (ii) any person that is an executive officer or director of the person specified.

“**Agreement**” shall have the meaning assigned to such term in the preamble hereto.

“**Alternate Base Rate**” shall mean, for any day, a fluctuating rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Base Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, and (c) the LIBOR Rate for an Interest Period of one-month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) plus 1.00%. If the Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate, the Federal Funds Effective Rate or the LIBOR Rate shall be effective on the effective date of such change in the Base Rate, the Federal Funds Effective Rate or the LIBOR Rate, respectively.

“**Anti-Terrorism Laws**” shall mean any requirement of law related to terrorism financing or money-laundering including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“**Patriot Act**”) of 2001 (Title III of Pub. L. 107-56), The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and Executive Order 13224 (effective September 24, 2001).

“**Applicable Margin**” shall mean, (a) for all Eurodollar Loans, 9.00%, and (b) for all ABR Loans, 8.00%; provided, however, that (i) prior to the Maturity Date, and so long as no Default or Event of Default has occurred or is continuing, Borrower may (at the election of its Board of Directors) pay a portion of the interest accrued on the unpaid principal amount of (x) any Eurodollar Loans in kind, not to exceed 7.00% per annum and (y) any ABR Loans in kind, not to exceed 6.00% per annum, in each case, by capitalizing, compounding, and adding such interest to the unpaid principal amount of the Loans on the applicable Interest Payment Date (whereupon from and after such date such additional amounts shall constitute principal for all purposes hereunder and also accrue interest) (such interest, “**PIK Interest**”); and (ii) any such election to pay PIK Interest for any Interest Period must be made prior to the commencement of such Interest Period.

In determining the Applicable Margin applicable to any Loan, OID payable by Borrower to the Lenders shall be included (with OID being equated to interest based on an assumed four-year life to maturity).

“**Approved Fund**” shall mean any Fund that is administered or managed by (a) a Lender, (b) a Controlled Investment Affiliate of a Lender or (c) an entity or a Controlled Investment Affiliate of an entity that administers or manages a Lender.

“**Asset Sale**” shall mean any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property (excluding sales of inventory and dispositions of Cash Equivalents, in each case, in the ordinary course of business and also excluding sales of receivables made in the ordinary course of business pursuant to customer initiated discounting programs), by Borrower.



“**Assigned Contract**” shall mean any contract with respect to which the payments to be made to the Borrower have been assigned to the Lender, and includes each IU Contract.

“**Assignment and Assumption**” shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of each party whose consent is required by Section 11.04(b)), and accepted by the Agent, in a form as shall be approved by the Agent.

“**Attributable Indebtedness**” shall mean, when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“**Availability Period**” shall mean the period from and including the Closing Date to but excluding the earlier of: (i) the Maturity Date and (ii) the date of termination of the Commitments of all Lenders as set forth in this Agreement.

“**Avoidance Actions**” shall mean any and all claims or causes of action arising under Chapter 5 (other than Section 506(c) or Section 724(a)) of the Bankruptcy Code to avoid transfers, preserve or transfer liens or otherwise recover property of the estate and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise. “Avoidance Actions” do not include claims or causes of action pursuant to Section 549 of the Bankruptcy Code and the proceeds thereof, to the extent the transfer avoided was of an asset otherwise constituting Collateral.

“**Bankruptcy Code**” shall have the meaning assigned to such term in the recitals hereto.

“**Bankruptcy Court**” shall have the meaning assigned to such term in the recitals hereto.

“**Base Rate**” shall mean, for any day, a rate per annum that is equal to the corporate base rate of interest established by JP Morgan Chase Bank, N.A. from time to time or, if more than one rate is published as the corporate base rate, the highest of such rates; provided, however, that should Agent be unable to determine such rate, such rate shall be based upon such other indication of the prevailing prime rate of interest as chosen by Agent in its reasonable discretion; each change in the Base Rate shall be effective on the date such change is publicly announced as being effective.

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States.

“**Board of Directors**” shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person and (ii) in any other case, the functional equivalent of the foregoing.

“**Borrower**” shall have the meaning assigned to such term in the preamble hereto.

“**Borrowing**” shall mean 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.

“**Borrowing Availability**” shall mean: (i) prior to the entry of the Final Order, the Interim Amount, or (ii) upon and after the entry of the Final Order, the Commitments then in effect; less, the sum of (A) in the case of each of clause (i) and (ii), the Loan Exposure plus (B) in the case of clause (ii) the Carve-Out Reserve, subject to any limitations contained in the Financing Orders.

“**Borrowing Request**” shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit A, or such other form as shall be approved by the Agent.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“**Capital Expenditures**” shall mean, for any period, without duplication, all expenditures (whether paid in cash or accrued as a liability) by Borrower during such period, that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment reflected in the consolidated balance sheet of Borrower.

“**Capital Lease Obligations**” of any person shall mean 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.

“**Carve-Out**” shall have the meaning assigned to such term in the Interim Order or, upon entry of the Final Order, in the Final Order.

“**Carve-Out Reserve**” shall mean, as of any date of determination, a reserve in an amount equal to the unpaid portion of the Carve-Out.

“**Cash Equivalents**” shall mean, as to any person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$1.0 billion with maturities of not more than one year from the date of acquisition by such person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody’s, and in each case maturing not more than one year after the date of acquisition by such person; (e) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above; and (f) demand deposit accounts maintained in the ordinary course of business.

“**Casualty Event**” shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of Borrower . “**Casualty Event**” shall include but not be limited to any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

“**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

“**Chapter 11 Case**” shall have the meaning assigned to such term in the recitals hereto.

“**Change in Law**” shall mean (a) the adoption of any law, treaty, order, rule or regulation after the Closing Date, (b) any change in any law, treaty, order, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date.

“**Charges**” shall have the meaning assigned to such term in Section 11.13.

“**Closing Date**” shall mean the first date on which all of the conditions set forth in Section 4.01 were satisfied as specified by the Agent. For the avoidance of doubt, the Closing Date shall not occur prior to the time when the Interim Order has been entered by the Bankruptcy Court, in form and substance satisfactory to the Agent, as more fully described in Section 4.01.

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

“**Collateral**” shall mean have the meaning ascribed to “Pledge Collateral” in the Security Agreement, and for the avoidance of doubt, shall include all real and personal property of the Borrower now owned or hereafter acquired and all other property of whatever kind and nature, in each case, that is pledged as collateral under any Security Document, the Financing Orders or any other order of the Bankruptcy Court in the Chapter 11 Case.

“**Collateral Account**” shall mean a collateral account or sub-account in the form of a deposit account established and maintained by the Agent for the benefit of the Secured Parties, in accordance with the provisions of Section 9.01.

“**Commitment**” shall mean, with respect to each Lender, the commitment of such Lender to make its pro rata share of the Loans hereunder during the Availability Period in the amount set forth on Schedule I to the Lender Addendum executed and delivered by such Lender, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. Subject to the Financing Orders, the initial aggregate amount of the Lenders’ Commitments is \$10,000,000, which amount includes OID of \$600,000.

“**Committee**” shall mean the official committee of unsecured creditors formed in the Chapter 11 Case.

“**Communications**” shall have the meaning assigned to such term in Section 11.01(f).

“**Compliance Certificate**” shall mean a certificate of a Financial Officer substantially in the form of Exhibit B.

“**Confidential Information**” shall have the meaning assigned to such term in Section 11.12.

“**Contested Collateral Lien Conditions**” shall mean, with respect to any Permitted Lien of the type described in clauses (a), (b), (e) and (f) of Section 6.02, the following conditions:

- (a) the Borrower shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien;
- (b) the Borrower shall maintain, to the extent it deems appropriate or is required by GAAP, cash reserves in an amount sufficient to pay and discharge such Lien and the Agent’s reasonable estimate of all interest and penalties related thereto; and
- (c) such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created by the Financing Orders and evidenced by the Financing Orders and/or the Security Documents, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Lien and security interest created by the Financing Orders and evidenced by the Financing Orders and/or Security Documents.

“**Contingent Obligation**” shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“**primary obligations**”) of any other person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect

thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“**Control**” shall mean 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 ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” shall have meanings correlative thereto.

“**Controlled Investment Affiliate**” shall mean, as to any person, any other person which directly or indirectly is in Control of, is Controlled by, or is under common Control with, such person and is organized by such person (or any person Controlling such person) primarily for making equity or debt investments in Borrower or other portfolio companies.

“**Credit Extension**” shall mean the making of a Loan by a Lender.

“**Debt Issuance**” shall mean the incurrence by Borrower of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

“**Debtor**” shall have the meaning assigned to such term in the recitals hereto.

“**Default**” shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

“**Default Rate**” shall have the meaning assigned to such term in Section 2.06(b).

“**Defaulting Lender**” shall mean any Lender that (a) has failed to fund any portion of the Loans required to be funded by it hereunder within one (1) Business Day of the date required to be funded by it hereunder, (b) has notified the Agent, any Lender and/or the Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute or such failure is subsequently cured or (e) in the case of a Lender that has a Commitment outstanding at such time, shall take, or is the Subsidiary of any person that has taken, any action or be (or is) the subject of any action or proceeding (i) under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) with respect to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Lender (or its direct or indirect parent), or for a substantial part of the property of such Lender; (iii) with respect to the winding-up or liquidation of such Lender, (iv) with respect to which such Lender makes a general assignment for the benefit of its creditors, become unable, admits in writing its inability or fails generally to pay its debt as they become due; or (v) takes any action for the purpose of effecting any of the foregoing.

“**Disability Insurance Assignment**” shall mean the collateral assignment to the Agent, in form and substance satisfactory to the Agent, of a certain policy of disability insurance with respect to Darol Lain providing for disability payments and with terms and conditions and issued by an insurer satisfactory to the Agent, together with all amendments, modifications, renewals,

exhibits and schedules to such Disability Insurance Assignment as may be in effect from time to time.

“**Disability Insurance Proceeds**” shall mean the aggregate insurance proceeds received in connection with any disability insurance policy maintained by the Borrower on any Person for the benefit of the Bank.

“**Disqualified Capital Stock**” shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the latest Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the first anniversary of the latest Maturity Date, or (c) contains any repurchase obligation other than repurchase obligations with respect to Borrower’s common Equity Interests issued to employees and directors of Borrower upon death, disability, retirement, severance or termination of employment or service and which provide that any repurchase obligation shall not be effective during the continuance of an Event of Default or if such repurchase of Borrower’s Equity Interests would not otherwise be permitted by this Agreement or would result in an Event of Default under this Agreement and customary change of control or asset sale proceeds repurchase obligations and which may come into effect prior to payment in full of all Obligations (other than indemnity obligations under the Loan Documents that are not then due and payable and for which no events or claims that could give rise thereto are then pending or outstanding).

“**Dividend**” with respect to any person shall mean that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person outstanding (or any options or warrants issued by such person with respect to its Equity Interests). Without limiting the foregoing, “Dividends” with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

“**dollars**” or “**\$**” shall mean lawful money of the United States.

“**Effect of Bankruptcy**” shall mean, with respect to any obligation, contract or agreement to which the Borrower is a party, any default or other legal consequences arising on account of the commencement or the filing of the Chapter 11 Case, as applicable (including the implementation of any stay), or the rejection of any such obligation, contract or agreement with the approval of the Bankruptcy Court if required under applicable law.

“**Eligible Assignee**” shall mean (a) a Lender, (b) a Controlled Investment Affiliate of a Lender, (c) an Approved Fund and (d) any other person (other than a natural person) approved by (i) the Agent and (ii) unless a Default or an Event of Default has occurred and is continuing, the

Borrower (each such approval not to be unreasonably withheld or delayed); *provided* that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of the Borrower’s Affiliates.

“**Embargoed Person**” shall have the meaning assigned to such term in Section 6.19.

“**Environment**” shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

“**Environmental Claim**” shall mean any claim, notice, demand, order, action, suit, proceeding or other communication alleging liability for investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to health, safety or the Environment.

“**Environmental Law**” shall mean any and all applicable present and future treaties, laws, statutes, ordinances, regulations, rules, decrees, orders, judgments, consent orders, consent decrees or other binding requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health.

“**Environmental Permit**” shall mean any permit, license, approval, consent or other authorization required by or from a Governmental Authority under Environmental Law.

“**Equipment**” shall have the meaning assigned to such term in the UCC.

“**Equity Interest**” shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on, or issued after, the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“**ERISA Affiliate**” shall mean, with respect to any person, any trade or business (whether or not incorporated) that, together with such person, 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 of the Code.

“**ERISA Event**” shall mean (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 by regulation); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (f) the incurrence by Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (g) the receipt by Borrower or its ERISA Affiliates of any notice, concerning the imposition 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; (h) the making of any amendment to any Plan which could result in the imposition of a lien or the posting of a bond or other security; and (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to Borrower.

“**Eurodollar Borrowing**” shall mean a Borrowing comprised of Eurodollar Loans.

“**Eurodollar Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“**Event of Default**” shall have the meaning assigned to such term in Article VIII.

“**Excess Amount**” shall have the meaning assigned to such term in Section 2.10(h)(ii).

“**Excluded Taxes**” shall mean, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, branch profits or franchise taxes imposed on (or measured by) its overall net income or overall gross income by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or is otherwise doing business (other than a business deemed to arise as a result of the transactions contemplated by this Agreement) or, in the case of any Lender, in which its applicable lending office is located, (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.16 or a participant pursuant to Section 2.14(c)) upon a Default of the Borrower, any U.S. Federal withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office, except to the extent that such Foreign Lender was entitled, at the time of designation of a new lending office, to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.15(a), and (c) any Taxes that are attributable to the failure to comply with Section 2.15(e) or (f). It is understood and agreed, for the avoidance of doubt, that any U.S. Federal withholding tax imposed on a Foreign Lender (including an assignee) as a result of a Change in Law or regulation or interpretation thereof occurring after the time such Foreign Lender became a party to this Agreement shall not be an Excluded Tax.



“**Executive Orders**” shall have the meaning assigned to such term in Section 6.19.

“**Existing Lien**” shall have the meaning assigned to such term in Section 6.02(c).

“**Exit Arrangements**” has the meaning assigned to such term in Section 4.03.

“**Exit Arrangement Term Sheet**” has the meaning assigned to such term in Section 4.03.

“**E-Rate**” means the Universal Service Fund’s Schools and Libraries Support Programs, administered by the Universal Service Administrative Company under the direction of the FCC, which provides grants to eligible elementary and secondary public and private schools and public libraries, for their payment of expenses (which may be recurring expenses) associated with qualified telecommunications services, internet access, internal connections and basic maintenance of internal connections.

“**FCC**” means the Federal Communications Commission or any governmental body succeeding to the functions of such commission.

“**FCC Fund**” means the FCC Rural Health Care Pilot Program.

“**Federal Funds Effective Rate**” shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Agent from three federal funds brokers of recognized standing selected by it.

“**Fees**” shall mean the Agent Fee.

“**Final Order**” shall mean, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Case after a formal hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be substantially in the form of the Interim Order and shall otherwise be reasonably satisfactory in form and substance to the Agent, and from which no appeal or motion to reconsider has been timely filed (or any such appeal or motion has been conclusively resolved in favor of the Borrower) and such order in any respect is not subject of a stay or injunction pending appeal (unless the Agent and the Required Lenders waive such requirement), together with all extensions, modifications, amendments or supplements thereto, in form and substance reasonably satisfactory to the Agent, which, among other matters but not by way of limitation, authorizes the Borrower to obtain credit, incur (or guaranty) Indebtedness, grant Liens under this Agreement and the other Loan Documents, as the case may be, approves this Agreement and the other Loan Documents and grants Superpriority Claims to the Agent and Lenders.

“**Financial Officer**” of any person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such person.

“**Financing Orders**” shall mean the Interim Order, the Final Order and any amendment, modification or supplement thereto in form and substance reasonably acceptable to the Agent.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“**First Day Orders**” shall mean the First Day Orders as amended, restated, supplemented or otherwise modified prior to the date hereof and set forth on Schedule A-1.

“**First Telecom**” shall mean First Telecom Services, LLC, an Ohio limited liability company, and a Subsidiary of First Communications, LLC and/or its successors and assigns.

“**First Telecom Claim**” shall mean, collectively, all claims set forth in the motion filed by First Telecom in the Bankruptcy Court (A) for (I) Allowance of Administrative Expense and Immediate Payment Thereof and (II) Modification of the Automatic Stay to Allow Termination of Executory Contracts with the Debtor to the Extent the Debtor Does Not Honor Its Postpetition Obligations Thereunder; or, Alternatively, (B) Compelling Assumption or Rejection of Such Contracts (Docket No. 142) indefinitely.

“**Foreign Lender**” shall mean any Agent or Lender that is not a “United States person” within the meaning of Section 7701(a) (30) of the Code.

“**Foreign Plan**” shall mean any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by Borrower with respect to employees employed outside the United States.

“**Franchises**” shall mean all material franchises, permits and licenses, approvals, designations or certificates granted by the United States, or any agency or regulatory authority thereof, or any state, city, town, county or other municipality, or any agency or regulatory authority thereof, pursuant to which the Borrower has the right to own, control, acquire, construct or operate its business, including without limitation FCC and PUC Franchises, permits, licenses, approvals, designations and certificates.

“**Fund**” shall mean any person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**GAAP**” shall mean generally accepted accounting principles in the United States applied on a consistent basis.

“**Governmental Authority**” shall mean any federal, state, local or foreign court, central bank or governmental agency, authority, instrumentality or regulatory body or any subdivision thereof.

“**Governmental Real Property Disclosure Requirements**” shall mean any Requirement of Law of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including any transfer of control) of any Real Property, of the actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property, to be sold, leased, mortgaged, assigned or transferred.

“**Guarantors**” shall mean any Person who executed and delivers a guaranty with respect to the Obligations at any time or from time to time.

“**Hazardous Materials**” shall mean the following: hazardous substances; hazardous wastes; polychlorinated biphenyls (“**PCBs**”) or any substance or compound containing PCBs; asbestos or any asbestos-containing materials in any form or condition; radon or any other radioactive materials including any source, special nuclear or by-product material; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant or chemicals, wastes, materials, compounds, constituents or substances, subject to regulation or which can give rise to liability under any Environmental Laws.

“**Hedging Agreement**” shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

“**Hedging Obligations**” shall mean obligations under or with respect to Hedging Agreements.

“**Indebtedness**” of any person shall mean, 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 or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business); (f) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property; (g) all Capital Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such person; (h) all Hedging Obligations to the extent required to be reflected on a balance sheet of such person; (i) all Attributable Indebtedness of such person; (j) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers’ acceptances and similar credit transactions; and (k) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. 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 (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such person is not liable therefor. In no event will obligations or liabilities in respect of any Qualified Capital Stock constitute Indebtedness hereunder.

