

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

**FORM 10-Q**

(MARK ONE)

- ☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2015**  
**OR**
- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**FOR THE TRANSITION PERIOD FROM**                      **TO**  
**Commission File Number 001-36779**

**On Deck Capital, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**42-1709682**  
(I.R.S. Employer  
Identification No.)

**1400 Broadway, 25th Floor, New York, New York**  
(Address of principal executive offices)

**10018**  
(Zip Code)

**(888) 269-4246**  
(Registrant’s telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The number of shares of the registrant’s common stock outstanding as of July 31, 2015 was 69,587,381 .

**On Deck Capital, Inc.**

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# PART I - FINANCIAL INFORMATION

## Item 1. Unaudited Condensed Consolidated Financial Statements

### ON DECK CAPITAL, INC. AND SUBSIDIARIES

#### Unaudited Condensed Consolidated Balance Sheets (in thousands, except share and per share data)

	June 30, 2015	December 31, 2014
<b>Assets</b>		
Cash and cash equivalents	\$ 179,692	\$ 220,433
Restricted cash	28,267	29,448
Loans	513,919	504,107
Less: Allowance for loan losses	(53,052)	(49,804)
Loans, net of allowance for loan losses	460,867	454,303
Loans held for sale	13,317	1,523
Deferred debt issuance costs	5,175	5,374
Property, equipment and software, net	17,494	13,929
Other assets	13,491	4,622
<b>Total assets</b>	<b>\$ 718,303</b>	<b>\$ 729,632</b>
<b>Liabilities and equity</b>		
Liabilities:		
Accounts payable	\$ 5,743	\$ 4,360
Interest payable	663	819
Funding debt	368,382	387,928
Corporate debt	—	12,000
Accrued expenses and other liabilities	22,670	13,920
<b>Total liabilities</b>	<b>397,458</b>	<b>419,027</b>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Common stock—\$0.005 par value, 1,000,000,000 shares authorized and 69,525,505 and 69,031,719 shares issued and outstanding at June 30, 2015 and December 31, 2014, respectively	363	360
Treasury stock—at cost	(5,843)	(5,656)
Additional paid-in capital	447,042	442,969
Accumulated deficit	(127,384)	(127,068)
<b>Total On Deck Capital, Inc.'s stockholders' equity</b>	<b>314,178</b>	<b>310,605</b>
Noncontrolling interest	6,667	—
<b>Total equity</b>	<b>320,845</b>	<b>310,605</b>
<b>Total liabilities and equity</b>	<b>\$ 718,303</b>	<b>\$ 729,632</b>

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

**ON DECK CAPITAL, INC. AND SUBSIDIARIES**  
**Unaudited Condensed Consolidated Statements of Operations**  
(in thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Revenue:				
Interest income	\$ 50,248	\$ 32,864	\$ 98,947	\$ 59,212
Gain on sales of loans	11,710	1,584	18,389	2,927
Other revenue	1,354	1,054	2,434	1,925
Gross revenue	63,312	35,502	119,770	64,064
Cost of revenue:				
Provision for loan losses	15,526	13,073	38,626	29,652
Funding costs	4,771	3,801	9,816	8,441
Total cost of revenue	20,297	16,874	48,442	38,093
Net revenue	43,015	18,628	71,328	25,971
Operating expense:				
Sales and marketing	14,981	7,113	27,656	13,474
Technology and analytics	10,206	3,799	18,794	6,708
Processing and servicing	3,015	2,084	5,717	3,693
General and administrative	9,991	4,434	19,576	7,826
Total operating expense	38,193	17,430	71,743	31,701
Income (loss) from operations	4,822	1,198	(415)	(5,730)
Other expense:				
Interest expense	(74)	(62)	(180)	(219)
Warrant liability fair value adjustment	—	(2,190)	—	(8,822)
Total other expense	(74)	(2,252)	(180)	(9,041)
Income (loss) before provision for income taxes	4,748	(1,054)	(595)	(14,771)
Provision for income taxes	—	—	—	—
Net income (loss)	4,748	(1,054)	(595)	(14,771)
Accretion of dividends on redeemable convertible preferred stock	—	(3,596)	—	(6,200)
Net loss attributable to noncontrolling interest	232	—	232	—
Net income (loss) attributable to On Deck Capital, Inc. common stockholders	\$ 4,980	\$ (4,650)	\$ (363)	\$ (20,971)
Net income (loss) per share attributable to On Deck Capital, Inc. common stockholders:				
Basic	\$ 0.07	\$ (0.88)	\$ (0.01)	\$ (4.21)
Diluted	\$ 0.07	\$ (0.88)	\$ (0.01)	\$ (4.21)
Weighted-average common shares outstanding:				
Basic	69,479,737	5,262,317	69,366,278	4,983,554
Diluted	75,680,290	5,262,317	69,366,278	4,983,554

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

**ON DECK CAPITAL, INC. AND SUBSIDIARIES**  
**Unaudited Condensed Consolidated Statements of Cash Flows**  
(in thousands)

	Six Months Ended June 30,	
	2015	2014
<b>Cash flows from operating activities</b>		
Net loss	\$ (595)	\$ (14,771)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Provision for loan losses	38,626	29,652
Depreciation and amortization	2,943	1,755
Amortization of debt issuance costs	1,332	1,482
Stock-based compensation	4,358	637
Warrant liability fair value adjustment	—	8,826
Amortization of net deferred origination costs	18,317	12,322
Gain on sales of loans	(18,389)	(2,927)
Provision for unfunded loan commitment	807	71
Common stock warrant issuance	—	64
Gain on extinguishment of debt	(48)	—
Changes in operating assets and liabilities:		
Other assets	(8,823)	(941)
Accounts payable	2,946	512
Interest payable	(156)	(530)
Accrued expenses and other liabilities	7,352	1,437
Originations of loans held for sale	(196,119)	(53,677)
Payments of net deferred origination costs of loans held for sale	(7,954)	(3,317)
Proceeds from sale of loans held for sale	204,025	59,648
Repayments of term loans held for sale	1,664	591
Net cash provided by operating activities	50,286	40,834
<b>Cash flows from investing activities</b>		
Change in restricted cash	1,179	(165)
Purchases of property, equipment and software	(3,896)	(4,813)
Capitalized internal-use software	(2,254)	(1,248)
Originations of term loans and lines of credit, excluding rollovers into new originations	(511,726)	(359,793)
Proceeds from sale of loans held for investment	58,901	—
Payments of net deferred origination costs	(17,332)	(15,628)
Principal repayments of term loans and lines of credit	411,628	219,749
Net cash used in investing activities	(63,500)	(161,898)
<b>Cash flows from financing activities</b>		
Proceeds from exercise of stock options	187	355
Payments of initial public offering costs	(1,845)	—
Purchase of shares for treasury	(184)	—
Investment by noncontrolling interest	7,069	—
Proceeds from the issuance of redeemable convertible preferred stock	—	77,000
Proceeds from the issuance of funding debt	110,728	340,926
Payments of debt issuance costs	(1,133)	(3,993)
Repayment of funding debt principal	(130,226)	(266,911)

	Six Months Ended June 30,	
	2015	2014
Repayment of corporate debt principal	(12,000)	(12,000)
Net cash (used in) provided by financing activities	(27,404)	135,377
Effect of exchange rate changes on cash and cash equivalents	(123)	—
Net increase (decrease) in cash and cash equivalents	(40,741)	14,313
Cash and cash equivalents at beginning of period	220,433	4,670
Cash and cash equivalents at end of period	\$ 179,692	\$ 18,983
<b>Supplemental disclosure of other cash flow information</b>		
Cash paid for interest	\$ 8,087	\$ 7,493
<b>Supplemental disclosures of non-cash investing and financing activities</b>		
Stock-based compensation included in capitalized internal-use software	\$ 360	\$ 73
Unpaid principal balance of term loans rolled into new originations	\$ 127,174	\$ 61,947
Accretion of dividends on redeemable convertible preferred stock	\$ —	\$ 6,200

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

## ON DECK CAPITAL, INC. AND SUBSIDIARIES

### Notes to Unaudited Condensed Consolidated Financial Statements

#### 1. Organization

On Deck Capital, Inc.'s principal activity is providing financing products to small businesses located throughout the United States and Canada, including term loans and lines of credit. We use technology and analytics to aggregate data about a business and then quickly and efficiently analyze the creditworthiness of the business using our proprietary credit scoring model.

#### 2. Summary of Significant Accounting Policies

##### *Basis of Presentation and Principles of Consolidation*

The accompanying unaudited condensed consolidated financial statements and footnotes have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") as contained in the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") for interim financial information. All intercompany transactions and accounts have been eliminated in consolidation. The results of operations for the three and six months ended June 30, 2015 are not necessarily indicative of the results for the full year or the results for any future periods. We have reclassified certain prior-period amounts to conform to the current period's presentation. These unaudited condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements, including the related notes, and the other information contained in our Annual Report on Form 10-K for the year ended December 31, 2014. When used in these notes to condensed consolidated financial statements, the terms "we," "us," "our" or similar terms refers to On Deck Capital, Inc. and its consolidated subsidiaries.

During the six months ended June 30, 2015, we acquired a 55% interest in On Deck Capital Australia PTY LTD ("OnDeck Australia") with the remaining 45% owned by non-affiliated parties. We consolidate the financial position and results of operations of OnDeck Australia. The noncontrolling interest, which is presented as a separate component of our consolidated equity, represents the minority owners' proportionate share of the equity of the jointly owned entity. The noncontrolling interest is adjusted for the minority owners' share of the earnings, losses, investments and distributions.

##### *Use of Estimates*

The preparation of financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts in the condensed consolidated financial statements and accompanying notes. Significant estimates include allowance for loan losses, valuation of warrants, stock-based compensation expense, servicing assets/liabilities, capitalized software development costs, the useful lives of long-lived assets and valuation allowance for deferred tax assets. We base our estimates on historical experience, current events and other factors we believe to be reasonable under the circumstances. These estimates and assumptions are inherently subjective in nature; actual results may differ from these estimates and assumptions.

##### *Loans and Loans Held for Sale*

###### *Loans*

We originate term loans and lines of credit (collectively, "loans") that are generally short term in nature and require daily or weekly repayments. We have both the ability and intent to hold these loans to maturity. When we originate a term loan, the borrower grants us a security interest in its assets. We may or may not perfect our security interest by publicly filing a financing statement. Loans are carried at amortized cost, reduced by a valuation allowance for loan losses estimated as of the balance sheet dates. In accordance with ASC Subtopic 310-20, *Nonrefundable Fees and Other Costs*, the amortized cost of a loan is equal to the unpaid principal balance, plus net deferred origination costs. Net deferred origination costs are comprised of certain direct origination costs, net of all loan origination fees received. Loan origination fees include fees charged to the borrower related to origination that increase the loan's effective interest yield. Direct origination costs in excess of loan origination fees received are included in the loan balance and amortized over the term of the loan using the effective interest method. Loan origination costs are limited to direct costs attributable to originating a loan, including commissions and personnel costs directly related to the time spent by those individuals performing activities related to loan origination. Additionally, when a term loan is originated in conjunction with the extinguishment of a previously issued term loan, we determine whether this is a new loan or a modification to an existing loan in accordance with ASC 310-20. If accounted for as a new loan, any remaining unamortized net deferred costs are recognized when the new loan is originated. If accounted for as a modification, any remaining unamortized net deferred costs are amortized over the life of the modified loan.

###### *Loans Held for Sale*

*OnDeck Marketplace*® is a program whereby we originate and sell certain term loans to third-party institutional investors and retain servicing rights. We sell these whole loans to purchasers in exchange for a cash payment. A portion of our loans are originated for the purpose of being sold through *Marketplace*. These whole loans are initially classified as held for sale within a short period of time from the initial funding when the whole loan is identified for sale and a plan exists for the sale. From time to time we may reclassify certain loans from held for investment to held for sale. Loans held for sale, inclusive of net deferred origination costs, are recorded at the lower of cost or market until the loans are sold.

Because we continue to service the loans we sell, we evaluate whether a servicing asset or liability has been incurred. We estimate the fair value of the loan servicing asset or liability considering the contractual servicing fee revenue, adequate compensation for our servicing obligation, the non-delinquent principal balances of loans and projected servicing revenues over the remaining lives of the loans. As of June 30, 2015 and December 31, 2014, we serviced term loans we sold with remaining unpaid principal of \$202.6 million and \$79.7 million, respectively, and determined any servicing asset to be immaterial. During the three months ended June 30, 2015 and 2014 we sold through *Marketplace* loans with an unpaid principal balance of \$ 143.0 million and \$ 24.0 million, respectively, and during the six months ended June 30, 2015 and 2014 we sold loans with an unpaid principal balance of \$ 235.1 million and \$ 53.3 million, respectively.

#### *Allowance for Loan Losses*

The allowance for loan losses (“ALLL”) is established through periodic charges to the provision for loan losses. Loan losses are charged against the ALLL when we believe that the future collection of principal is unlikely. Subsequent recoveries, if any, are credited to the ALLL.

We evaluate the creditworthiness of our portfolio on a pooled basis due to its composition of small, homogeneous loans with similar general credit risk characteristics and diversification among variables including industry and geography. We use a proprietary forecast loss rate at origination for new loans that have not had the opportunity to make payments when they are first funded. The forecasted loss rate is updated daily to reflect actual loan performance, and the underlying ALLL model is updated monthly to reflect our assumptions. The allowance is subjective as it requires material estimates, including such factors as historical trends, known and inherent risks in the loan portfolio, adverse situations that may affect borrowers’ ability to repay and current economic conditions. Other qualitative factors considered may include items such as uncertainties in forecasting and modeling techniques, changes in portfolio composition, seasonality, business conditions and emerging trends. Recovery of the carrying value of loans is dependent to a great extent on conditions that may be beyond our control. Any combination of the aforementioned factors may adversely affect our loan portfolio resulting in increased delinquencies and loan losses and could require additional provisions for credit losses, which could impact future periods. In our opinion, we have provided adequate allowances to absorb probable credit losses inherent in our loan portfolio based on available and relevant information affecting the loan portfolio at each balance sheet date.

#### *Accrual for Unfunded Loan Commitments and Off-Balance Sheet Credit Exposures*

For our line of credit product we estimate probable losses on unfunded loan commitments similarly to the ALLL process and include the calculated amount in accrued expenses and other liabilities. We believe the accrual for unfunded loan commitments is sufficient to absorb estimated probable losses related to these unfunded credit commitments. The determination of the adequacy of the accrual is based on evaluations of the unfunded credit commitments, including an assessment of the probability of commitment usage, credit risk factors for lines of credit outstanding to these customers and the terms and expiration dates of the unfunded credit commitments. As of June 30, 2015 and December 31, 2014, our off-balance sheet credit exposure related to the undrawn line of credit balances was \$50.6 million and \$28.7 million, respectively. The related accrual for unfunded loan commitments was \$2.1 million and \$1.3 million as of June 30, 2015 and December 31, 2014, respectively. Net adjustments to the accrual for unfunded loan commitments are included in general and administrative expenses.

#### *Accrual for Third-Party Representations*

We have made certain representations to third parties that purchase loans through *OnDeck Marketplace*. Any significant estimated post-sale obligations or contingent obligations to the purchaser of the loans, such as fraudulent loan repurchase obligations or excess loss indemnification obligations, would be accrued if probable and estimable in accordance with ASC 450, *Contingencies*. There are no restricted assets related to these agreements. As of June 30, 2015 and December 31, 2014, we have not incurred any significant losses and or material liability for probable obligations requiring accrual.

#### ***Revenue Recognition***

##### *Interest Income*

We generate revenue primarily through interest and origination fees earned on loans originated and held to maturity.

We recognize interest and origination fee revenue over the terms of the underlying loans using the effective interest method. Origination fees collected but not yet recognized as revenue are netted with direct origination costs and presented as a component of loans in our condensed consolidated balance sheets.

Historically, borrowers who elected to prepay term loans were required to pay future interest and fees that would have been assessed had the term loan been repaid in accordance with its original agreement. Beginning in December 2014, certain term loans may be eligible for a discount of future interest and fees that would have been assessed had the loan been repaid in accordance with its original agreement.