“**Indemnified Taxes**” shall mean Taxes other than Excluded Taxes.

“**Indemnitee**” shall have the meaning assigned to such term in Section 11.03(b).

“**Insurance Policies**” shall mean the insurance policies and coverages required to be maintained by Borrower as an owner of Mortgaged Property with respect to the applicable Mortgaged Property pursuant to Section 5.04 and all renewals and extensions thereof.

“**Insurance Requirements**” shall mean, collectively, all provisions of the Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon Borrower as an owner of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

“**Intellectual Property**” shall have the meaning assigned to such term in Section 3.06(a).

“**Interest Election Request**” shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit C-1.

“**Interest Payment Date**” shall mean (a) with respect to any ABR Loan, the last Business Day of the calendar month to occur during any period in which such Loan is outstanding, (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, in the case of a Eurodollar Loan with an Interest Period of more than one (1) month’s duration, each day of such Interest Period that occurs at intervals of one (1) month’s duration after the first day of such Interest Period and (c) the Maturity Date.

“**Interest Period**” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one (1), two (2) or three (3) months thereafter, as the Borrower may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“**Interim Amount**” means the maximum amount of Loans permitted by the Interim Order, but not to exceed the sum of (i) \$6,000,000 or such lesser amount as is required to repay certain existing Indebtedness contemplated to be repaid on the Closing Date; and (ii) expenses incurred by the Borrower in connection with the Transactions, including expenses required to be paid on or prior to the Closing Date pursuant to the Loan Documents, in each case, subject to the 13-Week Budget.

“**Interim Order**” shall mean collectively, the order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which, among other matters, but not by way of limitation, grants a Superpriority Claim to Lenders, authorizes, on an interim basis, the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents and is not subject to any stay or injunction or otherwise subject to reversal on appeal as to any Loans funded hereunder, together with all extensions, modifications, amendments and supplements thereto, in form and substance reasonably satisfactory to the Agent.

“**Intermediate Unit**” shall mean an “intermediate unit” designated as such by the Commonwealth of Pennsylvania to provide administrative support to an educational community in a designated service area.

“**Investments**” shall have the meaning assigned to such term in Section 6.03.

“**IRU Contract**” shall mean the agreements between the Borrower and FirstEnergy Fiber Holdings Corp. (as successor-in-interest to FirstEnergy Telecom Services, Inc.) providing for the Borrower’s use of telecommunications networks and fiber optic capacity within the Commonwealth of Pennsylvania.

“**IU Contract**” shall mean an agreement between the Borrower and an Intermediate Unit for the provision by the Borrower of telecommunications equipment and services to an educational community in the designated service area served by such Intermediate Unit in the Commonwealth of Pennsylvania, the payment of which is an obligations of the Intermediate Unit supported by E-Rate and/or FCC Fund (as applicable).

“**Joinder Agreement**” shall mean a joinder agreement in a form reasonably satisfactory to the Agent.

“**Leases**” shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“**Lender Addendum**” shall mean with respect to any Lender on the Closing Date, a lender addendum in the form of Exhibit D, to be executed and delivered by such Lender on the Closing Date as provided in Section 11.14.

“**Lender Net Proceeds**” shall have the meaning given such term in Section 4.03(b).

“**Lenders**” shall mean (a) the financial institutions that have become a party hereto pursuant to a Lender Addendum and (b) any financial institution that has become a party hereto pursuant to an Assignment and Assumption, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption.

“**LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Agent to be the arithmetic mean (rounded upward, if necessary, to the nearest 1/100th of 1%) of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; provided, however, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, “LIBOR Rate” shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Agent is offered deposits in dollars at approximately 11:00

a.m., London, England time, two (2) Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time on the date of determination (rather than the second Business Day preceding the date of determination). “Telerate British Bankers Assoc. Interest Settlement Rates Page” shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

“**Lien**” shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (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 property; and (c) in the case of securities (other than securities representing an interest in a joint venture), any purchase option, call or similar right of a third party with respect to such securities.

“**Life Insurance Assignment**” shall mean, the collateral assignment to the Agent, in form and substance satisfactory to the Agent, of a certain policy of insurance on the life of Darol Lain issued by an issuer acceptable to the Agent in the face amount of \$8,000,000, together with, in each case, all amendments, modifications, renewals, exhibits and schedules to such Life Insurance Assignment as may be in effect from time to time.

“**Loan Documents**” shall mean this Agreement, the Notes (if any), the Security Documents, the Financing Orders, each Hedging Agreement that evidences or governs a Hedging Obligation that constitutes an Obligation relating to the Loans entered into with any counter-party that was a Lender or an Affiliate of a Lender at the time such Hedging Obligation was entered into.

“**Loan Exposure**” shall mean, (i) with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Loans of such Lender and (ii) with respect to the Lenders, collectively, at any time, the aggregate principal amount at any such time of all outstanding Loans of the Lenders. The outstanding Loans referenced herein shall include any amounts applied by Lenders to refinance the loans and other obligations under the Prior Credit Agreement.

“**Loans**” shall mean the term loans made by the Lenders to the Borrower pursuant to Section 2.01. Each Loan shall be either an ABR Loan or a Eurodollar Loan.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Material Adverse Effect**” shall mean (a) a material adverse effect on the business, property, results of operations or condition, financial or otherwise of Borrower; (b) material impairment of the ability of the Borrower to perform any of its obligations under any Loan

Document; or (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Agent under any Loan Document; *provided* that a Material Adverse Effect shall not be deemed to exist as a result of the Chapter 11 Case or the Effect of Bankruptcy.

“**Material Contracts**” shall mean agreements with Intermediate Units 5, 6, 8, 9, 10, 11 and 28, material agreements of the Borrower with respect to the PAIU System and any other contract of Borrower with a total contract value in excess of \$250,000.

“**Maturity Date**” shall mean, in accordance with the terms of this Agreement, the earliest to occur of (a) the acceleration (whether automatic or by written notice) of any Obligations and (b) February 28, 2013.

“**Maximum Rate**” shall have the meaning assigned to such term in Section 11.13.

“**Milestones**” shall mean certain milestones related to the Chapter 11 Case, as set forth on Schedule M (unless extended or modified with the consent of the Agent).

“**Monthly Variance Report**” shall have the meaning assigned to such term in Section 5.01(g)(i).

“**Moody’s**” shall mean Moody’s Investors Service Inc. or any successor by merger or consolidation to its business.

“**Mortgaged Property**” shall mean (a) the Real Property identified on Schedule 3.05(b) and (b) each Real Property, if any, which shall be required to be mortgaged after the Closing Date pursuant to Section 5.11(c).

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which Borrower or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which Borrower could incur liability.

“**Net Cash Proceeds**” shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the cash proceeds received by Borrower (including cash proceeds subsequently received (as and when received by Borrower) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers’ fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower’s good faith estimate of income taxes paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale or any other liabilities retained by Borrower associated with the properties sold in such Asset Sale and, to the extent such amount equals or exceeds \$1,000,000, held in the Collateral Account (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower’s good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within two (2) years of such Asset Sale and to the extent such amount equals or exceeds \$1,000,000,

held in the Collateral Account (*provided* that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within two (2) years of such Asset Sale and placed in the Collateral Account, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties);

(b) with respect to any Debt Issuance or any issuance of Equity Interests by Borrower, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the insurance proceeds, condemnation awards and other compensation received in cash in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds and the reasonable cost of putting any real property in a safe and secure condition, awards or other compensation in respect of such Casualty Event.

“**Notes**” shall mean any notes evidencing the Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit E.

“**Obligations**” shall mean (a) obligations of the Borrower from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including any interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower under this Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Borrower under or pursuant to this Agreement and the other Loan Documents.

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

“**Officer’s Certificate**” shall mean, as to any person, a certificate executed by the chairman of the Board of Directors (if an officer), the chief executive officer, the president or any one of the Financial Officers of such person, each in his or her official (and not individual) capacity.

“**OID**” shall mean original issue discount.

“**Organizational Documents**” shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv)



in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

“**Other List**” shall have the meaning assigned to such term in Section 6.19.

“**Other Taxes**” shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including related interest, fines, penalties and additions to tax) arising from any payment made or required to be made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“**PAIU System**” shall mean the Telecom System which serves the Intermediate Units under the IU Contract between the Borrower and Montgomery County Intermediate Unit as the same now exists or may be amended, restated, supplemented or otherwise modified from time to time.

“**Participant**” shall have the meaning assigned to such term in Section 11.04(e).

“**Patriot Act**” shall have the meaning assigned to such term in Section 11.16.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Perfection Certificate**” means the Perfection Certificate delivered by the Borrower to the Agent on the Closing Date and attached to the Security Agreement.

“**Permitted Collateral Liens**” means (i) Contested Liens (as defined in the Security Agreement), (ii) the Liens described in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (m), (n) and (subject to the provisions set forth therein) of Section 6.02 and (iii) in the case of Mortgaged Property, “Permitted Collateral Liens” shall mean the Liens described in clauses (a), (b), (d), (e) and (g) of Section 6.02; *provided, however*, upon the Closing Date or upon the date of delivery of each additional mortgage under Section 5.11(c) or 5.12, Permitted Collateral Liens shall mean only those Liens set forth in Schedule B to the applicable mortgage and the Liens set forth in Sections 6.02 (a) and (e) to the extent such Liens are the obligations of the Borrower prior to any acquisition of Real Property which shall be subject to a mortgage under Section 5.11(c) or Section 5.12.

“**Permitted Liens**” shall have the meaning assigned to such term in Section 6.02.

“**Permitted Monthly Variance**” shall have the meaning assigned to such term in Section 5.01(g).

“**Permitted Variances**” shall have the meaning assigned to such term in Section 5.01(g)(ii).

“**Permitted Weekly Variance**” shall have the meaning assigned to such term in Section 5.01(g)(ii).

“**Person**” or “**person**” shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof, in any case, whether acting in a personal, fiduciary or other capacity.

“**Petition Date**” shall have the meaning assigned in the recitals hereto.

“**PIK Interest**” shall have the meaning assigned to such term within the definition of Applicable Margin.

“**PIK Interest Election Notice**” shall mean a notice in the form of Exhibit C-2.

“**Plan**” shall mean 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 which is maintained or contributed to by Borrower or its ERISA Affiliate or with respect to which Borrower could incur liability (including under Section 4069 of ERISA).

“**Pre-Petition**” shall mean the time period ending immediately prior to the filing of the Chapter 11 Case.

“**Pre-Petition Convertible Subordinated Notes**” shall mean, collectively, the Convertible Subordinated Promissory Notes in the aggregate original principal amount of \$4,000,000 issued pursuant to the Pre-Petition Convertible Subordinated Promissory Note Documents.

“**Pre-Petition Convertible Subordinated Promissory Note Documents**” shall mean the Convertible Subordinated Promissory Notes dated as of December 14, 2009, between the noteholders party thereto, as payees and Borrower, as maker, together with all documents, agreements, certificates and instruments attached thereto or delivered in connection therewith, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time to time in compliance therewith.

“**Pre-Petition Subordinated Lender**” shall mean Global Leveraged Capital Credit Opportunity Fund I.

“**Pre-Petition Subordinated Notes**” shall mean, collectively, the note or notes in the aggregate original principal amount of \$10,000,000 issued pursuant to the Pre-Petition Subordinated Note Documents.

“**Pre-Petition Subordinated Note Documents**” shall mean the Senior Subordinated Note Purchase Agreement dated as of May 19, 2008, between Pre-Petition Subordinated Lender, as purchaser, and the Borrower, as borrower, together with all other documents, agreements, certificates and instruments attached thereto or delivered in connection therewith, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time to time in compliance therewith.

“**Pre-Petition 2010 Subordinated Notes**” shall mean, collectively, the Subordinated Promissory Notes in the aggregate original principal amount of \$2,750,000 issued pursuant to the Pre-Petition 2010 Subordinate Note Documents.

“**Pre-Petition 2010 Subordinated Note Documents**” shall mean the Pre-Petition 2010 Subordinated Notes dated as of July 20, 2010, between the noteholders party thereto, as payees and Borrower, as maker, together with all documents, agreements, certificates and instruments attached thereto or delivered in connection therewith, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time to time in compliance therewith.

“**Prior Credit Agreement**” shall have the meaning assigned in the recitals hereof.

“**Prior Loan Documents**” shall mean the Loan Documents (as defined in the Prior Credit Agreement).

“**Pro Rata Percentage**” of any Lender at any time shall mean the percentage of the total Commitments of all Lenders represented by such Lender’s Commitment; *provided* that for purposes of Sections 2.19(b) and (c), “Pro Rata Percentage” shall mean the percentage of the total Commitments represented by such Lender’s Commitment.

“**Proceeding**” shall mean, with respect to any person, any (a) insolvency, bankruptcy, receivership, reorganization, readjustment, composition or other similar proceeding relating to such person or its property or creditors in such capacity, (b) proceeding for any liquidation, dissolution or other winding-up of such person, voluntary or involuntary, whether or not involving insolvency or proceedings under the Bankruptcy Code, whether partial or complete and whether by operation of law or otherwise, (c) assignment for the benefit of creditors of such person or (d) other marshaling of the assets of such person.

“**Property**” or “**property**” shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

“**PUC**” means the Pennsylvania Public Utility Commission and any other state or local regulatory agency or body that exercises jurisdiction over the ownership, construction or operation of the Borrower’s business.

“**Purchase Money Obligation**” shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property and any refinancing thereof; *provided, however*, that (i) such Indebtedness is incurred within ninety (90) days after such acquisition of such property by such person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

“**Qualified Capital Stock**” of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, or leased by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto and all improvements and appurtenant futures.

“**Register**” shall have the meaning assigned to such term in Section 11.04(c).

“**Regulation D**” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Release**” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

“**Reorganization Plan**” shall mean a plan of reorganization in the Chapter 11 Case of the Debtor.

“**Required Lenders**” shall mean, at any time, Lenders having Loans and unused Commitments representing more than 50% of the sum of all Loans outstanding and unused Commitments at such time; *provided*, that “Required Lenders” shall include not less than two (2) Lenders; *provided, further*, that the Loans and unused Commitments held or deemed held by any Defaulting Lender shall be excluded for purpose of making a determination of Required Lenders.

“**Requirements of Law**” shall mean, collectively, any and all requirements of any Governmental Authority including any and all laws, ordinances, rules, regulations or similar statutes or case law.

“**Response**” shall mean (a) “**response**” as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the Environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material; or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

“**Responsible Officer**” of any person shall mean any executive officer or Financial Officer of such person or any other officer or similar official thereof with responsibility for the administration of the obligations of such person in respect of this Agreement.

“**S&P**” shall mean Standard & Poor’s Rating Services, Inc., a division of the McGraw-Hill Companies, Inc.

“**Sale and Leaseback Transaction**” shall mean any arrangement, directly or indirectly, with any person whereby Borrower 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 which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“**SDN List**” shall have the meaning assigned to such term in Section 6.19.

“**Secured Obligations**” shall mean (a) the Obligations, and (b) the due and punctual payment and performance of all obligations of the Borrower under each Hedging Agreement entered into after the Closing Date with any counterparty that is a Secured Party.

**“Secured Parties”** shall mean, collectively, the Agent, the Lenders and each counterparty to a Hedging Agreement if at the date of entering into such Hedging Agreement such person was an Agent or a Lender or an Affiliate of an Agent or a Lender and such person executes and delivers to the Agent a letter agreement in form and substance acceptable to the Agent pursuant to which such person (i) appoints the Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 10.03 and 10.09 as if it were a Lender.

**“Securities Collateral”** shall have the meaning assigned to such term in the applicable Security Agreement.

**“Security Agreement”** shall mean that certain Security Agreement, dated as of the Closing Date, among the Borrower and Agent for the benefit of the Secured Parties.

**“Security Agreement Collateral”** shall mean all property pledged or granted as collateral pursuant to the applicable Security Agreement delivered on the Closing Date or thereafter pursuant to Section 5.11.

**“Security Documents”** shall mean, collectively, the Security Agreement, the Financing Orders and each other security document, mortgage or pledge agreement delivered in accordance with applicable local or foreign law to grant a valid, perfected security interest in any property as collateral for the Secured Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, Financing Orders, any mortgage or any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement, Financing Orders or any mortgage and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest in or Lien on any Property as collateral for the Secured Obligations any property.

**“Specified Recoveries”** shall have the meaning given such term in Section 4.03(b).

**“Statutory Reserves”** shall mean (a) for any Interest Period for any Eurodollar Borrowing in dollars, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against “Eurodollar liabilities” (as such term is used in Regulation D) or (b) for any Interest Period for any portion of a Borrowing in euros, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves), if any, are in effect on such day for funding in euros required to be maintained by commercial banks that lend in euros. Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

**“Subordinated Indebtedness”** shall mean Indebtedness of the Borrower or any Guarantor that is by its terms subordinated in right of payment to the Obligations of the Borrower and such Guarantor, as applicable.

**“Subsidiary”** shall mean, with respect to any person (the “parent”) at any date, (i) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity

Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (ii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (iii) any other person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent. Unless the context requires otherwise, “Subsidiary” refers to a Subsidiary of Borrower.

“**Superpriority Claim**” means a claim against any Debtor which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

“**Tax Return**” shall mean all returns, statements, filings, attachments and other documents or certifications required to be filed in respect of Taxes.

“**Taxes**” shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including related interest, fines, penalties or additions to tax) with respect to the foregoing.

“**Telecom Systems**” shall mean systems of or used by the Borrower for the provision of telecommunications equipment and services to its customers in the ordinary course of business.

“**Transactions**” shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Loan Documents and the Chapter 11 Case, including (a) the execution, delivery and performance of the Loan Documents; (b) to refinance the loans and other obligations outstanding under the Prior Credit Agreement and Prior Loan Documents and (c) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

“**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 Alternate Base Rate.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in any applicable state or jurisdiction.

“**United States**” shall mean the United States of America.

“**Weekly Variance Report**” shall have the meaning assigned to such term in Section 5.01(g)(ii).

“**Withdrawal Liability**” shall mean 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 Type (*e.g.*, a “Eurodollar Loan”). Borrowings also may be classified and referred to by Type (*e.g.*, a “Eurodollar Borrowing”). The Loans to be made pursuant to this Agreement are term loans that may not be drawn, repaid and

redrawn and any repayments or prepayments of principal hereunder shall permanently reduce the Loans.

**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 “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 Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any person shall be construed to include such person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless otherwise indicated, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (f) 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 and (g) “on,” when used with respect to the Mortgaged Property or any property adjacent to the Mortgaged Property, means “on, in, under, above or about.”