#### *Gain on Sales of Loans*

In October 2013, we started OnDeck *Marketplace* whereby we originate and sell certain loans to third-party purchasers and retain servicing rights. We account for the loan sales in accordance with ASC Topic 860, *Transfers and Servicing*, which states that a transfer of a financial asset, a group of financial assets, or a participating interest in a financial asset is accounted for as a sale if all of the following conditions are met:

1. The financial assets are isolated from the transferor and its consolidated affiliates as well as its creditors.
2. The transferee or beneficial interest holders have the right to pledge or exchange the transferred financial assets.
3. The transferor does not maintain effective control of the transferred assets.

For the three and six months ended June 30, 2015 and 2014, all sales met the requirements for sale treatment under the guidance for ASC Topic 860, *Transfers and Servicing*. We record the gain or loss on the sale of a loan at the sale date in an amount equal to the proceeds received less outstanding principal and net deferred origination costs.

#### *Other Revenue*

We retain servicing rights on sold loans and recognize servicing revenue for servicing sold loans as a component of other revenue. For the three months ended June 30, 2015 and 2014 we earned \$0.9 million and \$0.2 million of servicing revenue, respectively. For the six months ended June 30, 2015 and 2014 we earned \$1.4 million and \$0.4 million of servicing revenue, respectively. In accordance with ASC Topic 860, *Transfers and Servicing*, we have recognized an immaterial servicing asset. Other revenue also includes marketing fees earned from our issuing bank partner, which are recognized as the related services are provided, and monthly fees charged to customers for our line of credit products.

#### *Stock-Based Compensation*

In accordance with ASC Topic 718, *Compensation—Stock Compensation*, all stock-based compensation made to employees is measured based on the grant-date fair value of the awards and recognized as compensation expense on a straight-line basis over the period during which the option holder is required to perform services in exchange for the award (the vesting period). We use the Black-Scholes-Merton Option Pricing Model to estimate the fair value of stock options. The use of the option valuation model requires subjective assumptions, including the fair value of our common stock, the expected term of the option and the expected stock price volatility, which is based on our stock as well as our peer companies. We issue restricted stock units ("RSUs") to employees and directors, which are measured based on the fair values of the underlying stock on the dates of grant. Additionally, the recognition of stock-based compensation expense requires an estimation of the number of options and RSUs that will ultimately vest and the number of options and RSUs that will ultimately be forfeited. Estimated forfeitures are subsequently adjusted to reflect actual forfeiture.

#### *Recent Accounting Pronouncements Not Yet Adopted*

In May 2014, the FASB issued ASU 2014-09, *Revenue Recognition*, which creates ASC 606, *Revenue from Contracts with Customers*, and supersedes ASC 605, *Revenue Recognition*. ASU 2014-09 requires revenue to be recognized in an amount that reflects the consideration to which the entity expects to be entitled in exchange for goods or services as described in ASU 2014-09. In July of 2015, the FASB voted to defer the effective date of the new revenue standard by one year. The new guidance will be effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Early adoption is permitted, but not before the original effective date of December 15, 2016. We are currently in the process of assessing the impact the adoption of this guidance will have on our consolidated financial statements.

In April 2015, the FASB issued ASU 2015-03, *Simplifying the Presentation of Debt Issuance Costs*, which amends ASC 835-30, *Interest - Imputation of Interest*. ASU 2015-03 requires entities to change the presentation of debt issuance costs in the financial statements. Under the ASU, an entity will be required to present such costs in the balance sheet as a direct deduction from the related debt liability rather than as an asset. This accounting standard is effective beginning January 1, 2017. We are currently assessing the impact this accounting standard will have on our consolidated financial statements.

### 3. Net Income (Loss) Per Common Share

Basic and diluted net income (loss) per common share is calculated as follows (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Numerator:				
Net income (loss)	\$ 4,748	\$ (1,054)	\$ (595)	\$ (14,771)
Less: net loss attributable to noncontrolling interest	232	—	232	—
Less: Accretion of dividends on redeemable convertible preferred stock	—	(3,596)	—	(6,200)
Net income (loss) attributable to On Deck Capital, Inc. common stockholders	<u>\$ 4,980</u>	<u>\$ (4,650)</u>	<u>\$ (363)</u>	<u>\$ (20,971)</u>
Denominator:				
Weighted-average common shares outstanding:				
Basic	69,479,737	5,262,317	69,366,278	4,983,554
Weighted average effect of dilutive securities:				
Stock options	5,819,581	—	—	—
Restricted stock and RSUs	40,032	—	—	—
Employee stock purchase program	58,776	—	—	—
Warrants to purchase common stock	282,164	—	—	—
Diluted weighted-average common shares outstanding	<u>75,680,290</u>	<u>5,262,317</u>	<u>69,366,278</u>	<u>4,983,554</u>
Net income (loss) attributable to On Deck Capital, Inc. common stockholders per common share:				
Basic	<u>\$ 0.07</u>	<u>\$ (0.88)</u>	<u>\$ (0.01)</u>	<u>\$ (4.21)</u>
Diluted	<u>\$ 0.07</u>	<u>\$ (0.88)</u>	<u>\$ (0.01)</u>	<u>\$ (4.21)</u>

Diluted loss per common share is the same as basic loss per common share for all loss periods presented because the effects of potentially dilutive items were anti-dilutive given our net losses in those periods. The following common share equivalent securities have been excluded from the calculation of weighted-average common shares outstanding because the effect is anti-dilutive for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
<b>Anti-Dilutive Common Share Equivalents</b>				
Redeemable convertible preferred stock:				
Series A	—	4,438,662	—	4,438,662
Series B	—	10,755,262	—	10,755,262
Series C	—	9,735,538	—	9,735,538
Series C-1	—	1,701,112	—	1,701,112
Series D	—	14,467,756	—	14,467,756
Series E	—	5,234,546	—	5,234,546
Warrants to purchase redeemable convertible preferred stock	—	1,423,768	—	1,423,768
Warrants to purchase common stock	22,000	4,077,066	2,516,288	4,077,066
Restricted stock units and restricted stock	351,737	—	555,666	—
Stock options	1,125,043	8,179,788	9,911,822	8,179,788
Total anti-dilutive common share equivalents	1,498,780	60,013,498	12,983,776	60,013,498

The weighted-average exercise price for warrants to purchase common stock was \$ 9.51 as of June 30, 2015 and December 31, 2014 . For the three months ended June 30, 2015 a warrant to purchase 2,206,496 of shares of common stock was excluded from diluted weighted-average shares outstanding and anti-dilutive common share equivalents as performance conditions had not been met.

#### 4. Loans, Allowance for Loan Losses and Loans Held for Sale

Loans consisted of the following as of June 30, 2015 and December 31, 2014 (in thousands):

	June 30, 2015	December 31, 2014
Term loans	\$ 461,657	\$ 466,386
Lines of credit	41,731	24,177
Total unpaid principal balance	503,388	490,563
Net deferred origination costs	10,531	13,544
Total loans	\$ 513,919	\$ 504,107

The activity in the allowance for loan losses for the three and six months ended June 30, 2015 and 2014 consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Balance - beginning of period	\$ 56,795	\$ 27,723	\$ 49,804	\$ 19,443
Provision for loan losses	15,526	13,073	38,626	29,652
Loans charged off	(21,155)	(9,382)	(39,014)	(18,059)
Recoveries of loans previously charged off	1,886	486	3,636	864
Allowance for loan losses - end of period	\$ 53,052	\$ 31,900	\$ 53,052	\$ 31,900

We originate most of the loans in our portfolio and also purchase loans from an issuing bank partner. During the three months ended June 30, 2015 and 2014 we purchased loans in the amount of \$48.8 million and \$40.4 million , respectively. During the six months ended June 30, 2015 and 2014 we purchased loans in the amount of \$103.4 million and \$74.4 million , respectively.

We sell previously charged-off loans to a third-party debt collector. The proceeds from these sales are recorded as a component of the recoveries of loans previously charged-off. For the three months ended June 30, 2015 and 2014 , previously charged-off loans sold accounted for \$1.3 million and \$0.3 million of recoveries of loans previously charged-off, respectively. For the six months ended June 30, 2015 and 2014 , previously charged-off loans sold accounted for \$2.8 million and \$0.6 million of recoveries of loans previously charged-off, respectively.