**SECTION 1.04**      **Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the Closing Date, in each case unless otherwise agreed to by the Borrower and the Required Lenders.

**SECTION 1.05**      **Resolution of Drafting Ambiguities.** Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

**SECTION 1.06**      **Timing of Payment and Deliveries.** Solely in connection with the payment of any obligation or the performance of any covenant, duty or obligation, if stated to be due on a day that is not a Business Day or delivery of any notice, document, certificate or other writing is stated to be required on a day that is not a Business Day, the date of such payment (other than as described in the definition of Interest Period), performance or delivery shall be extended to the immediately succeeding Business Day.

## **ARTICLE II**

### **THE CREDITS**

**SECTION 2.01**      **Commitments.** Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender severally, and not jointly, agrees on

or after the Closing Date and during the Availability Period to make Loans to the Borrower in dollars in an aggregate principal amount not to exceed, its Commitment; provided that in no event shall Loans be issued and outstanding hereunder on any date in excess of Borrowing Availability. The Loans are not a revolving credit facility and may not be drawn, repaid and redrawn, and payments of principal on the Loans shall permanently reduce the Loans. If any time the then outstanding principal balance of the Loans exceeds the Borrowing Availability, then the Borrower shall immediately prepay the outstanding Loans in an amount sufficient to eliminate such excess in accordance herewith.

**SECTION 2.02      Loans.**

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments, subject to the Borrowing Availability; *provided* that for purposes of calculating Borrowing Availability and the amount of unfunded Commitments, capitalized PIK Interest shall not reduce the amount of Borrowing Availability or the amount of the Lenders' respective Commitments. The failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). ABR Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$50,000 and not less than \$200,000 or (ii) equal to the remaining available balance of the applicable Commitments. Eurodollar Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$50,000 and not less than \$200,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided* that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than ten (10) Eurodollar Borrowings outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Agent may designate not later than 2:00 p.m., New York City time, and the Agent shall promptly credit the amounts so received to an account as directed by the Borrower in the applicable Borrowing Request maintained with the Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Agent such Lender's portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with paragraph (c) above, and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the



Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Agent, each of such Lender and the Borrower, severally, agrees to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. If such Lender shall repay to the Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement, and the Borrower's obligation to repay the Agent such corresponding amount pursuant to this Section 2.02(d) shall cease.

(e) Notwithstanding any other provision of this Agreement, the Borrower 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 Maturity Date.

**SECTION 2.03 Borrowing Procedure.** To request a Borrowing, the Borrower shall deliver, by hand delivery, electronic mail or telecopier, a duly completed and executed Borrowing Request to the Agent (i) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing, or (ii) in the case of an ABR Borrowing not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

- (a) the aggregate amount of such Borrowing;
  - (b) the date of such Borrowing, which shall be a Business Day;
  - (c) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
  - (d) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";
  - (e) the location and number of Borrower's account to which funds are to be disbursed;
- and
- (f) that the conditions set forth in Sections 4.02(b)-(d) have been satisfied as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing if in dollars shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

The Carve-Out shall be funded at the times and in the manner set forth in the Financing Orders.

**SECTION 2.04 Evidence of Debt; Repayment of Loans.**

(a) The Borrower hereby unconditionally promises to pay to the Agent for the account of each Lender, the unpaid principal amount of each Loan of such Lender on the Maturity Date. All payments or repayments of Loans made pursuant to this Section 2.04(a) shall be made in dollars.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In the event of a conflict between records maintained by any Lender and the records of the Agent in respect of such matters, the records of the Agent shall control in the absence of manifest error.

(e) Any Lender by written notice to the Borrower (with a copy to the Agent) may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit E. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered as signs).

**SECTION 2.05      Fees.**

(a) Agent Fee. The Borrower agrees to pay to the Agent, for its own account, a non-refundable agent's fee (the "**Agent Fee**") equal to Seventy Five Thousand Dollars (\$75,000), which fee shall be deemed fully earned and due and payable on the Closing Date in addition to any other fee from time to time payable under the Loan Documents and paid in cash or cash equivalents on the Closing Date.

(b) All Fees shall be paid on the dates due, in immediately available funds, to the Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees shall be refundable under any circumstances absent manifest error.

**SECTION 2.06      Interest on Loans.**

(a) Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, at the written request of the Agent or the Required Lenders, all Obligations shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of principal and premium, if any, of or interest on any Loan, two percent (2.0%) plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in Section 2.06(a) (in either case, the “**Default Rate**”).

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan in cash and/or in the form of PIK Interest as provided herein; *provided* that (i) interest accrued pursuant to Section 2.06(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan), 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 Alternate Base 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 Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

**SECTION 2.07      Termination and Reduction of Commitments.**

(a) The Commitments shall automatically terminate on the Maturity Date.

(b) At its option, the Borrower may at any time terminate, or from time to time permanently reduce, the Commitments; *provided* that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Commitments shall not be terminated or reduced if, after giving effect to such termination or reduction, the aggregate amount of Loan Exposure would exceed the aggregate amount of Commitments less the Carve-Out Reserve. Any termination of the commitments in full shall be accompanied by the repayment in cash or cash equivalents of all Loans outstanding and other Obligations.

(c) The Borrower shall notify the Agent in writing of any election to terminate or reduce the Commitments under Section 2.07(b) at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitments delivered by the Borrower 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 (by notice to the Agent on or prior to the specified effective date) if such

condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Unless otherwise agreed by the Lenders, each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

**SECTION 2.08      Interest Elections.**

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than ten (10) Eurodollar Borrowings under the Loans outstanding hereunder at any one time.

(b) To make an election pursuant to this Section, the Borrower shall deliver, by hand delivery, electronic mail or telecopier, a duly completed and executed Interest Election Request (accompanied by a duly completed and executed PIK Interest Election Request, if applicable) to the Agent not later than the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation 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;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration (subject to the proviso in clause (iv) above).

(d) Promptly following receipt of an Interest Election Request, the Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing of the same duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, the Agent or the Required Lenders may require, by notice to the Borrower, that (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 an ABR Borrowing at the end of the Interest Period applicable thereto.

**SECTION 2.09      Reserved.**

**SECTION 2.10      Optional and Mandatory Prepayments of Loans.**

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10, and shall comply with Section 2.10(h) and (i); *provided* that (each partial prepayment shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 or, if less, the outstanding principal amount of such Borrowing.

(b) Mandatory Loan Prepayments.

(i) In the event of the termination of all the Commitments, the Borrower shall, on the date of such termination, repay or prepay all its outstanding Loans and other Obligations, and comply with Sections 2.10(h) and (i).

(ii) In the event of any partial reduction of the Commitments, then (x) at or prior to the effective date of such reduction, the Agent shall notify the Borrower and the Lenders of the sum of the Loan Exposure after giving effect thereto and (y) if the sum of the Loan Exposure would exceed the aggregate amount of Commitments less the Carve-Out Reserve after giving effect to such reduction, then the Borrower shall, on the date of such reduction, repay or prepay Loans in an aggregate amount sufficient to eliminate such excess.

(iii) If at any time the then outstanding principal balance of Loans exceeds the Borrowing Availability, then the Borrower shall immediately prepay outstanding Loans in an amount sufficient to eliminate such excess in accordance herewith.

(c) Asset Sales. Subject to the Financing Orders, not later than one (1) Business Day following the receipt of any Net Cash Proceeds of any Asset Sale by Borrower, the Borrower shall apply 100% of such Net Cash Proceeds to make prepayments of the Loans, if any are then outstanding, and comply with Section 2.10(h) and (i); *provided* that no such prepayment shall be required under this Section 2.10(c) with respect to (A) any Asset Sale permitted by Section 6.05, (B) the disposition of property that constitutes a Casualty Event, or (C) Asset Sales of the type described in clause (a) of the definition of Asset Sale for fair market value resulting in no more than \$100,000 in Net Cash Proceeds per Asset Sale (or series of related Asset Sales) and less than \$500,000 in Net Cash Proceeds in any fiscal year; and

(d) Debt Issuance. Subject to the Financing Orders, not later than one (1) Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance by Borrower, the Borrower shall make prepayments of the Loans, if any are then outstanding, and comply with Section 2.10(h) and (i) in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(e) 363 Sales or Reorganization Plan. Subject to the Financing Orders, not later than one (1) Business Day following the closing of any 363 Sale or the confirmation of any Reorganization Plan, including, without limitation, any Reorganization Plan that provides for an Asset Sale, the Borrower shall make prepayments of the Loans, if any are then outstanding, and comply with Section 2.10(h) and (i) in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(f) Casualty Events. Subject to the Financing Orders, not later than one (1) Business Day following the receipt of any Net Cash Proceeds from a Casualty Event by Borrower, the Borrower shall apply an amount equal to 100% of such Net Cash Proceeds to make prepayments of the Loans, if any are then outstanding, and comply with Section 2.10(h) and (i); *provided* that no such prepayment shall be required under this Section 2.10(f) with respect to any disposition of property which constitutes a Casualty Event resulting in no more than \$100,000 in Net Cash Proceeds per Casualty Event and less than \$500,000 in Net Cash Proceeds from Casualty Events in any fiscal year; *provided, further*:

(i) so long as no Event of Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that the Borrower shall have delivered a certificate to the Agent on or prior to such date stating that such proceeds are expected to be used to purchase replacement assets or repair such assets and, in each case, otherwise in compliance with the terms of the Agreement no later than 365 days following the date of receipt of the entire amount of such proceeds; *provided* that if the property subject to such Casualty Event constituted Collateral under the Security Documents, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien granted pursuant to the Financing Orders or the Security Documents in favor of the Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12; and

(ii) if any portion of such Net Cash Proceeds shall not be so applied within such 365-day period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(f).

(g) Life Insurance Proceeds; Disability Insurance Proceeds. Subject to the Financing Orders, not later than one (1) Business Day following the receipt of any Life Insurance Proceeds or any Disability Insurance Proceeds, in each case, whether payable to the Agent or the Borrower, the Borrower shall make prepayments of the Loans, if any are then outstanding, and comply with Section 2.10(h) and (i) in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(h) Application of Prepayments.

(i) Subject to the provisions of this Section 2.10(h), prior to any optional or mandatory prepayment hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.10(i).

(ii) Amounts to be applied pursuant to this Section 2.10 to the prepayment of Loans shall be applied *first* to reduce outstanding ABR Loans and *second* to prepay Eurodollar

Loans, in each case without a reduction to the Commitments. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding (an “**Excess Amount**”), only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of the Borrower, the balance of such required prepayment shall be either (A) deposited in the Collateral Account and applied to the prepayment of Eurodollar Loans on the last day of the then next-expiring Interest Period for Eurodollar Loans; *provided* that (i) interest in respect of such Excess Amount shall continue to accrue thereon at the rate provided hereunder for the Loans which such Excess Amount is intended to repay until such Excess Amount shall have been used in full to repay such Loans and (ii) at any time while an Event of Default has occurred and is continuing, the Agent may, and upon written direction from the Required Lenders shall, apply any or all proceeds then on deposit in the Collateral Account to the payment of such Loans in an amount equal to such Excess Amount or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.13.

(i) Notice of Prepayment. The Borrower shall notify the Agent by written notice of any optional prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment and (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Agent shall advise the Lenders of the contents thereof. Such notice to the Lenders may be by electronic communication. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Credit Extension 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 and otherwise in accordance with this Section 2.10. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06. Prepayments in full of the Loans shall also be accompanied by the payment in full in cash or cash equivalents of all other Obligations, and the termination of the Lenders’ Commitments hereunder.

**SECTION 2.11**      Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) Agent reasonably determines (which determination shall be final and conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) the Agent is advised in writing by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Agent notifies the Borrower and the Lenders 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 such Borrowing shall be converted to or continued as on the last

day of the Interest Period applicable thereto an ABR Borrowing, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

**SECTION 2.12      Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against property of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered, it being understood that this Section 2.12 shall not apply to Taxes.

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

(c) A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 shall be delivered to the Borrower (with a copy to the Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such 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 any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such 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 180-day period referred to above shall not begin earlier than the date of effectiveness of the Change in Law.

**SECTION 2.13      Breakage Payments.** In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of



any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrower (with a copy to the Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within five (5) days after receipt thereof.

**SECTION 2.14            Payments Generally; Pro Rata Treatment; Sharing of Set Off.**

(a) The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees, or of amounts payable under Section 2.12, 2.13 or 2.15, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Agent, 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 Agent at its offices at 805 Third Avenue, 20th Floor, New York, New York 10022, except that payments pursuant to Sections 2.12, 2.13, 2.15 and 11.03 shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, 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 under each Loan Document shall be made in dollars, except as expressly specified otherwise.

(b) If at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (subject to the priorities set forth in Section 9.02 in the case of proceeds received by the Agent in respect of any sale of, collection from or realization upon all or any part of the Collateral pursuant to the exercise by the Agent of its remedies) (i) *first*, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties. It is understood that the foregoing does not apply to any adequate protection payments

under any federal, state or foreign bankruptcy, insolvency, receivership or similar proceeding, and that the Agent may, subject to any applicable federal, state or foreign bankruptcy, insolvency, receivership or similar orders, distribute any adequate protection payments it receives on behalf of the Lenders to the Lenders in its sole discretion (i.e., whether to pay the earliest accrued interest, all accrued interest on a pro rata basis or otherwise).

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise (including by exercise of its rights under Section 9.1 of the Security Agreement), obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any of its Affiliates (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(c) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(c) to share in the benefits of the recovery of such secured claim.

(d) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.14(d) or 11.03(d), then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

**SECTION 2.15**      **Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made without setoff, counterclaim or other defense and free and clear of and without deduction or withholding for any and all Indemnified Taxes; *provided* that if Borrower shall be required by law to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions or withholdings applicable to additional sums payable under this Section 2.15) the Agent or any Lender receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Borrower shall make such deductions or withholdings and (iii) Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law and shall indemnify the Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of Other Taxes paid by the Agent or such Lender and reasonable expenses arising therefrom or with respect thereto, whether or not such Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate accompanied by reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) The Borrower shall indemnify the Agent and each Lender within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15 and 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 accompanied by reasonable detail as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes and in any event within thirty (30) days of any such payment being due, by the Borrower to a Governmental Authority, the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will permit such payments under this Agreement to be made without withholding or at a reduced rate. Each Foreign Lender, on or before the date it becomes a Foreign Lender, shall to the extent it is legally entitled to do so (i) furnish two copies (which shall be accurate and complete, and originally executed) of either (a) U.S. Internal Revenue Service Form W-8BEN (or successor form), (b) U.S. Internal Revenue Service Form W-8ECI (or successor form), certifying, in the case of (a) or (b), to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to payments hereunder, or (c), to the extent

it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Foreign Lender, U.S. Internal Revenue Service Form W-8IMY (or any successor forms), together with any information, if any, such party chooses to transmit with such form, and any other certificate or statement of exemption required under the Code or the regulations issued thereunder, to establish that such party is not acting for its own account with respect to a portion of any such sums payable to such party, and (ii) to the extent it may lawfully do so at such times, upon reasonable request by the Borrower or the Agent, provide a new Form W-8BEN (or successor form), Form W-8ECI (or successor form) or Form W-8IMY (or successor form) upon the expiration or obsolescence of any previously delivered form to confirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any payments hereunder, or to establish that such party is not acting for its own account with respect to a portion of any such sums payable to such party; provided that any Foreign Lender that is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code that is relying on the “portfolio interest exception” under Section 881(c) of the Code shall also furnish a “Non-Bank Certificate” in the form of Exhibit F if it is furnishing a Form W-8BEN. Each Foreign Lender that does not furnish Internal Revenue Service Form W-8ECI (or successor form) represents that, to its knowledge, any Fees paid hereunder are not attributable to services performed by such Lender in the United States.

(f) Any Agent or Lender that is not a Foreign Lender and is not an exempt recipient (as defined in Section 6049(b)(4) of the Code and the regulations issued thereunder) shall deliver to the Borrower (with a copy to the Agent), on or prior to the date it become a party hereto, and at such other times as may be necessary in the determination of the Borrower in its reasonable discretion, two U.S. Internal Revenue Service Form W-9 (or any successor forms) properly completed and duly executed by such party.

(g) If the Agent or a Lender (or an assignee) determines in its reasonable discretion that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.15 with respect to the Indemnified Taxes or the Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender (or assignee) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided, however*, that the Borrower, upon the request of the Agent or such Lender (or assignee), agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender (or assignee) within a reasonable time (not to exceed twenty (20) days) after receipt of written notice that the Agent or such Lender (or assignee) is required to repay such refund to such Governmental Authority. Nothing contained in this Section 2.15(g) shall require the Agent or any Lender (or assignee) to make available its Tax Returns or any other information which it deems confidential to the Borrower or any other person. Notwithstanding anything to the contrary, in no event will any Lender be required to pay any amount to the Borrower the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in if the Indemnified Taxes or Other Taxes giving rise to such refund had never been paid in the first instance.

**SECTION 2.16      Mitigation Obligations; Replacement of Lenders.**

(a) Mitigation of Obligations. If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental

Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous in any material respect to such Lender. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses in reasonable detail submitted by such Lender to the Agent shall be conclusive absent manifest error.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all of its interests, rights and obligations under this Agreement to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have received the prior written consent of the Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (assuming for this purpose that the Loans of such Lender were being prepaid) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**SECTION 2.17**        Reserved.

**SECTION 2.18**        Reserved.

**SECTION 2.19**        Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender: any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.14(c) but excluding Section 2.16(b)) may, in lieu of being distributed to such Defaulting Lender, be retained by the Agent in a segregated non-interest bearing account and, subject to any applicable Requirements of Law, be applied at such time or times as may be determined by the Agent (a) *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder, (b) *second, pro rata*, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent, (c) *third*, if so determined by the Agent and the Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (d) *fourth, pro rata*, to the payment of any amounts owing to Borrower or the Lenders as a result of any judgment of a court of competent jurisdiction

obtained by the Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (e) *fifth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided*, that if such payment is (i) a payment of the principal amount of any Loans which a Defaulting Lender has funded its participation obligations and (ii) made at a time when the conditions set forth in Section 4.02 are satisfied, such payment shall be applied solely to prepay the Loans of all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans owed to any Defaulting Lender.

In the event that each of the Agent and the Borrower, each agrees in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Percentage. The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies that the Borrower, the Agent and the non-Defaulting Lenders may have against such Defaulting Lender. The arrangements permitted or required by this Section 2.19 shall be permitted under this Agreement, notwithstanding any limitations on Liens or the pro rata sharing provisions or otherwise.

**SECTION 2.20**      **Payment of Obligations.** Upon the Maturity Date, the Lenders shall be entitled to immediate payment of such Obligations then due and owing without further application to or order of the Bankruptcy Court, subject to the terms of the Loan Documents and the Financing Orders.

**SECTION 2.21**      **No Discharge; Survival of Claims.** The Borrower agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan the Chapter 11 Case (and the Borrower pursuant to Section 1141(d)(4) of the Bankruptcy Code hereby waives any such discharge) and (b) the Superpriority Claim granted to the Agent and the Lenders pursuant to the Financing Orders and described in the Loan Documents and the Liens granted to the Agent pursuant to the Financing Orders and described in the Loan Documents shall not be affected in any manner by the entry of an order confirming a Reorganization Plan in the Chapter 11 Case.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to the Agent and each of the Lenders that:

**SECTION 3.01**      **Organization; Powers.** Borrower (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has, upon the entry of the Financing Orders by the Bankruptcy Court, all requisite power and authority to carry on its business as now conducted and to own and lease its property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. On the Closing Date, there is no existing default under any Organizational Document of Borrower or any event which, with the giving of notice or passage of time or both, would constitute a default by any party thereunder.

**SECTION 3.02**      **Authorization; Enforceability.** Upon the entry of the Financing Orders by the Bankruptcy Court, the Transactions to be entered into by the Borrower, including any Credit Extensions hereunder, are within the Borrower's powers and have been duly authorized by all necessary action on the part of the Borrower. Subject to the entry of the Financing Orders by the Bankruptcy Court, this Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which the Borrower is to be a party, when executed and delivered by the Borrower, will constitute, a legal, valid and binding obligation of the Borrower, 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**      **No Conflicts.** Except as set forth on Schedule 3.03, upon entry of the Financing Orders by the Bankruptcy Court, the Transactions, including any Credit Extensions hereunder, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority (including, without limitation, the FCC and the PUC), except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Loan Documents and (iii) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect or to the extent such noncompliance is permitted by the Bankruptcy Court, (b) will not violate the Organizational Documents of Borrower or any judgment, decree or order of any Governmental Authority that is binding on Borrower, (c) will not violate or result in a default (except in respect of the Pre-Petition Convertible Subordinated Promissory Note Documents, Pre-Petition Subordinated Note Documents and Pre-Petition 2010 Subordinated Note Documents) or require any consent or approval under any indenture, mortgage, deed of trust, Franchise, permit, contract, agreement, Organizational Document or other instrument binding upon Borrower or its property (including, without limitation, FCC and PUC Franchises), or give rise to a right thereunder to require any payment to be made by Borrower, except for violations, defaults or the creation of such rights that 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 property of Borrower, except Liens created by the Loan Documents and Permitted Liens (including pursuant to the Financing Orders).

**SECTION 3.04**      **Financial Statements; Projections.**

(a) The Borrower has heretofore delivered to the Lenders (i) the unaudited balance sheet as of July 31, 2012 and related statements of income and cash flows of Borrower for the month ended July 31, 2012 and (ii) the balance sheets and related statements of income and cash flows of the Borrower as of and for the fiscal year ended 2008 and the balance sheets and related statements of income and cash flows of Borrower for the fiscal years ended 2008 audited by and accompanied by the opinion of ParenteBeard, independent public accountants, and certified by the chief financial officer of the Borrower. Such financial statements and all financial statements delivered pursuant to Sections 5.01(a) and (b) have been prepared in accordance with GAAP (in the case of financial statements delivered pursuant to Sections 5.01 (a) and (b), subject to normal year-end audit adjustments and the absence of footnotes) and present fairly and in all material respects the financial condition and results of operations and cash flows of the Borrower, as of the dates and for the periods to which they relate. Except as set forth in such financial statements and other than the commencement of the Chapter 11 Case and the First Telecom Claim, there are no post-Petition Date liabilities of Borrower of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is

no existing condition, situation or set of circumstances which could reasonably be expected to result in such a post-Petition Date liability, other than liabilities under the Loan Documents.

(b) The forecasts of financial performance of the Borrower, including the 13-Week Budget delivered on the Closing Date, projected income statements, statements of cash flows and balance sheets, furnished to the Lenders have been prepared in good faith by the Borrower, and based on assumptions believed by the Borrower, to be reasonable (it being understood that forecasts are subject to uncertainties and contingencies and that no representation or warranty is given that any forecast will be realized).

**SECTION 3.05**            **Properties.**

(a) Borrower has good title to, or valid leasehold interests in all its property material to its business, or licenses or other rights to use, free and clear of all Liens except for, in the case of Collateral that is Real Property, Permitted Collateral Liens and, in the case of all other material property, Permitted Liens (including pursuant to the Financing Orders) and minor irregularities or deficiencies in title that, individually or in the aggregate, do not in any material respect interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose. The property of the Borrower, (i) is in good operating order, condition and repair (ordinary wear and tear excepted), except to the extent that the failure to be in such condition could not reasonably be expected to result in a Material Adverse Effect, and (ii) constitutes all the property which is required for the business and operations of the Borrower as presently conducted.

(b) Schedule 3.05(b) contains a true and complete list of each interest in Real Property (i) owned by Borrower as of the Closing Date and describes the type of interest therein held by Borrower and (ii) leased or subleased by the Borrower, as lessee or sublessee as of the Closing Date and describes the type of interest therein held by the Borrower.

(c) As of the Closing Date, Borrower has not received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event currently affecting all or any portion of its property.

(d) The Borrower owns or has rights to use all of the Collateral and all rights with respect to any of the foregoing used in, necessary for or material to Borrower's business as currently conducted. The use by the Borrower of such Collateral and all such rights with respect to the foregoing does not infringe on the rights of any person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that the Borrower's use of any Collateral does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) As far as Borrower is aware, the Equipment of Borrower is in good repair, working order and condition, reasonable wear and tear excepted. Borrower shall use reasonable endeavors to cause the Equipment to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially practicable make or cause to be made all repairs, replacements and other improvements which are necessary or appropriate in the conduct of Borrower's business except in each case as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.



**SECTION 3.06      Intellectual Property.**

(a) Ownership/No Claims. The Borrower owns, or is licensed to use, all patents, patent applications, trademarks, trade names, servicemarks, copyrights, technology, trade secrets, proprietary information, domain names, know-how and processes necessary for the conduct of its business as currently conducted (the “**Intellectual Property**”), except for those the failure to own or license which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, no written claim has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any valid basis for any such claim. The use of such Intellectual Property by the Borrower does not infringe the rights of any person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Registrations. Except pursuant to licenses and other user agreements entered into by the Borrower in the ordinary course of business that are listed in Schedules 14(a) or 14(b) to the Perfection Certificate, on and as of the Closing Date (i) the Borrower owns and possesses the right to use, and has done nothing to authorize or enable any other person to use, any copyright, patent or trademark (as such terms are defined in the Security Agreement) listed in Schedules 14(a) or 14(b) to the Perfection Certificate and (ii) all registrations listed in Schedules 14(a) or 14(b) to the Perfection Certificate are valid and in full force and effect.

(c) No Violations or Proceedings. To the Borrower’s knowledge, on and as of the Closing Date, there is no material violation by others of any right of the Borrower with respect to any copyright, patent or trademark listed in Schedules 14(a) or 14(b) to the Perfection Certificate, respectively, pledged by it under the name of the Borrower except as may be set forth on Schedule 3.6(c).

**SECTION 3.07      Equity Interests.**

(a) Equity Interests. Schedules 1(a) and 11 to the Perfection Certificate sets forth a list of (i) Borrower and its jurisdiction of organization as of the Closing Date and (ii) the number of each class of the Equity Interests authorized, and the number issued and outstanding of each class of Equity Interests of Borrower as of the Closing Date. All Equity Interests of Borrower are duly and validly issued and are fully paid and non-assessable. Borrower is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it pursuant to the Financing Orders or under the Security Agreement, free of any and all Liens, rights or claims of other persons, except the security interest created pursuant to the Financing Orders and by the Security Agreement and Permitted Liens (including pursuant to the Financing Orders), and except as set forth on Schedule 3.07(a), on the Closing Date there are no outstanding warrants, options or other rights to purchase with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests.

(b) No Consent of Third Parties Required. Upon the entry of the Financing Orders by the Bankruptcy Court, no consent of any person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or first priority status of the security interest of the Agent in any Equity Interests pledged to the Agent for the benefit of the Secured Parties pursuant to the Financing Orders or under

the Security Agreement or the exercise by the Agent of the voting or other rights provided for in the Security Agreement or the exercise of remedies in respect thereof.

(c) Organizational Chart. An accurate organization chart, showing the ownership structure of Borrower on the Closing Date, and after giving effect to the Transactions, is set forth on Schedule 3.07(c). Borrower owns no Subsidiaries as of the Closing Date.

**SECTION 3.08      Litigation; Compliance with Laws.**

(a) Except for the Chapter 11 Case, the First Telecom Claim and for litigation that is stayed by the commencement and continuation of the Chapter 11 Case, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any business, property or rights of any Borrower (i) that challenge the enforceability or validity of any Loan Document or any of the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for matters covered by Section 3.18, neither Borrower nor or any of its property is in violation of, nor will the continued operation of its property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting Borrower's Real Property or is in default with respect to any judgment, writ, injunction, decree, rule or order of any Governmental Authority (including, without limitation, those of the FCC and PUC), in each case where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.09      [Reserved].**

**SECTION 3.10      Federal Reserve Regulations.**

(a) Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Securities Collateral pursuant to the Financing Orders or the Security Agreement does not violate such regulations.

**SECTION 3.11      Investment Company Act; Public Utility Holding Company Act.** Borrower is not an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to registration under, the Investment Company Act of 1940, as amended.

**SECTION 3.12      Use of Proceeds.** The Borrower will use the proceeds of the Loans in a manner consistent with the 13-Week Budget (subject to Permitted Variances) and the Financing Orders for payment of (i) all loans and obligations outstanding under the Prior Credit Agreement and Prior Loan Documents, (ii) post-petition operating expenses and other working capital and financing requirements of the Borrower, (iii) certain transaction and bankruptcy related fees, costs and

expenses (including the fees, expenses and disbursements of professionals retained by order of the Bankruptcy Court and payable under Sections 328, 330 and 331 of the Bankruptcy Code in accordance with the Order Pursuant to 11 U.S.C. §§ 105 And 331 And General Order Of The Bankruptcy Court Establishing Procedures For Monthly Compensation And Reimbursement Of Expenses Of Professionals entered by the Bankruptcy Court on January 27, 2012) and cure costs within the meaning of Sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code, (iv) the Carve-Out and (v) Pre-Petition claims permitted by the Bankruptcy Court. For the avoidance of doubt, all expenditures (including, without limitation, all Capital Expenditures) of Borrower may not exceed the expenditures set forth in the 13-Week Budget (subject to Permitted Variances) at any time.

**SECTION 3.13** Taxes. Except as would not, individually or in the aggregate, have a Material Adverse Effect, Borrower has (a) timely filed or caused to be timely filed all federal, state, local and foreign Tax Returns required to have been filed by it and all such Tax Returns are true and correct in all respects and (b) duly and timely paid or caused to be duly and timely paid all Taxes (whether or not shown as due on any Tax Return) and all assessments received by it, except (i) Taxes that are being contested in good faith by appropriate proceedings and for which Borrower has set aside on its books adequate reserves in accordance with GAAP and (ii) any taxes, fees, or other charges, the nonpayment of which is required or permitted by the Bankruptcy Code. Borrower has made adequate provision in accordance with GAAP on its *pro forma* financial statements referred to in Section 3.04(b) for all material Taxes not yet due and payable as of the date of such financial statements. Borrower is unaware of any proposed or pending tax assessments, deficiencies or audits that could be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect.

**SECTION 3.14** No Material Misstatements. No information, report, financial statement, certificate, Borrowing Request, exhibit or schedule furnished by or on behalf of Borrower to the Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection or pro forma adjustment, Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that forecasts are subject to uncertainties and contingencies and that no representation or warranty is given that any forecast will be realized).

**SECTION 3.15** Labor Matters. As of the Closing Date, there are no strikes, lockouts or slowdowns against Borrower pending or, to the knowledge of Borrower, threatened. The hours worked by and payments made to employees of Borrower have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable federal, state, local or foreign law dealing with such matters in any manner which could reasonably be expected to result in a Material Adverse Effect. All payments due from Borrower, or for which any claim may be made against Borrower, 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 Borrower except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any

union under any collective bargaining agreement to which Borrower is bound where such termination or right of renegotiation could reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.16**      **[Reserved]**.

**SECTION 3.17**      **Employee Benefit Plans.**

(a) Borrower and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. Except as disclosed on Schedule 3.17, no ERISA Event (other than the commencement of the Chapter 11 Case) has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in material liability of Borrower or any of its ERISA Affiliates or the imposition of a Lien on any of the property of Borrower. Except as disclosed on Schedule 3.17, the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Borrower's annual audited financial statements) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that could reasonably be expected to have a Material Adverse Effect if any of the Plans were to be terminated. The aggregate liabilities of Borrower or its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, could not reasonably be expected to result in a Material Adverse Effect.

(b) To the extent applicable, each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities.

**SECTION 3.18**      **Environmental Matters.**

(a) Except as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect:

(i) The Borrower and its business, operations and Real Property are and in the last three years have been in compliance with, and the Borrower has no liability under, Environmental Law;

(ii) The Borrower has obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of their property, under Environmental Law, all such Environmental Permits are valid and in good standing and, under the currently effective business plan of the Borrower, no expenditures or operational adjustments will be required in order to renew or modify such Environmental Permits during the next five (5) years;

(iii) There has been no Release or threatened Release of Hazardous Material on, at, under or from any Real Property or facility presently or formerly owned, leased or operated by the Borrower or its predecessors in interest that could result in liability by the Borrower under Environmental Law;

(iv) There is no Environmental Claim pending or, to the knowledge of the Borrower, threatened against the Borrower, or relating to the Real Property currently or formerly owned, leased or operated by the Borrower or relating to the operations of the Borrower, and there are no actions, activities, circumstances, conditions, events or incidents that could form the basis of such an Environmental Claim; and

(v) No person with an indemnity or contribution obligation to the Borrower relating to compliance with or liability under Environmental Law is in default with respect to such obligation.

(b) Except as set forth in Schedule 3.18:

(i) Borrower is not obligated to perform any material action or otherwise incur any material expense under Environmental Law pursuant to any order, decree, judgment or agreement by which it is bound or has assumed by contract or agreement, and Borrower is not conducting or financing any material Response pursuant to any Environmental Law with respect to any Real Property or any other location;

(ii) No Real Property or facility owned, operated or leased by the Borrower and, to the knowledge of the Borrower, no Real Property or facility formerly owned, operated or leased by the Borrower or any of its predecessors in interest is (i) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA or (ii) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (iii) included on any similar list maintained by any Governmental Authority including any such list relating to petroleum;

(iii) No Lien has been recorded or, to the knowledge of Borrower, threatened under any Environmental Law with respect to any Real Property or property of the Borrower;

(iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any Governmental Real Property Disclosure Requirements or any other Environmental Law; and

(v) The Borrower has made available to the Lenders all material records and files in the possession, custody or control of, or otherwise reasonably available to, the Borrower concerning compliance with or liability under Environmental Law, including those concerning the existence of Hazardous Material at Real Property or facilities currently or formerly owned, operated, leased or used by the Borrower.

**SECTION 3.19 Insurance.** Schedule 3.19 sets forth a true, complete and correct summary description of all insurance maintained by the Borrower as of the Closing Date. All insurance maintained by the Borrower is in full force and effect, all premiums have been duly paid and the Borrower has not received notice of violation or cancellation thereof except, in such case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The Mortgaged Property, and the use, occupancy and operation thereof, comply in all respects with all Insurance Requirements, and there exists no default under any material Insurance Requirement, in each case to the extent the same could not reasonably be expected to have a Material Adverse Effect.

The Borrower has insurance in such amounts and covering such risks and liabilities as are customary for companies of a similar size engaged in similar businesses in similar locations.

**SECTION 3.20**      **Legality, Validity and Enforceability of Liens.** Upon entry of the Financing Orders by the Bankruptcy Court, the Secured Parties will have legal, valid and enforceable Liens having the priority specified in the Financing Orders on, and security interests in, all of the Borrower's right, title and interest in and to the Collateral and the proceeds thereof.

**SECTION 3.21**      **Foreign Assets Control Regulations.** The Borrower is not, nor will be after the consummation of the Transactions and the application of the proceeds of the Loans, by reason of being a "national" of a "designated foreign country" or a "specially designated national" within the meaning of the Regulations of the Office of Foreign Assets Control, United States Treasury Department (31 C.F.R., Subtitle B, Chapter V), or for any other reason, in violation in any material respect of, any United States Federal statute or Presidential Executive Order concerning trade or other relations with any foreign country or any citizen or national thereof or the ownership or operation of any property.

**SECTION 3.22**      **Anti-Terrorism Law.**

(a) The Borrower is not, and to the knowledge of the Borrower, none of its Affiliates is in violation of any Anti-Terrorism Laws.

(b) The Borrower is not and to the knowledge of the Borrower, no Affiliate or broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Orders;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Orders;

(iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "**terrorism**" as defined in the Executive Orders; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) The Borrower is not and, to the knowledge of the Borrower, no broker or other agent of the Borrower acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE IV

CONDITIONS TO CREDIT EXTENSIONS

**SECTION 4.01**      **Conditions to Initial Credit Extensions.** The obligation of each Lender to fund the initial Credit Extension requested to be made by it shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 4.01.

(a)      **Certain Loan Documents.** All legal matters incident to this Agreement, the Credit Extensions hereunder and the other Loan Documents being executed by the parties on the Closing Date shall be satisfactory to the Lenders and to the Agent and there shall have been delivered to the Agent an executed counterpart of each of the Loan Documents being executed by the parties on the Closing Date.

(b)      **Corporate Documents.** The Agent shall have received:

(i)      a certificate of the secretary or assistant secretary of the Borrower dated as of the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of the Borrower certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of Borrower, the Borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of the Borrower (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i)); and

(ii)     a certificate as to the good standing of the Borrower as of a recent date, from such Secretary of State of its jurisdiction of incorporation or organization, as applicable.

(c)      **Officer's Certificate.** The Agent shall have received a certificate, dated as of the Closing Date and signed by the Chief Executive Officer and President of Borrower, confirming compliance with the conditions precedent set forth in this Section 4.01 and Sections 4.02(b), (c) and (d).

(d)      **Opinion of Counsel.** The Agent shall have received, on behalf of itself and the Lenders, a favorable written opinion of Lowenstein Sandler, PC, counsel for the Borrower.