The following table illustrates the unpaid principal balance of loans related to non-delinquent, paying and non-paying delinquent loans as of June 30, 2015 and December 31, 2014 (in thousands):

	June 30, 2015	December 31, 2014
Non-delinquent loans	\$ 440,841	\$ 430,689
Delinquent: paying (accrual status)	41,794	40,049
Delinquent: non-paying (non-accrual status)	20,753	19,825
Total	<u>\$ 503,388</u>	<u>\$ 490,563</u>

The balance of the allowance for loan losses for non-delinquent loans was \$22.0 million and \$20.5 million as of June 30, 2015 and December 31, 2014 , respectively, while the balance of the allowance for loan losses for delinquent loans was \$31.1 million and \$29.3 million as of June 30, 2015 and December 31, 2014 , respectively.

The following table shows an aging analysis of the unpaid principal balance of loans by delinquency status as of June 30, 2015 and December 31, 2014 (in thousands):

	June 30, 2015	December 31, 2014
<b>By delinquency status:</b>		
Non-delinquent loans	\$ 440,841	\$ 430,689
1-14 calendar days past due	22,215	23,954
15-29 calendar days past due	8,491	9,462
30-59 calendar days past due	9,910	10,707
60-89 calendar days past due	9,819	7,724
90 + calendar days past due	12,112	8,027
Total unpaid principal balance	<u>\$ 503,388</u>	<u>\$ 490,563</u>

## 5. Debt

The following table summarizes our outstanding debt as of June 30, 2015 and December 31, 2014 :

Description	Type	Maturity Date	Interest Rates at		
			June 30, 2015	June 30, 2015	December 31, 2014
(in thousands)					
Funding Debt:					
ODAST Agreement	Securitization Facility	May 2018	3.4%	\$ 174,976	\$ 174,972
ODART Agreement	Revolving	September 2016	3.7%	86,732	105,598
ODAC Agreement	Revolving	May 2017	8.4%	18,782	32,733
ODAP Agreement	Revolving	August 2016	5.0%	22,727	56,686
PORT Agreement	Revolving	June 2017	2.4%	15,011	—
RAOD Agreement	Revolving	May 2017	3.2%	28,209	—
SBAF Agreement	Revolving	Various (1)	7.4%	16,921	16,740
Partner Synthetic Participations	Term	Various (2)	Various	5,024	1,199
				368,382	387,928
Corporate Debt:					
Square 1 Agreement	Revolving	October 2015	4.5%	—	12,000
				\$ 368,382	\$ 399,928

(1) Maturity dates range from July 2015 through May 2017

(2) Maturity dates range from July 2015 through June 2017

On May 22, 2015, through a wholly-owned bankruptcy remote subsidiary, we entered into a \$50 million revolving line of credit with SunTrust Bank ("RAOD Agreement"). The facility bears interest at LIBOR plus 3.00% , and matures in May 2017.

On May 22, 2015 an amendment was made to the ODAC Agreement extending the date of maturity from October 2016 to May 2017. In addition to other changes, this facility is now exclusively for the use of financing our line of credit product.

On June 12, 2015, through a wholly-owned bankruptcy remote subsidiary, we entered into a \$100 million revolving line of credit with Bank of America, N.A. ("PORT Agreement"). The facility bears interest at LIBOR plus 2.25% , and matures in June 2017.

## 6. Redeemable Convertible Preferred Stock

The following table presents a summary of activity for the preferred stock issued and outstanding for the six months ended June 30, 2014 (in thousands):

	Series A	Series B	Series C	Series C-1	Series D	Series E	Total Amount
Balance, January 1, 2014	\$ 2,559	\$ 22,918	\$ 24,749	\$ 5,401	\$ 62,716	\$ —	\$ 118,343
Issuance of preferred stock	—	—	—	—	—	77,000	77,000
Accretion of dividends on preferred stock	65	634	818	188	2,407	2,088	6,200
Balance, June 30, 2014	\$ 2,624	\$ 23,552	\$ 25,567	\$ 5,589	\$ 65,123	\$ 79,088	\$ 201,543

All redeemable convertible preferred stock automatically converted into shares of common stock upon close of our initial public offering in December 2014. As of June 30, 2015 we had no redeemable convertible preferred stock outstanding.

## 7. Income Tax

As part of the process of preparing the unaudited condensed consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process involves determining the annual effective tax rate, income tax expense (benefit) and deferred income tax expense (benefit) related to temporary differences resulting from differing

treatment of items, such as the loan loss reserve, timing of depreciation and deferred rent liabilities, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the accompanying unaudited condensed consolidated balance sheets. We must then assess the likelihood that the deferred tax assets will be recovered through the generation of future taxable income.

We have not incurred any income tax during the three and six months ended June 30, 2015 and 2014 due to one or more of the following reasons:

- the book losses incurred during those periods;
- the anticipated and known book losses for years ended December 31, 2015 and 2014, respectively, or;
- the significant deferred tax assets available for application should permanent and temporary differences from book income yield taxable income.

The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. Based upon the level of historical losses and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more likely than not that we will not realize the benefits of these deductible differences in the foreseeable future. Therefore, we have recorded a full valuation allowance against our net deferred tax asset.

## 8. Fair Value of Financial Instruments

### *Assets and Liabilities Measured at Fair Value on a Recurring Basis Using Significant Unobservable Inputs (Level 3)*

The following table presents the changes in the Level 3 instruments measured at fair value on a recurring basis for the three and six months ended June 30, 2014 (in thousands):

	Three Months Ended June 30, 2014	Six Months Ended June 30, 2014
Warrant liability balance - beginning of period	\$ 11,078	\$ 4,446
Issuance of warrants at fair value	4	4
Change in fair value	2,190	8,822
Warrant liability balance - end of period	\$ 13,272	\$ 13,272

The warrant liability is classified within Level 3 due to the liability being valued using significant unobservable inputs. Fair value of these warrants is based on a valuation of our common stock. As the valuation of our common stock was determined prior to our initial public offering, we used a combination of the inputs including option pricing models, secondary transactions with third-party investors and an initial public offering scenario to determine the valuation of our common stock.

A hypothetical increase or decrease in assumed asset volatility of 10% in the option pricing model would result in an immaterial impact to the fair value of the warrants as of June 30, 2014. In the unaudited consolidated statements of operations, changes in fair value are included in warrant liability fair value adjustment.

For the three and six months ended June 30, 2015 we did not hold any material Level 3 instruments measured at fair value on a recurring basis.

### *Assets and Liabilities Disclosed at Fair Value*

As loans are not measured at fair value, the following discussion relates to estimating the fair value disclosure under ASC Topic 825. The fair value of loans is estimated by discounting scheduled cash flows through the estimated maturity. The estimated market discount rates used for loans are our current offering rates for comparable loans with similar terms.

The carrying amounts of certain of our financial instruments, including loans and loans held for sale, approximate fair value due to their short-term nature and are considered Level 3. The carrying amount of our financing obligations, such as fixed-rate

debt, approximates fair value, considering the borrowing rates currently available to us for financing obligations with similar terms and credit risks.

## 9. Stock-Based Compensation

The following table summarizes the assumptions used for estimating the fair value of stock options granted during the six months ended June 30, 2015 :

	Six Months Ended June 30, 2015
Risk-free interest rate	1.65 - 2.13 %
Expected term (years)	5.51 - 6.04
Expected volatility	44.00 - 46.51 %
Dividend yield	0%
Weighted-average grant date fair value per share option	\$8.27

The following is a summary of option activity during the six months ended June 30, 2015 :

	Number of Options	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2015	10,371,472	\$ 4.59		
Granted	310,043	\$ 18.73		
Exercised	(476,231)	\$ 1.18		
Forfeited	(278,638)	\$ 5.90		
Expired	(14,824)	\$ 0.97		
Outstanding at June 30, 2015	9,911,822	\$ 5.16	8.04	\$ 67,820
Exercisable at June 30, 2015	3,769,311	\$ 1.16	7.10	\$ 39,645
Vested or expected to vest as of June 30, 2015	9,431,273	\$ 4.95	8.05	\$ 65,494

Stock-based compensation expense was attributed to the following line items in our accompanying unaudited condensed consolidated statements of operations for the three and six months ended June 30, 2015 and 2014 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Sales and marketing	\$ 594	\$ 111	\$ 1,168	\$ 157
Technology and analytics	504	99	941	148
Processing and servicing	156	42	303	61
General and administrative	1,062	152	1,946	271
Total	\$ 2,316	\$ 404	\$ 4,358	\$ 637

Total compensation cost related to nonvested awards not yet recognized as of June 30, 2015 was \$19.0 million and will be recognized over a weighted-average period of approximately 3.01 years. The aggregate intrinsic value of options exercised during the three and six months ended June 30, 2015 was \$1.7 million and \$7.8 million , respectively.