(e)      **Fees.** The Agent shall have received all Fees and other amounts due and payable required to be paid on the Closing Date and, to the extent invoiced on or before the Closing Date, reimbursement or payment of all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Brown Rudnick LLP, counsel to the Agent.

(f)      **13-Week Budget.** The Agent and the Required Lenders shall have received a copy of the 13-Week Budget, in form and substance acceptable to the Required Lenders.

(g) Interim Order. Entry by the Bankruptcy Court of the Interim Order, in form and substance reasonably satisfactory to the Agent and the Required Lenders (and such entry shall occur no later than the close of business on September 19, 2012).

All obligations of the Agent and Lenders under this Agreement shall automatically terminate without any further action if the conditions required under this Section 4.01 (including, without limitation, Section 4.01(h)) have not been satisfied on or before the close of business on September 19, 2012 or waived in writing by Required Lenders in their sole discretion.

**SECTION 4.02** Conditions to All Credit Extensions. The obligation of each Lender to make any Credit Extension (including the initial Credit Extension) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) Notice. The Agent shall have received a Borrowing Request as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested.

(b) No Default. The Borrower shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after giving effect to such Credit Extension and the application of the proceeds thereof, no Default shall have occurred and be continuing on such date.

(c) Representations and Warranties. Each of the representations and warranties made by the Borrower set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(d) No Legal Bar. No order, judgment or decree of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it.

(e) Bankruptcy Matters. At the time of such Credit Extension, (i) if such Credit Extension is prior to the entry and effectiveness of the Final Order, the Interim Order shall not have terminated or expired, and the date of such Credit Extension shall not be more than thirty (30) days from the entry and effectiveness of the Interim Order or more than thirty-five (35) days from the date of this Agreement, (ii) if such Credit Extension is after the entry and effectiveness of the Final Order, the Final Order shall be effective, and shall not have been terminated or expired, (iii) no Financing Order shall have been vacated, reversed, stayed, amended, supplemented or otherwise modified (without the consent of the Agent), (iv) no motion for reconsideration of any Financing Order shall be pending, and (v) no appeal of any Financing Order shall be pending and no Financing Order shall be the subject of a stay pending appeal or a motion for a stay pending appeal.

(f) 13-Week Budget. At the time of such Credit Extension, if such Credit Extension is a Borrowing of a Loan, the amount of such Credit Extension shall not be in excess of the amounts necessary to fund expenditures (in the aggregate) permitted under the most recently delivered 13-Week Budget in effect at such time, subject to any Permitted Variance under Section 6.09.



(g) Commitment; Borrowing Availability. After giving effect to such Credit Extension, the aggregate then outstanding principal amount of the Loans shall not exceed the Commitment, and in no event shall the outstanding principal amount of the Loans be in excess of the Borrowing Availability at any time.

Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty by the Borrower that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the conditions contained in this Section 4.02 have been satisfied. The Borrower shall provide such information as the Agent may reasonably request to confirm that the conditions in this Section 4.02 have been satisfied.

**SECTION 4.03            Certain Exit Arrangements.**

(a) Each Lender hereby agrees to convert its Commitment and the Obligations under this Agreement into commitments and undertakings (the “**Exit Arrangements**”) set forth in the Summary of Preliminary Terms and Conditions For Exit Arrangements, attached hereto as Exhibit H (“**Exit Arrangements Term Sheet**”).

(b) Notwithstanding the foregoing or anything else herein to the contrary, each Lender’s obligations under this Section 4.03 shall be subject to the negotiation, execution and delivery of definitive documentation relating to the Exit Arrangements consistent with the Exit Arrangements Term Sheet reasonably satisfactory to the Agent and Required Lenders, and to the satisfaction of the closing conditions contained in Exhibit H. All obligations of the Lenders under this Section 4.03 shall terminate, upon written notification to Borrower and counsel for the Committee by Agent at Required Lenders’ direction, if the closing of the Exit Arrangements does not occur in accordance with the terms set forth in the Exit Arrangements Term Sheet on or before the Maturity Date; provided, however, in such event, notwithstanding anything contained herein, in the event any of the Lenders acquires all or substantially all of the assets of the Borrower through an Asset Sale or otherwise, the acquiring Lenders agree to pay to the holders of allowed general unsecured claims (excluding any such claim held by any of the Lenders or the Agent or First Telecom) against the Borrower their pro rata share of (i) cash in the aggregate amount of \$275,000 and (ii) a sum equal to thirty percent (30%) of the Lender Net Proceeds actually realized from the Agent’s and Lender’s Lien on Avoidance Actions (excluding only causes of action directly related to the Borrower’s business operations such as enforcement of licenses, patents, breach of contracts, etc.) (the “**Specified Recoveries**”). For the purposes of this Section 4.03(b), the term “**Lender Net Proceeds**” means any and all Specified Recoveries of any kind or nature less the legal fees and expenses, if any, incurred by the Agent and Lenders in connection with the prosecution or settlement of the underlying claims and causes of action associated therewith.

**ARTICLE V**

**AFFIRMATIVE COVENANTS**

The Borrower agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts due and payable under any Loan Document shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will:

**SECTION 5.01**      **Financial Statements, Reports, etc.** Furnish to the Agent and, upon the request of the Agent or any Lender, to each such Lender making the request to the Borrower or the Agent:

(a)      **Annual Reports.** Within one-hundred twenty (120) days after the end of each fiscal year, (i) the consolidated balance sheet of Borrower as of the end of such fiscal year and related consolidated statements of income, cash flows for such fiscal year, in comparative form with such financial statements as of the end of, and for, the preceding fiscal year, and notes thereto, all prepared in accordance with GAAP and accompanied by an opinion of ParenteBeard or other independent public accountants of recognized national standing satisfactory to the Agent, stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the dates and for the periods specified in accordance with GAAP, (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year and (iii) a balance sheet and statements of income, which shall be accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the date and for the periods specified on a basis consistent with audited financial statements in clause (i) above;

(b)      **Monthly Reports.** Within thirty (30) days after the end of each fiscal month, the consolidated balance sheet of Borrower as of the end of such month and the related consolidated statements of income and cash flows of Borrower for such month and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of Borrower as of the date and for the periods specified in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c)      **Financial Officer's Certificate.** (i) Concurrently with any delivery of financial statements under Section 5.01(a) or (b) above, a Compliance Certificate certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; and (ii) in the case of Section 5.01(a) above, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Borrower, which audit was conducted in accordance with GAAP, such accounting firm obtained no knowledge that any Default under Section 6.09 has occurred or, if in the opinion of such accounting firm such a Default has occurred, specifying the nature and extent thereof;

(d)      **Financial Officer's Certificate Regarding Collateral.** Concurrently with any delivery of financial statements under Section 5.01(a) above, a certificate of a Financial Officer (i) updating, to the extent necessary, to reflect (A) any changes to the names or locations of the Borrower or (B) any other information reasonably required by the Agent with respect to the Collateral or (ii) confirming that there has been no change in such information since the Closing Date or the latest supplement to the schedules to the this Agreement or Security Agreement, as applicable.

(e)      **Public Reports.** As soon as reasonably practicable after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower with the Securities and Exchange Commission, or any Governmental Authority succeeding

to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(f) Management Letters. As soon as reasonably practicable after the receipt thereof by the Borrower, a copy of any “management letter” received by any such person from its certified public accountants and the management’s responses thereto;

(g) 13-Week Budget; Operating Forecasts.

(i) Commencing on September 27, 2012 and on each fourth Thursday thereafter, furnish on or before 5:00 p.m., New York City time, to the Agent for prompt further distribution to each Lender, (A) an updated 13-Week Budget (covering the period beginning on the Monday immediately preceding the Thursday that such 13-Week Budget is delivered), in form and substance acceptable to the Agent and the Required Lenders, and (B) a report of net aggregate unfavorable variances of Net Operating Cash Flow (as defined in the 13-Week Budget) (the “**Monthly Variance Report**”) in the form attached hereto as Exhibit G-1 evidencing net unfavorable variances of no more than \$50,000 or 25% in the aggregate or \$20,000 or 25% by line item or in the aggregate for the prior four (4) week period as set forth in the prior 13-Week Budget (the “**Permitted Monthly Variance**”) (it being understood that the incurrence of net aggregate unfavorable variances in excess of \$50,000 or 25% in the aggregate or \$20,000 or 25% by line item for the prior four (4) week period shall constitute an Event of Default). It is hereby understood and agreed by the parties hereto and the Required Lenders that (Y) the Required Lenders shall be deemed to have consented to such 13-Week Budget if the Required Lenders fail to submit to the Agent a written objection to such 13-Week Budget by 5:00 p.m., New York City time, on Monday of the following week; *provided*, that the Borrower delivers the 13-Week Budget in a timely manner in accordance with the first sentence of this clause (i) and (Z) such 13-Week Budget shall not become the applicable 13-Week Budget until the Agent shall have delivered a notice of approval of such 13-Week Budget to the Borrower; *provided*, that if the Agent issues a notice of denial to the Borrower, the previously delivered 13-Week Budget shall continue to constitute the applicable 13-Week Budget until a 13-Week Budget is agreed to among the Borrower and the Agent in accordance with this Section; *provided, however*, further that if the Agent does not deliver either a notice of denial or a notice of approval to the Borrower within ten (10) Business Days of the Borrower’s second (2nd) written request for a reply, then the Borrower’s proposed 13-Week Budget shall become applicable until such time as the Agent does issue a reply.

(ii) Commencing on September 27, 2012 and on each Thursday thereafter, furnish to the Agent for prompt further distribution to each Lender (A) a comparison of actual to budgeted weekly results of operation for each prior four (4) week period, as applicable, (B) a report of weekly net aggregate unfavorable variances of Net Operating Cash Flow, actual cash receipts and actual cash disbursements (the “**Weekly Variance Report**”) in the form attached hereto as Exhibit G-2 evidencing net aggregate unfavorable variances of no more than \$50,000 or 25% in the aggregate or \$20,000 or 25% by line item per week (the “**Permitted Weekly Variance**” and, together with the Permitted Monthly Variance, the “**Permitted Variances**”) (it being understood that the incurrence of net aggregate unfavorable variances in excess of \$50,000 or 25% in the aggregate or \$20,000 or 25% by line item shall constitute an Event of Default) and (C) a report containing a summary of accrued, but unpaid, professional fees and expenses of the Borrower and the Committee incurred in the Chapter 11 Case as of such date.

(h) Organization. Within sixty (60) days after the close of each fiscal year of Borrower, Borrower shall deliver an accurate organization chart as required by Section 3.07(c), or confirm that there are no changes to Schedule 3.07(c);

(i) Organizational Documents. As soon as reasonably practicable, provide copies of any Organizational Documents that have been amended or modified in accordance with the terms hereof and deliver a copy of any notice of default given or received by the Borrower under any Organizational Document within fifteen (15) days after the Borrower gives or receives such notice; and

(j) Documents filed with the Bankruptcy Court or Delivered to the U.S. Trustee or Committee. As soon as available and in any event at least two (2) Business Days' prior to their being filed with the Bankruptcy Court (unless exigent circumstances require a shorter period, provided that as much advance notice as is possible shall still be given), copies of all monthly reports as well as all pleadings, motions, applications, judicial information or other information with respect to the Borrower's financial condition anticipated to be filed by or on behalf of the Borrower with the Bankruptcy Court or served by the Borrower to or upon the United States Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Case) or any Committee.

(k) Documents filed with the Bankruptcy Court or Delivered to the U.S. Trustee or Committee. Promptly, upon their being filed with the Bankruptcy Court, provide copies of all monthly reports as well as all pleadings, motions, applications, judicial information or other information with respect to the Borrower's financial condition filed by or on behalf of the Borrower with the Bankruptcy Court or served by the Borrower to or upon the United States Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Case) or any Committee, at the time such document is filed with the Bankruptcy Court or served by the Borrower to or upon the United States Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Case) or any Committee, to the extent such document has not otherwise been served pursuant to an order of the Bankruptcy Court establishing notice procedures in the Chapter 11 Case or otherwise.

(l) Operating Budget and Projections. Borrower shall furnish to Agent for each fiscal year of Borrower, not less than thirty (30) calendar days prior to the commencement of such fiscal year, (i) consolidated and consolidating month by month (as at the end of each such month) projected operating budgets, projections, profit and loss statements, income statements, balance sheets and cash flow statements of and for Borrower for such upcoming fiscal year, and (ii) annual projections for the fiscal years then remaining prior to the Maturity Date, in each case prepared in accordance with GAAP consistently applied with prior periods (subject to normal year-end adjustments and the absence of footnotes of Borrower).

(m) Other Information. As soon as reasonably practicable, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower, or compliance with the terms of any Loan Document, as the Agent or any Lender may reasonably request.

**SECTION 5.02** Litigation and Other Notices. Furnish to the Agent, and upon the request of the Agent or any Lender, to each such Lender making the request to the Borrower or the Agent, written notice of the following as soon as reasonably practicable (and, in any event, within five (5) Business Days of a Responsible Officer obtaining knowledge thereof):

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against the Borrower or any officer or director thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) the occurrence of a Casualty Event;

(d) the incurrence of any material Lien (other than Permitted Liens and the Carve-Out) on, or claim asserted against any of the Collateral (other than as a result of the filing of proofs of claims in the Chapter 11 Case);

(e) the receipt of all material, non-routine correspondence or material, non-routine official notices from the FCC, the PUC or any other Governmental Authority which regulates all or part of the operations of Borrower; and

(f) the receipt of notice of any (i) refusal or failure by any Governmental Authority to renew or extend any Franchise, (ii) proposed abandonment or proposed or actual revocation, expiration, termination or materially adverse modification of any Franchise, or (iii) dispute or other action with respect to any Franchise.

**SECTION 5.03**      **Existence; Businesses and Properties.** Except as resulting from the Chapter 11 Case, continue to:

(a) do or cause to be done all things reasonably necessary to preserve, renew and maintain in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or Section 6.06; and

(b) do or cause to be done all things reasonably necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; comply with all applicable Requirements of Law (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except in all cases where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Loan Documents; and at all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business subject to condemnation and casualty events) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times, except in all cases where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; *provided* that nothing in this Section 5.03(b) shall prevent (i) sales of property, consolidations or mergers by or involving the Borrower in accordance with Section 6.04 or Section 6.05; (ii) the withdrawal by the Borrower of its qualification

as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by the Borrower of any property, rights, franchises, licenses, trademarks, trade names, copyrights or patents that such person reasonably determines are not useful to its business or no longer commercially desirable.

(c) do or cause to be done all things reasonably necessary to maintain all of its Franchises.

**SECTION 5.04      Insurance.**

(a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including insurance with respect to Mortgaged Properties and other properties material to the business of the Borrower against such casualties and contingencies and of such types and in such amounts with such deductibles as is customary in the case of similar businesses operating in the same or similar locations, including (i) physical hazard insurance on an “all risk” basis, (ii) commercial general liability against claims for bodily injury, death or property damage covering any and all insurable claims, (iii) worker’s compensation insurance and such other insurance as may be required by any Requirement of Law and (iv) such other insurance against risks as the Agent may from time to time require (acting reasonably) (such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Agent); provided that if and so long as an Event of Default has occurred and is continuing with respect to physical hazard insurance, neither the Agent nor the Borrower shall agree to the adjustment of any claim thereunder in excess of \$1,000,000 without the consent of the other (such consent not to be unreasonably withheld or delayed).

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Agent of written notice thereof and if an endorsement providing such notice is commercially impracticable by the Borrower’s carrier, the Borrower will use its commercially reasonable efforts to provide thirty (30) days’ notice to the Agent prior to the cancellation, material reduction in amount or material change in coverage, (ii) name the Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable and (iii) be reasonably satisfactory in all other respects to the Agent.

(c) Notify the Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by the Borrower; and as soon as practicable deliver to the Agent a duplicate original copy of such policy or policies.

(d) With respect to Mortgaged Property, obtain flood insurance in such total amount as the Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any improvements located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

(e) Deliver to the Agent and the Lenders a report of a reputable insurance broker with respect to such insurance and such supplemental reports with respect thereto as the Agent may from time to time reasonably request.

(f) While the Borrower is the owner of any Mortgaged Property, the Borrower shall not knowingly take any action that is reasonably likely to be the basis for termination, revocation or denial of any insurance coverage required to be maintained under the respective mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Mortgaged Property, and the Borrower shall otherwise comply in all material respects with all Insurance Requirements in respect of the premises; *provided, however*, that the Borrower may, at its own expense and after written notice to the Agent, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, the prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under this Section 5.04 or (ii) cause the Insurance Policy containing any such Insurance Requirement to be replaced by a new policy complying with the provisions of this Section 5.04.

**SECTION 5.05      Obligations and Taxes.**

(a) Except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, subject to the approval of the Bankruptcy Court in the Chapter 11 Case and to the restrictions set forth in this Agreement, pay its Indebtedness and other obligations in accordance with their terms and pay and discharge promptly when due and payable all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof.

(b) Timely and correctly file all Tax Returns required to be filed by it, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(c) The Borrower does not intend to treat the Loans as being a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4. In the event the Borrower determines to take any action inconsistent with such intention, it will promptly notify the Agent thereof.

**SECTION 5.06      Employee Benefits.** Subject to the applicable provisions of the Bankruptcy Code and except as a result of the Chapter 11 Case (including the effects of the Chapter 11 Case on the funding of the Plans), (a) with respect to any Plan, comply in all material respects with the applicable provisions of ERISA and the Code and (b) furnish to the Agent (x) as soon as possible after, and in any event within ten (10) days after any Responsible Officer of the Borrower knows or has reason to know, that any ERISA Event has occurred that, alone or together with any other ERISA Event, could reasonably be expected to result in liability of the Borrower or any ERISA Affiliate in an aggregate amount exceeding \$1,000,000 or the imposition of a Lien, a statement of a Financial Officer of the Borrower setting forth details as to such ERISA Event and the action, if any, that the Borrower proposes to take with respect thereto, and (y) upon request by the Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan; (iii) all notices received by the Borrower or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan

(or employee benefit plan sponsored or contributed to by the Borrower) as the Agent shall reasonably request.

**SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Annual Meetings.** Keep proper books of record and account (i) in which full, true and correct entries are made in conformity with all Requirements of Law (ii) in form permitting financial statements conforming with GAAP to be derived therefrom and (iii) in which all dealings and transactions in relation to its business and activities are recorded. The Borrower will permit any representatives designated by the Agent or any Lender (in the case of any Lender only, during the continuance of a Default or an Event of Default) to visit and inspect the financial records and, subject to the rights of tenants, the property of the Borrower upon reasonable prior notice during regular business hours and to make extracts from and copies of such financial records, and permit any representatives designated by the Agent or any Lender (in the case of any Lender only, during the continuance of a Default or an Event of Default) to discuss the affairs, finances, accounts and condition of the Borrower with and be advised as to the same by the officers and employees thereof and the independent accountants therefor, all at such reasonable times and intervals and to such reasonable extent as the Agent or any Lender (in the case of any Lender only, during the continuance of a Default or an Event of Default) may request; *provided*, that unless a Default or an Event of Default is continuing, the Borrower shall not be required to pay the expenses of more than one (1) such visit per calendar year. The Borrower shall be permitted to reasonably coordinate the visits and inspections of individual Lenders to minimize inconvenience.

**SECTION 5.08 Use of Proceeds.** Use the proceeds of the Loans only for the purposes set forth in Section 3.12.

**SECTION 5.09 Compliance with Environmental Laws; Environmental Reports.**

(a) Comply, and cause all lessees and other persons occupying Real Property owned, operated or leased by the Borrower to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and Real Property; obtain and renew all material Environmental Permits applicable to its operations and Real Property; and conduct all Responses required by, and in accordance with, Environmental Laws; provided that the Borrower shall not be required to undertake any Response to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) If a Default caused by reason of a breach of Section 3.18 or Section 5.09(a) shall have occurred and be continuing for more than 20 days without the Borrower commencing activities reasonably likely to cure such Default, at the written request of the Agent or the Required Lenders through the Agent, provide to the Lenders within forty-five (45) days after such request, at the expense of the Borrower, an environmental assessment report regarding the matters which are the subject of such Default, including, where appropriate, any soil and/or groundwater sampling, prepared by an environmental consulting firm and, in the form and substance, reasonably acceptable to the Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them.

(c) While the Borrower is the owner of any Mortgaged Property, the Borrower shall not install nor permit to be installed in the Mortgaged Property any Hazardous Materials, other than in compliance with applicable Environmental Laws.



**SECTION 5.10**      **Meetings with Lenders.** On a bi-weekly basis, or otherwise at the reasonable request of the Agent, hold, or be available to hold, a meeting (at a mutually agreeable location and time or telephonically) with the Lenders and management of the Borrower regarding the financial results and operations of the Borrower and monitoring any developments in the Chapter 11 Case.

**SECTION 5.11**      **Additional Collateral; Addition of Guarantors.**

(a) Subject to this Section 5.11, with respect to any property acquired after the Closing Date by the Borrower that is intended to be subject to the Lien created by any of the Security Documents or the Financing Orders but is not so subject (but in any event excluding any assets described in the last sentence of paragraph (b) of this Section 5.11), promptly (and in any event within thirty (30) days after the acquisition thereof) (i) execute and deliver to the Agent such amendments or supplements to the relevant Security Documents or such other documents as the Agent shall reasonably deem necessary to grant to the Agent, for its benefit and for the benefit of the other applicable Secured Parties, a Lien on such property having the priority specified in the Financing Orders, and (ii) to the extent not already created and/or perfected, take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document or the Financing Orders and not already perfected in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Agent. The Borrower shall otherwise take such actions and execute and/or deliver to the Agent such documents as the Agent shall reasonably require to confirm the validity, perfection and priority of the Lien under the Financing Orders or the Security Documents against such after-acquired properties.

(b) With respect to any person that is or becomes a Subsidiary after the Closing Date, promptly (and in any event within 30 days after such person becomes a Subsidiary) (A) deliver to the Agent the certificates, if any, representing all of the Equity Interests of such Subsidiary that are owned by Borrower, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the Borrower, and all intercompany notes owing from such Subsidiary to Borrower together with instruments of transfer executed and delivered in blank by a duly authorized officer of Borrower and (B) cause such new Subsidiary (1) to execute a Joinder Agreement or such comparable documentation to become a Guarantor, a joinder agreement to the applicable Security Document or Financing Order, substantially in the form annexed thereto, and (2) to the extent not already created and/or perfected, to take all actions reasonably necessary or advisable in the opinion of the Agent to cause the Lien created by the applicable Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Agent.

(c) At the request of the Agent, as soon as practicable, grant to the Agent, within sixty (60) days of the acquisition thereof, a first priority (subject only to the Carve-Out) security interest in and mortgage on (i) each Real Property owned in fee by the Borrower as is acquired by the Borrower after the Closing Date, and (ii) the Borrower's leasehold interest in each leased Real Property of the Borrower, in each case, as additional security for the Secured Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 6.02). At the request of the Agent, the Borrower shall execute such mortgages and documentation reasonably satisfactory in form and substance to the Agent and shall constitute valid and enforceable perfected Liens having the priority specified in the Financing Orders. The mortgages or instruments related thereto shall be

duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the respective Liens in favor of the Agent required to be granted pursuant to the mortgages and all applicable taxes, fees and other charges payable in connection therewith shall be paid in full when due and payable. The Borrower shall otherwise take such actions and execute and/or deliver to the Agent such documents as the Agent shall reasonably require to confirm the validity, perfection and priority of the Liens of any existing mortgages or new mortgages against such after-acquired Real Property.

**SECTION 5.12      Security Interests; Further Assurances; PUC and FCC Filings; Post Closing Deliveries.**

(a) As soon as reasonably practicable, upon the reasonable request of the Agent, at the Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents, the Financing Orders or otherwise deemed by the Agent reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except Permitted Liens, or use commercially reasonable efforts to obtain any consents or waivers as may be necessary or appropriate in connection therewith. Deliver or cause to be delivered to the Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Agent as the Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents or the Financing Orders. Upon the exercise by the Agent of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that the Agent may reasonably require. If the Agent or the Required Lenders determine that they are required by law or regulation to have appraisals prepared in respect of the Real Property of the Borrower constituting Collateral, the Borrower shall provide to the Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are otherwise in form and substance reasonably satisfactory to the Agent.

(b) As soon as reasonably practicable, upon the reasonable request of the Agent, at the Borrower's expense, the Borrower will file with the FCC, the PUC and each other regulatory or administrative bodies in a timely fashion copies of the Loan Documents to the extent required under applicable law and any and all other documents required to be filed by applicable law, rules or regulations and shall take such other action as is necessary under applicable law and the rules and regulations of the PUC and FCC to effect the purposes of the Loan Documents. Without limiting the generality of the foregoing, the Borrower shall, in accordance with Schedule 5.12, obtain such consents as may be required of the PUC or FCC to permit the grant of a security interest in the Franchises in favor of the Agent pursuant to the Security Documents. The Agent shall have the right to petition the PUC or any other relevant regulatory authority having jurisdiction over the Borrower, for a change in management of the Borrower if a material Event of Default shall occur or if a Material Adverse Effect shall occur in the operations, business, condition (financial or otherwise) of the Borrower, and the Borrower shall execute and deliver such petitions, authorizations, consents and other documents and agreements as the Agent may require to effectuate the foregoing, and the Borrower shall otherwise facilitate and assist the Agent, at the Borrower's sole cost and expense, in promptly obtaining appropriate regulatory approval thereof.

(c) Borrower shall comply with the requirements set forth on Schedule 5.12 in accordance with the terms thereof.

**SECTION 5.13      Information Regarding Collateral.**

(a) Not make or suffer to exist any change (i) in the Borrower's legal name, (ii) in the location of the Borrower's chief executive office, (iii) in the Borrower's identity or organizational structure, (iv) in the Borrower's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in the Borrower's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Agent not less than 10 days' prior written notice (in the form of an Officers' Certificate), or such lesser notice period agreed to by the Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Agent to maintain the perfection and priority of the security interest of the Agent for the benefit of the applicable Secured Parties in the Collateral, if applicable. The Borrower agrees, as soon as practicable, to provide the Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence. The Borrower also agrees to promptly notify the Agent of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility), other than changes in location to a Mortgaged Property or a leased property, in each case if different than the location relating to such Collateral set forth in the schedules to the Security Agreement or the most recent supplement thereto.

(b) Concurrently with the delivery of financial statements pursuant to Section 5.01(b) for the last month of each fiscal quarter, deliver to the Agent a supplement to the schedules to the Security Agreement or confirmation that there have been no changes to the information set forth in such schedules since the date of the Security Agreement or the last supplement thereto provided pursuant to this Section 5.13(b).

**SECTION 5.14      Cooperation with Advisors.** The Borrower will use commercially reasonable efforts to cooperate and assist Advisors hired by or at the discretion of the Agent to enable such Advisors to perform the services for which they were engaged, including, without limitation, promptly providing such information and documents as such Advisors may reasonably request.

**SECTION 5.15      Transition of Certain Network Services, Equipment, Etc.** The Borrower will use commercially reasonable efforts to transition all high-capacity metro and long-haul fiber network services, all voice and data services and all other services and equipment provided to the Borrower by First Telecom to another service provider that is selected by the Borrower and is reasonably acceptable to the Required Lenders, and, shall complete such transition in full as soon as practicable, and in any event, not later than the close of business on January 31, 2013.

**ARTICLE VI**

**NEGATIVE COVENANTS**

The Borrower agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all

Fees and all other expenses or amounts due and payable under any Loan Document have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will not:

**SECTION 6.01**      **Indebtedness.** Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred under (i) this Agreement and the other Loan Documents, (ii) the Pre-Petition Convertible Subordinated Promissory Note Documents, (iii) the Pre-Petition Subordinated Note Documents and (iv) the Pre-Petition 2010 Subordinated Note Documents;

(b) (i) Indebtedness outstanding on the date of this Agreement and listed on Schedule 6.01(b) and (ii) refinancings or renewals thereof; *provided* that (A) any such refinancing Indebtedness is in an aggregate principal amount not greater than the aggregate principal amount of the Indebtedness being renewed or refinanced, plus the amount of any premiums required to be paid thereon and reasonable fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being renewed or refinanced and (C) the covenants, events of default, subordination and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, no less favorable to the Lenders than those contained in the Indebtedness being renewed or refinanced;

(c) Indebtedness under Hedging Obligations that are designed to protect against fluctuations in interest rates, foreign currency exchange rates or commodity prices, in each case not entered into for speculative purposes; provided that if such Hedging Obligations relate to interest rates, (a) such Hedging Obligations relate to payment obligations on Indebtedness otherwise permitted to be incurred by the Loan Documents and (b) the notional principal amount of such Hedging Obligations at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Obligations relate;

(d) Indebtedness permitted by Section 6.03(e);

(e) Indebtedness incurred after the date of this Agreement in respect of Purchase Money Obligations and Capital Lease Obligations, in an aggregate amount not to exceed \$250,000 at any time outstanding;

(f) Indebtedness in respect of bid, performance or surety, appeal or similar bonds issued for the account of and completion guarantees provided by the Borrower in the ordinary course of business, in an aggregate amount not to exceed \$250,000 at any time outstanding;

(g) Contingent Obligations of the Borrower in respect of Indebtedness otherwise permitted under this Section 6.01;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five (5) Business Days of incurrence; and

(i) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business.

Notwithstanding the foregoing, no Indebtedness under Sections 6.01(b), (c), (d), (g), (h) and (i), shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or pari passu with the super priority administrative expense claims of the Agent and Lenders except as specifically set forth herein or in the Financing Orders.

**SECTION 6.02**      **Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the “**Permitted Liens**”):

(a) Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien or (ii) in the case of any such charge or claim which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(b) Liens in respect of property of the Borrower imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, including, without limitation, carriers’, warehousemen’s, materialmen’s, landlords’, workmen’s, suppliers’, repairmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of the business of the Borrower, and (i) which do not in the aggregate materially detract from the value of the property of the Borrower, and do not materially impair the use thereof in the operation of the business of the Borrower, (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (iii) in the case of any such Lien which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(c) any Lien that is both (i) validly existing and perfected in accordance with applicable law on the date of this Agreement; and (ii) set forth on Schedule 6.02(c) on the Closing Date, and any Lien granted as a replacement or substitute therefor; provided that any such replacement or substitute Lien (a) except as permitted by Section 6.01(b)(ii)(A), does not secure an aggregate amount of Indebtedness, if any, greater than that secured on the Closing Date and (b) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an “**Existing Lien**”);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness or (ii) interfering with the ordinary conduct of the business of the Borrower at such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in an Event of Default;

(f) Liens (other than any Lien imposed by ERISA) (x) arising by virtue of deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that such Liens shall in no event encumber any property other than cash and Cash Equivalents and the aggregate amount of deposits at any time pursuant to clause (y) and clause (z) of this paragraph (f) shall not exceed \$50,000 in the aggregate;

(g) Leases of the properties of the Borrower, in each case entered into in the ordinary course of the Borrower's business; *provided, however*, with respect to any properties acquired by the Borrower after the Closing Date which are mortgaged under Section 5.11(c), and which are encumbered by existing Lease(s) on the date of such acquisition, such Lease(s) shall be Permitted Liens and Permitted Collateral Liens so long as (i) such Lease(s) are subordinate by their terms to the Agent's Liens with respect to such Mortgaged Property, or (ii) the Borrower obtains a subordination, non-disturbance and attornment agreement from each tenant thereunder in form and substance reasonably satisfactory to Agent or (iii) the Borrower is unable to obtain such subordination, non-disturbance and attornment agreement despite its commercially reasonable efforts to do so and the Lease is otherwise reasonably satisfactory to Agent;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower in the ordinary course of business in accordance with the past practices of the Borrower;

(i) Liens securing Indebtedness incurred pursuant to Section 6.01(e); provided that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of the Borrower;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and other account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) the Carve-Out;

(l) Liens granted pursuant to the Financing Orders or the Security Documents to secure the Secured Obligations;

(m) licenses of Intellectual Property granted by the Borrower in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Borrower;

(n) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods; and

(o) Liens securing other obligations that do not in the aggregate exceed \$50,000 at any time outstanding, so long as such Liens, to the extent covering any Collateral, (i) are junior to the Liens granted to the Agent pursuant to the Financing Orders or the Security Documents or (ii) constituting cash if any cash deposits or cash collateral is provided, such cash deposits or cash collateral shall be made in accordance with the 13-Week Budget;

*provided, however*, that no consensual Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral, other than Liens granted pursuant to the Financing Orders. Notwithstanding the foregoing, Liens permitted under Sections 6.02(a) through (o) shall at all times be junior and subordinate to the Liens under the Loan Documents and the Financing Orders, other than the Carve-Out. The prohibition provided for in this Section 6.02 specifically includes, without limitation, the Borrower, any Committee, or any other party-in-interest in the Chapter 11 Case or any successor case to priming or creating *pari passu* to any claims, Liens or interests of the Agent and the Lenders any Lien (other than for the Carve-Out) irrespective of whether such claims, Liens or interests may be “adequately protected” (unless the Obligations and adequate protection claims will be paid in full in cash upon the granting of any such Lien and the Commitments terminated).

**SECTION 6.03**      **Investments, Loans and Advances.** Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, “**Investments**”), except that the following shall be permitted:

(a) Investments outstanding on the date of this Agreement and identified on Schedule 6.03(a);

(b) the Borrower may (i) acquire and hold accounts receivable owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms and historical practice, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(c) Hedging Obligations incurred pursuant to Section 6.01(c);

(d) loans and advances to directors, employees and officers of the Borrower for bona fide business purposes, in an aggregate amount not to exceed \$50,000 at any time outstanding;

(e) [Reserved];

(f) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with Borrower’s past practices that are received in settlement of *bona fide* disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(g) Investments made by the Borrower as a result of consideration received in connection with an Asset Sale made in compliance with Section 6.05;

(h) other investments in an aggregate amount not to exceed the amounts set forth in, and for the purposes set forth in the 13-Week Budget; *provided, however*, that it shall not be deemed a breach of this clause (h) if the amount of any such investments exceed the limits set forth in the 13-Week Budget by amounts less than the Permitted Variance; and

(i) by the Borrower consisting of Contingent Obligations permitted under Section 6.01(g).

**SECTION 6.04** Mergers and Consolidations. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

- (a) Asset Sales in compliance with Section 6.05; and
- (b) acquisitions in compliance with Section 6.06.

**SECTION 6.05** Asset Sales. Effect any Asset Sale, except that the following shall be permitted:

(a) disposition of used, worn out, obsolete or surplus property in the ordinary course of business and consistent with past practices and the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower;

(b) other Asset Sales; provided that the fair market value of the assets sold (as reasonably determined by the Borrower) pursuant to this Section 6.05(b) shall not exceed (i) \$100,000 in the aggregate during the term of this Agreement;

(c) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(d) mergers and consolidations in compliance with Section 6.04;

(e) Investments in compliance with Section 6.03;

(f) without duplication, Investments permitted as Capital Expenditures not in excess of the Capital Expenditures set forth in the approved 13-Week Budget (subject to Permitted Variances); and

(g) any Asset Sale pursuant to a sale under Section 363 of the Bankruptcy Code, through a confirmed Reorganization Plan in the Chapter 11 Case, or otherwise, provided that the Obligations are paid in full in cash or cash equivalents concurrently with the closing or confirmation thereof and the Lenders' Commitments terminate hereunder.

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by



this Section 6.05, such Collateral shall be sold free and clear of the Liens created pursuant to the Financing Orders or by the Security Documents.

**SECTION 6.06**      **Acquisitions.** Purchase or otherwise acquire (in one or a series of related transactions) any part of the property (whether tangible or intangible) of any person, except that the following shall be permitted:

(a) Capital Expenditures by Borrower not in excess of the Capital Expenditures set forth in the approved 13-Week Budget (subject to Permitted Variances);

(b) purchases and other acquisitions of inventory, materials, equipment and intangible property in the ordinary course of business;

(c) Investments in compliance with Section 6.03;

(d) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(e) mergers and consolidations in compliance with Section 6.04;

*provided* that the Lien on and security interest in such property granted or to be granted in favor of the Agent pursuant to the Financing Orders or under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable.

**SECTION 6.07**      **Dividends.** Authorize, declare or pay, directly or indirectly, any Dividends with respect to Borrower.

**SECTION 6.08**      **Transactions with Affiliates.** Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of the Borrower, other than on terms and conditions at least as favorable to the Borrower as would reasonably be obtained by the Borrower at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that the following shall be permitted:

(a) Dividends permitted by Section 6.07;

(b) Investments permitted by Sections 6.03;

(c) reasonable director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification and reimbursement arrangements, in each case approved by the Board of Directors and consistent with the historical practice of the Borrower;

(d) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods and services, in each case in the ordinary course of business and otherwise not prohibited by the Loan Documents;

(e) the Borrower may enter into employment, non-competition or confidentiality agreements with their employees in the ordinary course of business; and

(f) transactions conducted in the ordinary course of business on a basis consistent with past practices with Borrower or with joint ventures to which Borrower is a party relating to the purchase or sale of inventory and equipment and operational, management and technical services.