## 10. Commitments and Contingencies

### Commitments

In March 2015 we amended the lease of our New York City corporate headquarters to extend the lease and rent additional space. We will occupy the additional space incrementally, as it becomes available, at which time we will incur a proportionate amount of additional rent payments. The dates the additional space will be available are uncertain as they are dependent upon the departure of current occupants and the landlord's ability to prepare the space. Upon the completion of delivery of all additional space, our additional average monthly fixed rent payment will be approximately \$0.4 million. The amended lease also provides for rent credits aggregating \$3.6 million and a tenant improvement allowance not to exceed \$5.8 million. The lease will terminate ten years and ten months after the delivery of certain portions of the additional space.

In April 2015, we provided notice of termination to the landlord of our current office space in Denver, Colorado resulting in a termination fee of \$0.4 million which is included in general and administrative expense for the three months ended June 30, 2015. The lease is scheduled to expire in January 2016.

In June 2015, we entered into a sublease in Denver, Colorado (the "New Denver Lease") as the subtenant. The New Denver Lease is for approximately 72,000 square feet with an average monthly fixed rent payment of approximately \$144,000. The New Denver Lease also provides for a tenant improvement allowance not to exceed \$2.6 million. The lease has a term of 124 months after the commencement date.

### ***Concentrations of Credit Risk***

Financial instruments that potentially subject us to significant concentrations of credit risk consist principally of cash, cash equivalents, restricted cash and loans. We hold cash, cash equivalents and restricted cash in accounts at regulated domestic financial institutions in amounts that may exceed FDIC insured amounts. We believe these institutions to be of high credit quality, and we have not experienced any related losses to date.

We are exposed to default risk on loans we originate and hold and that we purchase from our issuing bank partner. We perform an evaluation of each customer's financial condition and during the term of the customer's loan(s), we have the contractual right to limit a customer's ability to take working capital loans or other financing from other lenders that may cause a material adverse change in the financial condition of the customer. There is no single customer or group of customers that comprise a significant portion of our loan portfolio.

### ***Contingencies***

Two separate putative class actions were filed in August 2015 in the United States District Court for the Southern District of New York against us, certain of our executive officers, our directors and certain or all of the underwriters of our initial public offering, or IPO. The suits allege that the registration statement for our IPO contained materially false and misleading statements regarding, or failed to disclose, specified information in violation of the Securities Act of 1933, as amended. The suits seek a determination that the case is a proper class action and/or certification of the plaintiff as a class representative, rescission or a rescissory measure of damages and/or unspecified damages, interest, attorneys' fees and other fees and costs. The Company intends to defend itself vigorously in these matters, although at this time we cannot predict the outcome.

From time to time we are subject to other legal proceedings and claims in the ordinary course of business. The results of such matters cannot be predicted with certainty. However, we believe that the final outcome of any such current matters will not result in a material adverse effect on our consolidated financial condition, consolidated results of operations or consolidated cash flows.

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our condensed consolidated financial statements and the related notes and other financial information included elsewhere in this report and in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2014. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Cautionary Note Regarding Forward-Looking Statements" below for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### **Cautionary Note Regarding Forward-Looking Statements**

This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and other legal authority. These forward-looking statements concern our operations, economic performance, financial condition, goals, beliefs, future growth strategies, objectives, plans and current expectations.

Forward-looking statements appear throughout this report including in this Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations. Forward-looking statements can generally be identified by words such as "will," "enables," "expects," "allows," "continues," "believes," "anticipates," "estimates" or similar expressions.

Forward-looking statements are neither historical facts nor assurances of future performance. They are based only on our current beliefs, expectations and assumptions regarding the future of our business, anticipated events and trends, the economy and other future conditions. As such, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and in many cases outside our control. Therefore, you should not rely on any of these forward-looking statements. Our expected results may not be achieved, and actual results may differ materially from our expectations.

Important factors that could cause or contribute to such differences include risks relating to: our ability to attract potential customers to our platform; the degree to which potential customers apply for loans, are approved and borrow from us; anticipated trends, growth rates, sources of growth and challenges in our business and in the markets in which we operate; the ability of our customers to repay loans and our ability to accurately assess creditworthiness; our ability to adequately reserve for loan losses; the continuing impact of our implementation of certain additional compliance measures related to our funding advisor channel; changes in our product distribution channel mix or our funding mix; our ability to anticipate market needs and develop new and enhanced offerings to meet those needs; interest rates and origination fees on loans; maintaining and expanding our customer base; the impact of competition in our industry and innovation by our competitors; our anticipated growth and growth strategies, including the possible introduction of new products and possible expansion in existing or new international markets, and our ability to effectively manage that growth and our expenses; our reputation and possible adverse publicity about us or our industry; the availability, cost and sources of our funding; our failure to anticipate or adapt to future changes in our industry; our ability to hire and retain necessary qualified employees; the lack of customer acceptance or failure of our products; our reliance on our third-party service providers; the evolution of technology affecting our offerings and our markets; our compliance with applicable local, state and federal laws, rules and regulations and their application and interpretation, whether existing, modified or new; our ability to adequately protect our intellectual property; the effect of litigation or other disputes to which we are or may be a party; the increased expenses and administrative workload associated with being a public company; failure to maintain an effective system of internal controls necessary to accurately report our financial results and prevent fraud; our liquidity and working capital requirements; the estimates and estimate methodologies used in preparing our condensed consolidated financial statements; the future trading prices of our common stock, the impact of securities analysts' reports and shares eligible for future sale on these prices; our ability to prevent or discover security breaks, disruption in service and comparable events that could compromise the personal and confidential information held in our data systems, reduce the attractiveness of our platform or adversely impact our ability to service our loans; and other risks, including those described elsewhere in this report and under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2014 and in other documents that we file with the Securities and Exchange Commission, or SEC, from time to time which are available on the SEC website at [www.sec.gov](http://www.sec.gov).

Except as required by law, we undertake no duty to update any forward-looking statements. Readers are also urged to carefully review and consider all of the information in this report, as well as the other documents we make available through the SEC's website.

When we use the terms "OnDeck," the "Company," "we," "us" or "our" in this report, we are referring to On Deck Capital, Inc. and its consolidated subsidiaries unless the context requires otherwise.

OnDeck, the OnDeck logo, OnDeck *Score* , OnDeck *Marketplace* and other trademarks or service marks of OnDeck appearing in this report are the property of OnDeck. Trade names, trademarks and service marks of other companies appearing in this report are the property of their respective holders. We have generally omitted the ®, ™ and other designations, as applicable, in this report.

## Overview

We are a leading platform for small business lending. We are seeking to transform small business lending by making it efficient and convenient for small businesses to access capital. Enabled by our proprietary technology and analytics, we aggregate and analyze thousands of data points from dynamic, disparate data sources to assess the creditworthiness of small businesses rapidly and accurately. Small businesses can apply for a term loan or line of credit on our website in minutes and, using our proprietary *OnDeck Score* ®, we can make a funding decision immediately and transfer funds as fast as the same day. Since 2007, we have originated more than \$3 billion in loans. Our loan originations have increased at a compound annual growth rate of 159% from 2012 to 2014 and had year-over-year growth rates of 69% and 76% for the three months and six months ended June 30, 2015 , respectively. We originated \$419.0 million in loans in the second quarter of 2015.

We generate the majority of our revenue through interest income and fees earned on the term loans we retain. Our term loans are obligations of small businesses with fixed dollar repayments, in principal amounts ranging from \$5,000 to \$250,000 and with maturities of 3 to 24 months. In September 2013, we expanded our product offerings by launching a line of credit product with line sizes currently ranging from \$10,000 to \$50,000, repayable within six months of the date of the latest funds draw. We earn interest on the balance outstanding and charge a monthly fee as long as the line of credit is available. In October 2013, we also began generating revenue by selling some of our term loans to third-party institutional investors through *OnDeck Marketplace* ®. The balance of our revenue comes from our servicing and other fee income, which primarily consists of fees we receive for servicing loans we have sold to third-party institutional investors and marketing fees from our issuing bank partner.