**SECTION 6.09 Compliance with 13-Week Budget.** Comply with the 13-Week Budget including without limitation in terms of actual cash receipts and actual cash disbursements and expenditures (including, without limitation Capital Expenditures), in each case, within the Permitted Variances at all times.

**SECTION 6.10 Prepayments of Indebtedness; Modifications of Organizational Documents and Other Documents, etc.** Directly or indirectly:

(a) except as specifically set forth in the Financing Orders, make (or give any notice in respect thereof) any voluntary or optional payment or mandatory prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change in Control or similar event of, (i) any Subordinated Indebtedness, (ii) the Pre-Petition Convertible Subordinated Notes or any Indebtedness under the Pre-Petition Convertible Subordinated Promissory Note Documents, (iii) the Pre-Petition Subordinated Notes or any Indebtedness under the Pre-Petition Subordinated Note Documents, or (iv) the Pre-Petition 2010 Subordinated Notes or any Indebtedness under the Pre-Petition 2010 Subordinated Note Documents, except, in any such case in connection with the refinancing thereof as permitted pursuant to Section 6.01;

(b) amend or modify, or permit the amendment or modification of, any provision of any Subordinated Indebtedness, in any manner that is adverse in any material respect to the interests of the Lenders;

(c) terminate, amend, modify (including electing to treat any Pledged Interests (as defined in the Security Agreement) as a “security” under Section 8-103 of the UCC) or change any of its Organizational Documents (including by the filing or modification of any certificate of designation) and, in each case, other than any such amendments, modifications or changes or such new agreements which are not adverse in any material respect to the interests of the Lenders;

(d) make any payments or transfer, or agree to any setoff or recoupment, with respect to any Pre-Petition claim, Pre-Petition Lien or Pre-Petition Indebtedness, except as approved by order of the Bankruptcy Court; or

(e) amend or modify, or permit the amendment or modification of, (i) any Financing Order without the prior written consent of the Agent or (ii) any First Day Order except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Agent or Lenders in such capacities.

**SECTION 6.11 [Reserved.]**

**SECTION 6.12 Limitation on Equity Issuance.** With respect to the Borrower, issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest unless the same results in the repayment in full of the Obligations, except as permitted pursuant to the definition of Asset Sale.

**SECTION 6.13**      **Limitation on Creation of Subsidiaries.** Establish, create or acquire any Subsidiaries without the prior written consent of the Agent.

**SECTION 6.14**      **Business.** With respect to the Borrower, engage (directly or indirectly) in any businesses other than those businesses in which the Borrower is engaged on the date of this Agreement and businesses that are similar, complementary or reasonably related to or are reasonable extensions thereof.

**SECTION 6.15**      **Limitation on Accounting Changes.** Make or permit, any change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect or are required by GAAP.

**SECTION 6.16**      **Fiscal Year.** Change its fiscal year-end to a date other than December 31.

**SECTION 6.17**      **No Further Negative Pledge.** Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of the Borrower to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (1) this Agreement and the other Loan Documents; (2) covenants in documents creating Liens permitted by Section 6.02 prohibiting further Liens on the properties encumbered thereby; (3) the Pre-Petition Convertible Subordinated Promissory Note Documents, the Pre-Petition Subordinated Note Documents and the Pre-Petition 2010 Subordinated Note Documents, in each case as in effect on the Closing Date; (4) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of the Borrower to secure the Obligations; and (5) any prohibition or limitation of the sort described in clauses (i), (iii), (iv), (v), (vi), (vii) of Section 6.11.

**SECTION 6.18**      **Anti-Terrorism Law; Anti-Money Laundering.**

(a) Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.22, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Borrower's compliance with this Section 6.18).

(b) Cause or permit any of the funds of the Borrower that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of law.

**SECTION 6.19**      **Embargoed Person.** Cause or permit (a) any of the funds or properties of the Borrower that are used to repay the Loans to constitute property of, or be

beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law (“**Embargoed Person**” or “**Embargoed Persons**”) that is identified on the “List of Specially Designated Nationals and Blocked Persons” (the “**SDN List**”) maintained by OFAC and/or on any other similar list (“**Other List**”) maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any executive order or regulation promulgated thereunder with the result that the investment in the Borrower (whether directly or indirectly) is prohibited by law, or the Loans made by the Lenders would be in violation of law, the executive order, any related enabling legislation or any other similar executive orders (collectively, “**Executive Orders**”), or (2) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower, with the result that the investment in the Borrower (whether directly or indirectly) is prohibited by law or the Loans are in violation of law.

**SECTION 6.20**      **Critical Vendor and Other Payments.** The Borrower shall not make or agree to make (a) any pre-petition “critical vendor” payments or other payments on account of any creditor’s pre-petition unsecured claims, (b) payments on account of claims or expenses arising under Section 503(b)(9) of the Bankruptcy Code, or (c) payments under any plan or on account of any claim that requires approval pursuant to Section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (y) are approved by order of the Bankruptcy Court and (z) are expressly permitted by the terms of the Loan Documents and the 13-Week Budget or as otherwise expressly permitted under the First Day Orders.

**SECTION 6.21**      **Pre-Petition Indebtedness.** Except as provided in the Financing Orders or other orders entered by the Bankruptcy Court, the Borrower shall not make any adequate protection payments on account of any Pre-Petition Indebtedness.

**SECTION 6.22**      **Changes In Key Management.** Permit, at any time prior to the Maturity Date, Darol Lain (or any other individual approved by Required Lenders as a substitute for him in accordance with the terms of this Section 6.22) to cease whether voluntarily or involuntarily to devote substantially all of his business time to the management or operations of Borrower unless, in each case, a substitute or substitutes acceptable to Required Lenders is found for such individual within thirty (30) days of the date such individual announces his resignation or departure or is removed from his position (each, a “**Departure**”); provided, however, that if a substitute acceptable to Required Lenders has not been appointed within such period but Borrower is diligently attempting to recruit a substitute, this covenant shall not be deemed in breach until the sixtieth (60th) day from the date of the relevant Departure.

**SECTION 6.23**      **Compliance with Milestones.** The Borrower shall achieve the Milestones set forth in Schedule M by the dates specified therein (or such later date as may be agreed to by the Agent in its sole discretion), in form and substance, to Agent and Required Lenders.

ARTICLE VII

[RESERVED]

ARTICLE VIII

EVENTS OF DEFAULT

**SECTION 8.01**      **Events of Default.** Upon the occurrence and during the continuance of the following events (“**Events of Default**”):

(a) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings hereunder, or any representation, warranty, statement or information contained in any, certificate, or other document furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in Section 5.02, 5.03(a), 5.08, 5.15 or in Article VI;

(e) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of thirty (30) days after written notice thereof from the Agent or any Lender to the Borrower;

(f) the Borrower shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations) incurred or entered into after the Petition Date, when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness entered into after the Petition Date if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; *provided that*, it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$75,000 at any one time (provided that, the “principal amount” in respect of any Hedging Obligations of the Borrower at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Borrower would be required to pay if the related Hedging Agreement were terminated at such time);

(g) (i) the E-Rate program shall have been terminated, or (ii) the Borrower, or any Intermediate Unit party to an IU Contract which is supported by funds provided through the E-Rate or FCC Fund Programs, shall have been disqualified or disbarred from receiving funds pursuant to E-Rate or FCC Fund;

(h) (i) the failure of Borrower to comply from and after the date hereof with any obligations under any Material Contract or the occurrence of any breach, default, condition or event with respect to any Material Contract, if the effect of such failure or occurrence is to cause the counterparty under such Material Contract to terminate such Material Contract or (ii) any other condition shall exist or arise the result of which is to cause the gross profits arising from Material Contracts, taken as a whole, to decline by an aggregate amount equal to ten percent (10%) or more of the gross profits expected to be generated by such Material Contracts, taken as a whole, in the current fiscal year;

(i) (x) except in connection with the First Telecom Claim, one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of \$100,000 (exclusive of amounts covered by insurance for which coverage is not denied) in respect of obligations arising after the Petition Date shall be rendered against the Borrower and the same shall remain undischarged, unvacated or unbonded 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 levy upon properties of the Borrower to enforce any such judgment; and/or (y) in the case of solely the First Telecom Claim, one or more orders or decrees for the payment of money in an aggregate amount in excess of \$500,000 (exclusive of amounts covered by insurance for which coverage is not denied) in respect of obligations arising after the Petition Date shall be rendered against the Borrower and the same shall remain undischarged, unvacated or unbonded for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by First Telecom to levy upon properties of the Borrower to enforce any such judgment;

(j) one or more ERISA Events arising after the Petition Date shall have occurred (other than any ERISA Event that arises out of (i) the Borrower's seeking of a funding waiver under Code Section 412(c), (ii) failing to satisfy the minimum funding standard prior to or during the pendency of any funding waiver request or (iii) attempting to terminate any of the pension plans listed on Schedule 3.17, each such event arising out of (i)-(iii), hereinafter called an "**Excluded ERISA Event**") that, when taken together with all other such ERISA Events that have occurred after the Petition Date (other than an Excluded ERISA Event), could reasonably be expected to result in liability for the Borrower and its ERISA Affiliates or the imposition of a Lien on any properties of the Borrower, in either event in an amount which could reasonably be expected to exceed \$100,000;

(k) any security interest and Lien purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents or the Financing Orders (including a perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in such Security Document or the Financing Orders)) in favor of the Agent, or shall be asserted by the Borrower not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement, such Security Document or the Financing Orders) security interest in or Lien on the Collateral covered thereby;

(l) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by the Borrower or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or the Borrower shall repudiate or deny any portion of its liability or obligation for the payment of Obligations;

(m) the Borrower shall fail to achieve the Milestones set forth in Schedule M by the dates specified therein (or such later date as may be agreed to by the Agent in its sole discretion), in form and substance satisfactory to Agent and Required Lenders; or

(n) the occurrence of any of the following in the Chapter 11 Case:

(i) the entry of an order or ruling (which has not been withdrawn, dismissed or reversed): (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement (unless such financing is proposed to refinance and pay in full the Obligations due under this Agreement with the termination of all related lending commitments hereunder); (x) to grant any Lien other than Permitted Liens and the Carve-Out upon or affecting any Collateral without the prior written consent of the Agent (unless the granting of such Lien is simultaneous with a refinancing to pay in full in cash all Obligations (including, without limitation, all PIK Interest) due under this Agreement and the termination of the Lenders' Commitments hereunder); or (y) except as provided in the Financing Orders, to use cash collateral of Agent under Section 363(c) of the Bankruptcy Code without the prior written consent of the Agent;

(ii) the filing of any Reorganization Plan or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by the Borrower (y) which plan does not propose to provide for the payment in full in cash of all Obligations (including, without limitation, all PIK Interest) under this Agreement (or conversion of such Obligations and Commitment to an exit facility consistent with the Exit Arrangements Term Sheet), or (b) if such plan does not propose payment in full in cash or cash equivalents of all Obligations (including, without limitation, all PIK Interest) under this Agreement (or conversion of such Obligations and Commitment to an exit facility consistent with the Exit Arrangements Term Sheet) and the termination of the Lenders' Commitments hereunder, in each case to which the Agent and the Required Lenders do not consent or otherwise agree to the treatment of their claims.

(iii) the entry of an order in the Chapter 11 Case confirming a Reorganization Plan that does not contain a provision for termination of the Commitments and repayment in full in cash of all of the Obligations under this Agreement, to which the Agent and the Required Lenders do not consent or otherwise agree to the treatment of their claims;

(iv) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Interim Order or the Final Order (except with respect to ministerial changes) without the written consent of the Agent or the filing of a motion for reconsideration with respect to the Interim Order or the Final Order;

(v) the Final Order is not entered on or before the date that is thirty-five (35) days after the date of this Agreement (which date, at the request of the Borrower and with the consent of the Agent, may be extended for another five (5) Business Days), or prior to or immediately following the expiration of the Interim Order;

(vi) the entry of an order allowing any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Agent, any Lender or any of the Collateral;

(vii) the appointment of an interim or permanent trustee in the Chapter 11 Case or the appointment of a receiver or an examiner in the Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, the reorganization of the Borrower (or the Borrower seeks or acquiesces in such relief);

(viii) the sale without the Agent's and the Required Lenders' consent, of all or substantially all of the assets of the Borrower through a sale under Section 363 of the Bankruptcy Code, through a confirmed Reorganization Plan in the Chapter 11 Case, or otherwise (or the Borrower seeks or acquiesces in such relief) that does not provide for payment in full in cash of the Obligations and termination of Lenders' Commitments (or conversion of such Obligations and Commitment to an exit facility consistent with the Exit Arrangements Term Sheet);

(ix) the dismissal of the Chapter 11 Case, or the conversion of the Chapter 11 Case from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code (except as consented to by the Agent and the Required Lenders) or the Borrower shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case under Section 1112 of the Bankruptcy Code, conversion of the Chapter 11 Case or otherwise;

(x) other than pursuant to the First Day Orders or the Financing Orders, the entry of a final order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral having value in excess of \$250,000 , or (y) with respect to any Lien on or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

(xi) Reserved;

(xii) the entry of an order in the Chapter 11 Case avoiding or requiring disgorgement of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xiii) the failure of the Borrower to perform any of its material obligations under the Interim Order or the Final Order, which materially and adversely affects the interests of any of the Lenders, taken as a whole, the Agent as reasonably determined by the Agent and the Required Lenders, as the case may be;

(xiv) except as otherwise provided by the Financing Orders, the entry of an order in the Chapter 11 Case granting any other super priority administrative claim or Lien equal or superior to that granted to Agent, on behalf of itself and/or the Secured Parties;

(xv) the Borrower's return of goods constituting Collateral pursuant to Section 546(g) of the Bankruptcy Code other than in accordance with any such program (y) approved pursuant to a First Day Order, or (b) otherwise approved by the Bankruptcy Court.

then, and in every such event, and at any time thereafter during the continuance of such event, the Agent may, and at the request of the Required Lenders shall, subject to the applicable provisions of



the Loan Documents and the Financing Orders, by notice to the Borrower, take any or all of the following actions, at the same or different times:

(A) suspend the Commitments with respect to additional Loans, whereupon any additional Credit Extension shall be made or incurred in the Agent's sole discretion (or in the sole discretion of the Required Lenders, if such suspension occurred at their direction) so long as such Event of Default is continuing;

(B) declare the Commitments to be terminated forthwith, whereupon the Commitments and such obligations shall immediately terminate;

(C) increase the rate of interest applicable to the Loans to the interest rate specified in Section 2.06(c), to the extent permitted thereunder;

(D) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind (except as provided in the Loan Documents and the Financing Orders), all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding;

(E) direct the Borrower to sell or otherwise dispose of any or all of the Collateral on terms and conditions reasonably acceptable to the Agent and the Required Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code and the Agent (on behalf of the Lenders) shall have the right to "credit bid" the allowed amount of the Lenders' claims during any sale of all or substantially all of the Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any Reorganization Plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code (and, without limiting the foregoing, direct the Borrower to assume and assign any lease or executory contract included in the Collateral to the Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code,

(F) enter onto the premises the Borrower in connection with an orderly liquidation of the Collateral, and/or

(G) exercise any rights and remedies provided to such Agent under the Loan Documents or at law or in equity, including all remedies provided for under the UCC and, pursuant to the Interim Order and the Final Order.

Upon the occurrence and during the continuance of an Event of Default and the exercise by the Agent, on behalf of the Lenders, of their rights and remedies under this Agreement and the other Loan Documents: (a) the Borrower shall use commercially reasonable efforts to assist the Agent and the Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Agent and the Required Lenders; and (b) the Borrower will be deemed to have assumed and assigned to the Lenders all executory contracts and leases to which the Borrower is a party (without further order or action of the Bankruptcy Court or any other Person),

other than executory contracts or leases specifically excepted by the Lenders by written notice to Borrower.

**ARTICLE IX**

**COLLATERAL ACCOUNT; APPLICATION OF COLLATERAL PROCEEDS**

**SECTION 9.01      Collateral Account.**

(a) The Agent is hereby authorized to establish and maintain, in the name of the Agent, a restricted deposit account designated “Last Mile Inc. - Collateral Account.” The Borrower shall deposit into the Collateral Account from time to time (i) the cash proceeds of any of the Collateral (including pursuant to any disposition thereof) to the extent contemplated herein or in any other Loan Document, (ii) the cash proceeds of any Casualty Event with respect to Collateral, to the extent contemplated herein or in any other Loan Document, and (iii) any cash the Borrower is required to pledge as additional collateral security hereunder pursuant to the Loan Documents.

(b) The balance from time to time in the Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. So long as no Event of Default has occurred and is continuing or will result therefrom, the Agent shall within one (1) Business Day of receiving a request of the Borrower for release of cash proceeds from the Collateral Account constituting Net Cash Proceeds relating to any Casualty Event or Asset Sale remit such cash proceeds on deposit in the Collateral Account to or upon the order of the Borrower, so long as the Borrower has satisfied the conditions relating thereto set forth in Section 9.02. At any time following the occurrence and during the continuance of an Event of Default, the Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion apply or cause to be applied (subject to collection) the balance from time to time outstanding to the credit of the Collateral Account to the payment of the Obligations in the manner specified in Section 9.02 hereof and shall provide written notice of any such application. The Borrower shall have no right to withdraw, transfer or otherwise receive any funds deposited in the Collateral Account except to the extent specifically provided herein.

(c) Amounts on deposit in the Collateral Account shall be invested and reinvested from time to time in Cash Equivalents as the Borrower (or, after the occurrence and during the continuance of an Event of Default, the Agent) shall determine by written instruction to the Agent, or if no such instructions are given, then as the Agent, in its sole discretion, shall determine which Cash Equivalents shall be held in the name and be under the control of the Agent (or any sub-agent); *provided* that at any time after the occurrence and during the continuance of an Event of Default, the Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such Cash Equivalents and to apply or cause to be applied the proceeds thereof to the payment of the Obligations in the manner specified in Section 9.02 hereof.

**SECTION 9.02      Application of Proceeds.** The proceeds received by the Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Agent of its remedies shall be applied, in full or in part, together with any other sums then held by Agent pursuant to this Agreement, promptly by the Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Agent in connection therewith and all amounts for which the Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the payment in full in cash, pro rata, of interest and other amounts constituting Obligations (other than principal) and any fees, premiums and scheduled periodic payments due under Hedging Agreements constituting Secured Obligations and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *Fourth*, to the payment in full in cash, *pro rata*, of principal amount of the Obligations and any premium thereon and any breakage, termination or other payments under Hedging Agreements constituting Secured Obligations and any interest accrued thereon; and

(e) *Fifth*, the balance, if any, to the person lawfully entitled thereto (including the Borrower or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (e) of this Section 9.02, the Borrower shall remain liable, jointly and severally, for any deficiency.

## ARTICLE X

### THE AGENT

**SECTION 10.01** Appointment. Each Lender hereby irrevocably designates and appoints the Agent as an agent of such Lender under this Agreement and the other Loan Documents. Each Lender that holds Loans or has Commitments and each holder of any related Hedging Agreements and each person holding Overdraft Obligations (in each case, in its capacity as such) hereby irrevocably designates and appoints the Agent as an agent of such person under this Agreement. Each Lender irrevocably authorizes Agent, in such capacity, through its agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order.

**SECTION 10.02**     **Agent in Its Individual Capacity.** Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or other Affiliate thereof as if it were not an Agent hereunder.

**SECTION 10.03**     **Exculpatory Provisions.** Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02), and (c) except as expressly set forth in the Loan Documents, Agent shall not have any duty to disclose or shall be liable for the failure to disclose, any information relating to the Borrower that is communicated to or obtained by the bank serving as Agent or any of its Affiliates in any capacity. Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or willful misconduct. Agent shall not be deemed to have knowledge of any Default unless and until written notice thereof is given to Agent by the Borrower or a Lender, and Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document.

**SECTION 10.04**     **Reliance by Agent.** Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by a proper person. Agent also may rely upon any statement made to it orally and believed by it to be made by a proper person, and shall not incur any liability for relying thereon. Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or advisors.

**SECTION 10.05**     **Delegation of Duties.** Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through or delegate any one or more sub-agents appointed by Agent. Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of Agent and any such sub-agent.

**SECTION 10.06**     **Successor Agent.** Any Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice, the Required Lenders shall have the right to appoint a successor to Agent from among the Lenders; and so long as no

Default has occurred and is continuing the Borrower (such approval not to be unreasonably withheld). If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after such retiring Agent gives notice of its resignation, then such retiring Agent may, on behalf of the Lenders, appoint a successor to Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least \$500,000,000; *provided* that if such retiring Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, such retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders appoint a successor to such Agent with the approval of the Borrower (which approval shall not be unreasonably withheld). Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article X and Section 11.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

**SECTION 10.07**      **Non-Reliance on Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

**SECTION 10.08**      **[Reserved].**

**SECTION 10.09**      **Indemnification.** The Lenders severally agree to indemnify Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective outstanding Loans and Commitments in effect on the date on which indemnification is sought under this Section 10.09 (or, if indemnification is sought after the date upon which all Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding Loans and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Agent under or in connection with any of the foregoing; *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from Agent's gross

negligence or willful misconduct. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

**SECTION 10.10** **Actions in Concert.** Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Notes (including exercising any rights of setoff) without first obtaining prior written consent of the Agent and the Required Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement and the Notes shall be taken in concert and at the direction or with the consent of the Agent or the Required Lenders and as provided in Section 8.01.

**SECTION 10.11** **Enforcement.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent, or as the Required Lenders may require or otherwise direct the Agent, for the benefit of all Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any bankruptcy or insolvency law.

**SECTION 10.12** **Withholding Tax.** To the extent required by any applicable law, the Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. Without limiting the provisions of Section 2.15(a) or (c), each Lender shall, and does hereby, indemnify the Agent, and shall make payable in respect thereof within 30 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Agent) incurred by or asserted against the Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Agent to properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Agent under this Section 10.12. The agreements in this Section 10.12 shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.01** **Notices.** 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 telecopier, as follows:

- (a) if to the Borrower, to it at:

Last Mile Inc.  
120 South 16th Street  
Lebanon, PA 17042  
Attention: Darol Lain, CEO and President  
Telecopier No.: (717) 270-4338

with copies to (which shall not constitute notice):

Lowenstein Sandler PC  
1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
Attention: Thomas A. Pitta  
Telecopier No.: (212) 262-7402

- (b) if to the Agent, to it at:

Global Leveraged Capital Advisors, LLC  
805 Third Avenue  
20th Floor  
New York, New York 10022  
Attention: Jeffrey J. Youle  
Telecopier No.: (646) 619-4122

with a copy to (which shall not constitute notice):

Brown Rudnick LLP  
Seven Times Square  
New York, New York 10036  
Attention: Robert J. Stark  
Telecopier No.: (212) 938-2862  
Attention: Mary D. Bucci  
Telecopier No.: (617) 289-0478

(c) if to a Lender, to it at its address (or telecopier number) set forth on the applicable Lender Addendum or in the Assignment and Assumption pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopier or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 11.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 11.01, and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

(d) Electronic Communications. Notices and other communications to the Lenders hereunder may (subject to Section 11.01(f)) be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including as set forth in Section 11.01(f)); *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an 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 such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet web site 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 web site address therefor.

(e) Change of Address, etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(f) Posting. The Borrower hereby agrees that it will provide to the Agent all information, documents and other materials that it is obligated to furnish to the Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Agent at jjy@glc11c.com or at such other e-mail address(es) provided to the Borrower from time to time or in such other form, including hard copy delivery thereof, as the Agent shall require. In addition, the Borrower agrees to continue to provide the Communications to the Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Agent shall require. Nothing in this Section 11.01 shall prejudice the right of the Agent, any Lender or the Borrower to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as Agent shall require.

To the extent consented to by the Agent in writing from time to time, Agent agrees that receipt of the Communications by the Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Agent for purposes of the Loan Documents; *provided* that the Borrower shall also deliver to the Agent an executed original of each Compliance Certificate required to be delivered hereunder.



**SECTION 11.02      Waivers; Amendment.**

(a) No failure or delay by Agent or any 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 Agent and the Lenders hereunder and under the other Loan Documents 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 the Borrower 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 shall not be construed as a waiver of any Default, regardless of whether Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Except as provided in paragraph (c) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Agent and the Borrower, in each case with the written consent of the Required Lenders; provided that no such agreement shall:

(i) increase the Commitment of any Lender without the written consent of such Lender;

(ii) reduce the principal amount or premium of any Loan or reduce the rate of interest thereon, or reduce any Fees payable hereunder, or change the currency of payment of any Obligation, without the written consent of each Lender affected thereby;

(iii) postpone or extend the maturity of any Loan or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment beyond the Maturity Date, without the written consent of each Lender affected thereby or amend the definition of "Interest Period" so as to allow intervals of greater than six months without the regard to the consent of each affected Lender;

(iv) change Section 2.14(b) or (c) in a manner that would alter the *pro rata* sharing of payments or setoffs required thereby, without the written consent of each Lender;

(v) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender;

(vi) release any Guarantor from its guarantee, or limit its liability in respect of any guarantee, without the written consent of each Lender; or

(vii) release all or substantially all of the Collateral from the Liens under the Financing Orders or the Security Documents or alter the relative priorities of the Obligations entitled

to the Liens under the Financing Orders or the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations), in each case without the written consent of each Lender;

*provided, further*, that (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent without the prior written consent of the Agent, as the case may be and (2) no such agreement shall increase the aggregate amount of Commitments (or increase the principal amount of outstanding Loans) without the prior written consent of the Required Lenders. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by the Borrower, the Required Lenders and the Agent if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of, premium, if any, and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement.

Notwithstanding anything to the contrary contained in this Section 11.02, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except to the extent the consent of such Lender would be required under clause (i), (ii) or (iii) in the proviso to the first sentence of this Section 11.02(b).

(c) If, in connection with any proposed change, waiver, discharge or termination of the provisions of this Agreement as contemplated by Section 11.02(b) (other than clause (iii) of such Section), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right to replace (subject to the last sentence of Section 11.02(b)) all, but not less than all, of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more persons pursuant to Section 2.16 so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

(d) Notwithstanding anything to the contrary contained herein to the contrary: (i) the amounts set forth in the line-item for “Restructuring Professional Fees” set forth in the initial 13-Week Budget may not be decreased in any successive 13-Week Budget without the prior written consent of the Committee, such consent not to be unreasonably withheld, conditioned or delayed; and (ii) neither Section 4.03 nor the Exit Arrangement Term Sheet may be amended, modified, supplemented or waived without the prior written consent of the Committee, such consent not to be unreasonably withheld, conditioned or delayed; *provided, however*, that the Debtor and the Lenders may agree (in their respective sole discretion) to extend the Maturity Date for up to sixty (60) days without the consent of the Committee.

**SECTION 11.03      Expenses; Indemnity.**

(a) The Borrower agrees to pay, promptly upon demand:

(i) all reasonable out-of-pocket costs and expenses incurred by the Agent, including the reasonable fees, charges and disbursements of Advisors for the Agent and the Agent, in connection with the preparation, execution and delivery of the Loan Documents, the administration of the Loans and Commitments, the perfection and maintenance of the Liens securing the Collateral

and any actual or proposed amendment, supplement or waiver of any of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated);

(ii) all reasonable out-of-pocket costs and expenses incurred by the Agent, including the reasonable fees, charges and disbursements of Advisors for the Agent, in connection with any action, suit or other proceeding affecting the Collateral or any part thereof, in which action, suit or proceeding the Agent is made a party or participates or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Agent to defend or uphold the Liens granted pursuant to the Financing Orders or by the Security Documents (including any action, suit or proceeding to establish or uphold the compliance of the Collateral with any Requirements of Law);

(iii) all costs and expenses incurred by the Agent or any Lender, including the reasonable fees, charges and disbursements of Advisors for the Agent or any Lender, incurred in connection with the enforcement or protection of its rights under the Loan Documents, including its rights under this Section 11.03(a), or in connection with the Loans made hereunder and the collection of the Obligations, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of the Obligations; provided, however, that Borrower shall not be liable for the costs and expenses of more than one (1) counsel to the Lenders, as a group; and

(iv) all of the reasonable out-of-pocket fees and expenses of the Advisors incurred from and after the Closing Date in connection with the preparation, reproduction, delivery and review of pleadings, documents and reports related to the Chapter 11 Case (including, without limitation, the Loan Documents) and any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Chapter 11 Case and any subsequent case under Chapter 7 of the Bankruptcy Code, and general monitoring of the Chapter 11 Case and any subsequent case under Chapter 7 of the Bankruptcy Code.

(b) The Borrower agrees to indemnify the Agent, each Lender, each Affiliate of any of the foregoing persons and each of their respective partners, controlling persons, directors, officers, trustees, employees and agents (each such person being called an “**Indemnitee**”) against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities, penalties, judgments, suits and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) without duplication of amounts payable pursuant to, and subject to the limitations set forth in, Section 11.03(a), the execution, delivery, performance, administration or enforcement of the Loan Documents, (ii) any actual or proposed use of the proceeds of the Loans, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or Release or threatened Release of Hazardous Materials, on, at, under or from any property owned, leased or operated by the Borrower at any time, or any Environmental Claim related in any way to the Borrower; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, 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.

(c) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of the Loans, the release of all or any portion of the

Collateral, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agent or any Lender. All amounts due under this Section 11.03 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(d) To the extent that the Borrower fails to promptly pay any amount required to be paid by it to the Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agent, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent in its capacity as such. For purposes hereof, a Lender's "*pro rata share*" shall be determined based upon its share of the sum of the total Loan Exposure, outstanding Loans and unused Commitments at the time.

**SECTION 11.04      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, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender shall have the right at any time to assign to an Eligible Assignee 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); *provided* (i) that except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Agent otherwise consents, (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, except that this clause (ii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Type of Commitments or Loans, (iii) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (provided that only one such fee shall be payable in the event of contemporaneous Assignments to or by two or more Approved Funds), and (iv) the assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement (provided that any liability of the Borrower to such assignee under Section 2.12, 2.13 or 2.15 shall be limited to the amount, if any, that would have been payable thereunder by the Borrower in the absence of such assignment, except to the extent any such amounts are attributable to a Change in Law occurring after the date of such assignment), and the assigning

Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be null and void to effect such assignment or transfer and instead shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with and subject to the limitations on sales of participations set forth in this Section 11.04.

(c) The Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive in the absence of manifest error, and Borrower, the Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender shall have the right at any time, without the consent of the Borrower or the Agent, to sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) such participation is recorded in the register described in the last sentence of this Section 11.04(e). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii) or (iii) of the first proviso to Section 11.02(b) that affects such Participant. Subject to paragraph (f) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 (subject to the requirements and limitations of Section 2.15) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that such Participant agrees in writing to be subject to Section 2.14(c) as though it were a Lender. Each Lender shall,

acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain at one of its offices a register on which it records the names and addresses of its Participants, and the amount and terms of its participations.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, 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 a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of the Borrower or the Agent, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities; *provided* that, with respect to any Loans, the documentation governing or evidencing such collateral assignment or pledge shall provide that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of this Section 11.4 concerning assignments and shall not be effective to transfer any rights under this Agreement or in any Loan under this Agreement unless the requirements of this Section 11.04 concerning assignments are fully satisfied.

(h) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recording system, as the case may be, to the extent and as provided for under 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 11.05**      **Survival of Agreement.** All covenants, agreements, representations and warranties made by the Borrower 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, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any 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 of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.14, 2.15 and 11.03 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the Commitments or the termination of this Agreement or any provision hereof.

**SECTION 11.06**      **Counterparts; Integration; Effectiveness.** 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 the Fee Letters 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. This Agreement shall become effective when it shall have been executed by the Agent and when the Agent 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. Delivery of an executed counterpart of a signature page of this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 11.07**      **Severability.** Any provision of this Agreement 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 hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 11.08**      **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates are hereby authorized (notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion to, hearing before, or order from, the Bankruptcy Court) but subject in all cases to the provisions of the Financing Orders, 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 such Lender or Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

**SECTION 11.09**      **Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York. The Borrower hereby consents and agrees that the Bankruptcy Court (or if the reference is withdrawn, the applicable United States District Court) shall have exclusive jurisdiction to hear and determine any claims or disputes between the Borrower, Agent and the Lenders pertaining to this Agreement or any of the other Loan Documents related to this Agreement or to any other matter arising out of or relating to this Agreement; *provided*, that Agent, the Lenders and the Borrower acknowledge that any appeals from the Bankruptcy Court may have to be heard by a court other than the Bankruptcy Court; *provided, further*, that nothing in this Agreement shall be deemed or operate to preclude Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Agent. The Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any court, and the Borrower hereby waives any objection that Borrower may have based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower hereby waives personal service of the summons, complaint

and other process issued in any such action or suit and agrees that service of such summons, complaint and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in Section 11.01 of this Agreement and that service so made shall be deemed completed upon the earlier of the Borrower's actual receipt thereof or three (3) days after deposit in the United States mail, proper postage prepaid.

(b) The Borrower 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 Section 11.09(a). 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.

(c) Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in Section 11.01. 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 applicable law.

**SECTION 11.10** 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 (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or 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 11.11** 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 11.12** Confidentiality. Neither Agent nor any Lender shall disclose any Confidential Information to any person without the consent of the Borrower, other than (a) to Agent's or such Lender's Affiliates and their officers, directors, employees, agents and advisors and to potential lenders, pledgees under Section 11.04(g) and Participants, and then only if such potential lender or Participant has agreed to be bound by the terms of this Section 11.12 (*provided* that if such potential lender or participant is not a commercial lending institution or fund that makes or holds bank loans in the ordinary course of its business the consent of the Borrower shall be required prior to such disclosure and such consent shall not affect the Bon-owner's consent rights provided for in Section 11.04) and any other confidentiality agreement entered into by Agent or such Lender with respect to such Confidential Information, (b) as required by any law, rule or regulation or judicial process, (c) as requested or required by any state, federal or foreign Governmental Authority or regulatory authority or examiner regulating such Lender Party (including the National Association of Insurance Commissioners), (d) to any direct or indirect contractual counterparty in any swap, hedge or similar agreement (or such professional advisor) agrees to be bound by the provisions of this Section 11.12, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights



hereunder or thereunder in a related court proceeding so long as such Confidential Information is (i) filed under seal with the applicable court, (ii) used in a manner consistent with any applicable protective order entered by any applicable court proceeding, or (iii) as may be agreed between the Agent and the Borrower and (f) when required by it, to S&P, Agent, provided that, prior to any such disclosure, each such rating agency shall undertake to preserve the confidentiality of any Confidential Information relating to the Borrower received by it from such Lender. Neither Agent nor any Lender shall disclose any Confidential Information to any person in contravention of any confidentiality agreement entered into by Agent or such Lender. “**Confidential Information**” means information concerning the Borrower of any of its direct or indirect shareholders, or any of their respective employees, directors, or Subsidiaries, or Affiliates (including without limitation the Permitted Holders) received by Agent or any Lender on a confidential basis from the Borrower or any other person under or pursuant to this Agreement or any other Loan Document including without limitation financial terms and financial and organizational information contained in any documents, statements, certificates, materials or information furnished, or to be furnished, by or on behalf of the Borrower or any other person on a confidential basis in connection with this Agreement and the Loan Documents, but does not include any such information that (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any of its direct or indirect shareholders, or any of their respective employees, directors, Subsidiaries or Affiliates (including without limitation, the Permitted Holders) or any of their respective agents or representatives.

**SECTION 11.13 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 such 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 such Lender.

**SECTION 11.14 Lender Addendum.** Each Lender to become a party to this Agreement on the Closing Date shall do so by delivering to the Agent a Lender Addendum duly executed by such Lender, the Borrower and the Agent.

**SECTION 11.15 Obligations Absolute.** To the fullest extent permitted by applicable law, all obligations of the Borrower hereunder or the granting of any Lien on any property shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Borrower;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against the Borrower;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;

(e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Borrower.

**SECTION 11.16 USA PATRIOT Act Notice.** Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name, address and tax identification number of the Borrower and other information regarding the Borrower that will allow such Lender or the Agent, as applicable, to identify the Borrower in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to the Lenders and the Agent.

**SECTION 11.17 Parties including the Trustees; Bankruptcy Court Proceedings.** This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Borrower, the bankruptcy estate of the Borrower, and any trustee, other bankruptcy estate representative or any successor-in-interest of the Borrower in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of Agent and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Borrower to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent file financing statements or otherwise perfect its Liens under applicable law. The Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the express written consent of the Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by the Borrower without the prior express written consent of Agent and Lenders shall be void. The terms and provisions of this Agreement are

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for the purpose of defining the relative rights and obligations of the Borrower, Agent and Lenders with respect to the transactions contemplated hereby and no person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto have caused this Senior, Secured, Super-Priority Debtor-In-Possession Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**BORROWER:**

**LAST MILE INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGENT:**

**GLOBAL LEVERAGED CAPITAL  
ADVISORS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**GLOBAL LEVERAGED CAPITAL PRIMARY  
CREDIT FUND, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_