We rely on a diversified set of funding sources for the capital we use in our lending activities, consisting of debt facilities, loan sales to investors through *OnDeck Marketplace* and securitization. As of June 30, 2015 , we had \$193.4 million outstanding and \$464.5 million total borrowing capacity under our debt facilities (excluding our securitization described below), subject to borrowing conditions. We have sold approximately \$408.5 million in loans to *OnDeck Marketplace* investors from October 2013 through June 30, 2015 including \$149.6 million during the second quarter of 2015 , which represents a 57.7% increase over the first quarter of 2015. The increase included a single transaction portfolio sale of \$53.9 million of loans to an affiliate of Jefferies Group LLC, a global investment banking firm. Amounts of loans sold through *Marketplace* refer to carrying value which is unpaid principal balance plus net deferred origination costs, unless otherwise indicated. In addition, we completed our first securitization transaction in May 2014, pursuant to which we issued debt that is secured by a revolving pool of OnDeck small business loans. We raised approximately \$175 million from this securitization transaction. We completed our initial public offering, or IPO, in December 2014 from which we raised \$210.0 million, net of underwriting discounts and commissions and offering expenses. We have also used proceeds from our preferred stock financings, IPO and operating cash flow to fund loans in the past and continue to finance a portion of our outstanding loans with these funds.

We originate loans through direct marketing, including direct mail, social media, and other online marketing channels. We also originate loans through referrals from our strategic partners, including banks, payment processors and small business-focused service providers, and through funding advisors who advise small businesses on available funding options.

## Key Financial and Operating Metrics

We regularly monitor a number of metrics in order to measure our current performance and project our future performance. These metrics aid us in developing and refining our growth strategies and making strategic decisions.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
	(dollars in thousands)			
Originations	\$ 419,042	\$ 248,067	\$ 835,019	\$ 475,417
Unpaid Principal Balance	\$ 503,388	\$ 338,815	\$ 503,388	\$ 338,815
Average Loans	\$ 535,170	\$ 319,122	\$ 524,816	\$ 286,922
Loans Under Management	\$ 718,678	\$ 381,623	\$ 718,678	\$ 381,623
Effective Interest Yield	37.6%	41.2%	37.7%	41.3%
<i>Marketplace</i> Gain on Sale Rate	7.8%	6.3%	7.5%	5.2%
Average Funding Debt Outstanding	\$ 383,386	\$ 236,553	\$ 384,900	\$ 220,468
Cost of Funds Rate	5.0%	6.4%	5.1%	7.7%
Provision Rate	5.3%	5.8%	6.6%	7.0%
Reserve Ratio	10.5%	9.4%	10.5%	9.4%
15+ Day Delinquency Ratio	8.0%	6.1%	8.0%	6.1%
Adjusted EBITDA	\$ 8,703	\$ 2,479	\$ 6,886	\$ (3,338)
Adjusted Net Income (Loss)	\$ 7,296	\$ 1,540	\$ 3,995	\$ (5,312)

### Originations

Originations represent the total principal amount of the term loans we made during the period, plus the total amount drawn on lines of credit during the period. Many of our repeat customers renew their loans before their existing loan is fully repaid. In accordance with industry practice, originations of such repeat loans are calculated as the full renewal loan principal, rather than the net funded amount, which is the renewal loan's principal net of the unpaid principal balance on the existing loan. Loans referred to, and funded by, our issuing bank partner and later purchased by us are included as part of our originations.

The number of weekends and holidays in a period can impact our business. Many small businesses tend to apply for loans on weekdays, and their businesses may be closed at least part of a weekend and on holidays. In addition, our loan fundings and automated customer loan repayments only occur on weekdays (other than bank holidays).

### Unpaid Principal Balance

Unpaid Principal Balance represents the total amount of principal outstanding for term loans held for investment and amounts outstanding under lines of credit at the end of the period. It excludes net deferred origination costs, allowance for loan losses and any loans sold or held for sale at the end of the period.

### Average Loans

Total loans represents the Unpaid Principal Balance, plus net deferred origination costs. Average Loans for the period is the simple average of total loans as of the beginning of the period and as of the end of each quarter in the period.

### Loans Under Management

Loans Under Management represents the Unpaid Principal Balance plus the amount of principal outstanding for loans held for sale, excluding net deferred origination costs, and the amount of principal outstanding of term loans we serviced for others at the end of the period.

### Effective Interest Yield

Effective Interest Yield is the rate of return we achieve on loans outstanding during a period, which is our annualized interest income divided by Average Loans.

Net deferred origination costs in total loans consist of deferred origination fees and costs. Deferred origination fees include fees paid up front to us by customers when loans are funded and decrease the carrying value of loans, thereby increasing the Effective Interest Yield earned. Deferred origination costs are limited to costs directly attributable to originating loans such as commissions, vendor costs and personnel costs directly related to the time spent by the personnel performing activities related to loan origination and increase the carrying value of loans, thereby decreasing the Effective Interest Yield earned.

Recent pricing trends are discussed under the subheading "Key Factors Affecting Our Performance - Pricing."

#### *Marketplace Gain on Sale Rate*

*Marketplace Gain on Sale Rate* equals our gain on sale revenue from loans sold through OnDeck *Marketplace* divided by the carrying value of loans sold, which is the sum of unpaid principal balance sold and the remaining carrying value of the net deferred origination costs. The carrying value of loans sold may be calculated as gain on sale of loans subtracted from proceeds from sale of loans (including both the proceeds from sale of loans held for sale and the proceeds from sale of loans held for investment). Loans designated as held for investment are typically not sold through *Marketplace*, however there are circumstances wherein loans are initially designated as held for investment upon origination and subsequently sold to investors.

#### *Average Funding Debt Outstanding*

Funding debt outstanding is the debt that we incur to support our lending activities and does not include our corporate debt. Average Funding Debt Outstanding for the period is the simple average of the funding debt outstanding as of the beginning of the period and as of the end of each quarter in the period.

#### *Cost of Funds Rate*

Cost of Funds Rate is our funding cost, which is the interest expense, fees, and amortization of deferred issuance costs we incur in connection with our lending activities across all of our debt facilities, divided by the Average Funding Debt Outstanding, then annualized.

#### *Provision Rate*

Provision Rate equals the provision for loan losses divided by the new originations volume of loans held for investment, net of originations of sales of such loans within the period. Because we reserve for probable credit losses inherent in the portfolio upon origination, this rate is significantly impacted by the expectation of credit losses for the period's originations volume. This rate may also be impacted by changes in loss expectations for loans originated prior to the commencement of the period. Loans designated as held for investment are typically not sold through *Marketplace*, however there are circumstances wherein loans are initially designated as held for investment upon origination and subsequently sold to investors.

#### *Reserve Ratio*

Reserve Ratio is our allowance for loan losses as of the end of the period divided by the Unpaid Principal Balance as of the end of the period.

#### *15+ Day Delinquency Ratio*

15+ Day Delinquency Ratio equals the aggregate Unpaid Principal Balance for our loans that are 15 or more calendar days past due as of the end of the period as a percentage of the Unpaid Principal Balance for such period. The Unpaid Principal Balance for our loans that are 15 or more calendar days past due includes loans that are paying and non-paying. The majority of our loans require daily repayments, excluding weekends and holidays, and therefore may be deemed delinquent more quickly than loans from traditional lenders that require only monthly repayments.

15+ Day Delinquency Ratio is not annualized, but reflects balances as of the end of the period.

The 15+ Day Delinquency Ratio is impacted by the degree of seasoning in the portfolio, given loans are more likely to experience delinquency as they age. The average loan age weighted by unpaid principal balance is shown in the table below.

Because we are retaining a smaller percentage of new loans on our balance sheet as we have increased sales through OnDeck *Marketplace*, our average loan age has lengthened. As a result, the 15+ Day Delinquency Ratio has increased since the October 2013 launch of *MarketPlace*, though we saw some improvement in the second quarter of 2015 sequentially which was achieved in part through improved collections efforts. The second quarter 2015 improvement of the 15+ Day Delinquency Ratio over the first quarter was achieved despite the second quarter portfolio sale of \$53.9 million of loans, which shifted the mix of current to delinquent loans on our books. Had the loans sold in the portfolio sale remained on our books, the 15+ Day Delinquency Ratio rate would have declined to approximately 7.3% at June 30, 2015.

	Q2 2015	Q1 2015	Q4 2014	Q3 2014	Q2 2014	Q1 2014	Q4 2013	Q3 2013	Q2 2013	Q1 2013
15+ Day Delinquency Ratio	8.0%	8.4%	7.3%	5.4%	6.1%	7.2%	7.6%	6.9%	6.9%	7.8%
Average Loan Age Weighted by Unpaid Principal Balance (months)	3.7	3.6	3.4	3.1	3.1	3.0	3.1	3.0	3.0	3.0

### Non-GAAP Financial Measures

We believe that the provision of non-GAAP metrics in this report can provide a useful measure for period-to-period comparisons of our core business and useful information to investors and others in understanding and evaluating our operating results. However, non-GAAP metrics are not a measure calculated in accordance with United States generally accepted accounting principles, or GAAP, and should not be considered an alternative to any measures of financial performance calculated and presented in accordance with GAAP. Other companies may calculate these non-GAAP metrics differently than we do.

#### Adjusted EBITDA

Adjusted EBITDA represents our net income (loss), adjusted to exclude interest expense associated with debt used for corporate purposes (rather than funding costs associated with lending activities), income tax expense, depreciation and amortization, stock-based compensation expense and warrant liability fair value adjustment. Stock-based compensation includes employee compensation as well as compensation to third party service providers.

EBITDA is impacted by changes from period to period in the liability related to both common and preferred stock warrants which require fair value accounting. Management believes that adjusting EBITDA to eliminate the impact of the changes in fair value of these warrants is useful to analyze the operating performance of the business, unaffected by changes in the fair value of stock warrants which are not relevant to the ongoing operations of the business. All such preferred stock warrants converted to common stock warrants upon our initial public offering in December 2014.

Our use of Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation;
- Adjusted EBITDA does not reflect interest associated with debt used for corporate purposes or tax payments that may represent a reduction in cash available to us; and
- Adjusted EBITDA does not reflect the potential costs we would incur if certain of our warrants were settled in cash.

The following table reconciles net income (loss) to Adjusted EBITDA for each of the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
	(in thousands)			
<b>Adjusted EBITDA</b>				
Net income (loss)	\$ 4,748	\$ (1,054)	\$ (595)	\$ (14,771)
Interest expense	74	62	180	219
Income tax expense	—	—	—	—
Depreciation and amortization	1,565	877	2,943	1,755
Stock-based compensation	2,316	404	4,358	637
Warrant liability fair value adjustment	—	2,190	—	8,822
Adjusted EBITDA	<u>\$ 8,703</u>	<u>\$ 2,479</u>	<u>\$ 6,886</u>	<u>\$ (3,338)</u>

### Adjusted Net Income (Loss)

Adjusted Net Income (Loss) represents our net income or loss adjusted to exclude net loss attributable to noncontrolling interest, stock-based compensation expense and warrant liability fair value adjustment, each on the same basis and with the same limitations as described above for Adjusted EBITDA.

The following table reconciles net income (loss) to Adjusted Net Income (Loss) for each of the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
	(in thousands)			
<b>Adjusted Net Loss</b>				
Net income (loss)	\$ 4,748	\$ (1,054)	(595)	(14,771)
Adjustments:				
Net loss attributable to noncontrolling interest	232	—	232	—
Stock-based compensation	2,316	404	4,358	637
Warrant liability fair value adjustment	—	2,190	—	8,822
Adjusted Net Income (Loss)	<u>\$ 7,296</u>	<u>\$ 1,540</u>	<u>\$ 3,995</u>	<u>\$ (5,312)</u>

## Key Factors Affecting Our Performance

### Investment in Long-Term Growth

The core elements of our growth strategy include acquiring new customers, broadening our distribution capabilities through strategic partners, enhancing our data and analytics capabilities, expanding our product offerings, extending customer lifetime value and expanding internationally such as our announcement that we are expanding to Australia. We plan to continue to invest significant resources to accomplish these goals, and we anticipate that our operating expense will continue to increase for the foreseeable future, particularly our sales and marketing and technology and analytics expenses. These investments are intended to contribute to our long-term growth, but they may affect our near-term financial performance.

### Originations

Our first quarter and second quarter 2015 originations of \$416.0 million and \$419.0 million, respectively, have increased relative to the corresponding prior year periods by 83.0% and 68.9%. The second quarter 2015 growth rate over the first quarter 2015 of 1% was due to the following factors:

(i) Enhanced compliance-related measures resulted in an 11% decline in loan originations in our funding advisor channel compared to the first quarter. The compliance measures in the funding advisor channel, combined with our continued investment in direct marketing and sales, brand awareness and growing our strategic partnerships, also resulted in higher direct and strategic partner loan mix which historically have a smaller average loan size compared to our funding advisor channel.

(ii) Our direct channel experienced lower than expected loan applications from our direct marketing campaigns, due to inefficiencies in some of our targeted marketing efforts as well as intensified competitive marketing activity. As a result of inefficiencies in internal coordination and the use of certain statistical response models, our direct marketing campaigns were less effective in reaching the intended target resulting in reduced response and conversion rates. In addition, based on industry data, we noted a significant increase in the amount of marketing targeted at small businesses which further contributed to our reduced response rate.

To address the impact of these direct channel factors, we made several adjustments to more effectively target our intended demographics and to increase response rates. As a result of these adjustments, we were able to effect an increase in direct originations during the last six weeks of the quarter compared to the first six weeks. We plan to continue investing in direct marketing and sales, increasing our brand awareness, increasing our technology and analytics investment to better identify and serve customers and growing our strategic partnerships.

We originate term loans and lines of credit to customers who are new to OnDeck, as well as to repeat customers. Our ability to increase adoption of our products within our existing customer base will be important to our future growth. We believe our significant number of repeat customers is primarily due to our high levels of customer service and continued improvement in products and services. Repeat customers generally comprise our highest quality loans, given many repeat customers require additional financing for growth or expansion. From our 2013 customer cohort, customers who took at least three loans grew their revenue and bank balance on average by 26% and 46%, respectively, from their initial loan to their third loan. On average, their OnDeck *Score* increased by 25 points, enabling us to grow their average loan amount by 107% while decreasing their annual percentage rate, or APR, by 20.7 percentage points. In order for a current customer to qualify for a new term loan while a term loan payment obligation remains outstanding, the customer must pass the following standards:

- the business must be approximately 50% paid down on its existing loan;
- the business must be current on its outstanding OnDeck loan with no material delinquency history; and
- the business must be fully re-underwritten and determined to be of acceptable credit quality.

The extent to which we generate repeat business from our customers will be an important factor in our continued revenue growth and our visibility into future revenue. In conjunction with repeat borrowing activity, our customers have tended to increase their subsequent loan size compared to their initial loan size.

### Pricing

Customer pricing is determined primarily based on the customer's OnDeck *Score*, the loan term, the customer type (new or repeat) and origination channel. Loans originated through the direct and strategic partner channels are generally priced lower than loans originated through the funding advisor channel due to the higher commissions paid to funding advisors.

Our customers generally pay between \$0.01 to \$0.04 per month in interest for every dollar they borrow under one of our term loans, with the actual amount typically driven by the length of term of the particular loan. In general, term loans are quoted in "Cents on Dollar," or COD, and lines of credit are quoted with an interest rate. Given the use case and payback period associated with shorter term products, we believe many of our customers prefer to understand pricing on a "dollars in, dollars out" basis and are primarily focused on total payback cost.

We believe that our product pricing has historically fallen between traditional bank loans to small businesses and certain non-bank small business financing alternatives such as merchant cash advances. The weighted average pricing on our originations has declined over time as measured by both average "Cents on Dollar" borrowed per month and APR as shown in the table below.

	Q2 2015	Q1 2015	Q4 2014	Q3 2014	Q2 2014	Q1 2014	Q4 2013	Q3 2013	Q2 2013	Q1 2013
Weighted Average Term Loan "Cents on Dollar" Borrowed, per Month	2.04¢	2.15¢	2.23¢	2.24¢	2.38¢	2.53¢	2.60¢	2.62¢	2.71¢	2.73¢
Weighted Average APR - Term Loans and Lines of Credit	46.5%	49.3%	51.2%	52.8%	56.7%	59.9%	61.8%	62.9%	65.0%	65.9%

The weighted average APR for term loans and lines of credit declined from 63.4% in 2013 to 54.4% in 2014, and further declined to 49.3% and 46.5% in the first and second quarters of 2015, respectively. We attribute this pricing shift from 2013 to longer average loan term lengths, increased originations from our lower cost direct and strategic partner channels as a percentage

of total originations, the growth of our line of credit product, which is priced at a lower APR level than our term loans, and our continued efforts to pass savings on to customers through rate reductions and successively lower origination fees for repeat customers. During the second quarter of 2015, we introduced a customer loyalty program, reducing our interest rates for repeat customers who historically have exhibited stronger credit characteristics than new customers, demonstrated successful loan history from paying down previous loans, and generated stronger unit economics in part due to the lower CAC of a repeat customer. This aligns with our goal of building long-term partnerships with our customers.

“Cents on Dollar” borrowed reflects the total interest to be paid by a customer to us for each dollar of principal borrowed, and does not include the loan origination fee. As of June 30, 2015 the APRs of our term loans ranged from 16% to 98% and the APRs of our lines of credit range from 13% to 36%. Because many of our loans are short term in nature and APR is calculated on an annualized basis, we believe that small business customers tend to evaluate term loans primarily on a “Cents on Dollar” borrowed basis rather than APR. Despite these limitations, we are providing historical APRs as supplemental information for comparative purposes. We do not use APR as an internal metric to evaluate performance of our business or as a basis to compensate our employees or to measure their performance. The interest on commercial business loans is also tax deductible as permitted by law compared to typical personal loans which do not provide a tax deduction. APR does not give effect to the small business customer’s possible tax deductions and cash savings associated with business related interest expenses. For these and other reasons, we do not believe that APR is a meaningful measurement of the expected returns to us or costs to our customer.

We consider Effective Interest Yield, or EIY, as a key pricing metric. EIY is the rate of return we achieve on loans outstanding during a period, which is our annualized interest income divided by Average Loans. Our Effective Interest Yield differs from APR in that takes into account deferred origination fees and deferred origination costs. Deferred origination fees include fees paid up front to us by customers when loans are funded and decrease the carrying value of loans, thereby increasing the Effective Interest Yield earned. Deferred origination costs are limited to costs directly attributable to originating loans such as commissions, vendor costs and personnel costs directly related to the time spent by the personnel performing activities related to loan origination and increase the carrying value of loans, thereby decreasing the Effective Interest Yield earned.

In addition to individual loan pricing and the number of days in a period, there are many other factors that can affect EIY, including:

- **Channel Mix** - In general, loans originated from the direct and strategic partner channels have lower EIYs than loans from the funding advisor channel. This is primarily due to the fact that the direct and strategic partner channels have lower annualized interest rates due to their lower acquisition costs and lower loss rates. The direct and strategic partner channels have, in the aggregate, increased from 42.0% to 57.1% to 71.6% of total originations in the second quarter of 2013, 2014 and 2015, respectively.
- **Term Mix** - In general, term loans with longer durations have lower annualized interest rates. Despite lower EIYs, total revenues from customers with longer loan durations are typically higher than the revenue of customers with shorter-term, higher EIY loans because total payback is typically higher compared to a shorter length term for the same principal loan amount. Since the introduction of OnDeck’s Term 24 product in February 2014 and with OnDeck’s improving credit models, the average length of new term loan originations has increased from 9.7 to 10.9 to 11.9 months in the second quarter of 2013, 2014 and 2015, respectively.
- **Customer Type Mix** - In general, loans originated from repeat customers have lower EIYs than loans from new customers. This is primarily due to the fact that repeat customers typically have a higher OnDeck *Score* and are deemed to be lower risk. In addition, repeat customers are more likely to be approved for longer terms than new customers given their established payment history and lower risk profiles. Finally, origination fees are generally reduced or waived and interest rates are lower for repeat customers due to our loyalty pricing, contributing to lower EIYs. Originations from repeat customers were over 50% of total originations in the second quarter of 2015, up significantly from both the second quarter of 2013 and 2014.
- **Product Mix** - In general, loans originated from line of credit customers have lower EIYs than loans from term loan customers. This is primarily due to the fact that line of credits are expected to have longer lifetime usage than term loans, enabling more time to recoup upfront acquisition costs. In the second quarter of 2015, the average line of credit APR was 36%, compared to the average term loan APR which was 47%. Further, draws from line of credit customers have increased from 0% to 4.2% to 9.0% of total originations in the second quarter of 2013, 2014 and 2015, respectively.
- **Marketplace Portfolio Sales of Seasoned Loans** - In the second quarter of 2015, EIY was impacted by *Marketplace* loan sales, in particular because we sold seasoned loans in addition to newly originated loans we typically sell through *Marketplace*. Sales of seasoned loans resulted in a higher EIY for the quarter because we earned interest income on those

loans for a longer period during the quarter than loans typically sold through *Marketplace* (increasing the numerator), and removed the loans from our balance sheet, reducing Average Loans (the denominator).

Since 2013, as part of our continuing initiative to reduce pricing while controlling risk, our EIY has generally declined quarter over quarter. Our EIY for both the first and second quarters of 2014 was 41.2%. For the first quarter of 2015, our EIY declined to 36.7% and then increased to 37.6% in the second quarter of 2015. This increase in EIY was attributable to additional business days in the second quarter of 2015 as compared to the first quarter and because a portion of loans sold through *Marketplace* in the second quarter of 2015 were seasoned loans originated prior to the second quarter. Excluding the impact of additional business days and the sale of seasoned loans, EIY would have declined in the second quarter of 2015 compared to the first quarter.

We expect our pricing to continue to gradually decline as our originations continue to shift towards our direct and strategic partner channels and repeat customers take advantage of our loyalty pricing.

#### *Significant Transactions*

##### Marketplace Growth

During the second quarter of 2015, we sold \$149.6 million of loans through OnDeck *Marketplace*. This was a 58% increase over the \$94.9 million of loans sold in the first quarter of 2015. Contributing to this growth was a single-transaction portfolio sale of \$53.9 million of loans to an affiliate of Jefferies Group LLC, a global investment banking firm. Because the loans were sold at a premium, they generated gains on sale. The combination of the increase in sale volume and the improvement in the *Marketplace* Gain on Sale Rate resulted in an increase in gain on sale of loans of \$5.0 million, or 75.3%, in the second quarter of 2015 as compared to the first quarter. Also, during the second quarter of 2015, approximately 19% of the loans sold through *Marketplace* were loans previously designated as held for investment. In addition to the gains recorded on those loan sales, we also benefited from the release of the associated loan loss reserves. We anticipate executing additional portfolio sales regularly contingent upon market conditions.

##### Debt Facilities

During the second quarter of 2015, we established two new asset-backed credit facilities and amended an existing one. On May 22, 2015, we entered into a two-year, \$50 million credit facility with SunTrust Bank and amended and repurposed our existing \$50 million On Deck Asset Company, LLC, or ODAC, credit facility to provide that the entire facility may be used solely for the financing of our line of credit product and extended the facility's maturity date to May 2017. On June 12, 2015, we entered into a two-year, \$100 million credit facility with Bank of America, N.A. These new and amended facilities permit us to finance term loans and lines of credit that did not meet the specific requirements of most of our pre-existing credit facilities. Accordingly, the new facilities will provide us additional financial resources at interest rates which will further reduce our Costs of Funds Rate.

#### *Customer Acquisition Costs*

Our customer acquisition costs, or CACs, reflect the efficiency of our direct marketing costs in attracting new customers. Our CACs differ depending upon the acquisition channel. CACs in our direct channel include the commissions paid to our internal sales force and expenses associated with direct mail, social media and other online marketing activities. CACs in our strategic partner channel include commissions paid to our internal sales force and strategic partners. CACs in our funding advisor channel include commissions paid to our internal sales force and funding advisors. Our CACs in our strategic partner and funding advisor channels trended lower sequentially as a percentage of originations from the respective channels, as a result of lower commissions as a percentage of their respective originations. Additionally, while re-certification impacted originations growth in the funding advisor channel, it had a positive impact on acquisition costs as we are now focused on working with only our highest quality partners, leading to lower CACs sequentially in this channel for the second quarter. Unlike last quarter, our CACs increased in the direct channel in the second quarter primarily as a result of the originations softness and the previously mentioned targeting inefficiencies that impacted the first six weeks of the quarter.

#### *Customer Lifetime Value*

The ongoing lifetime value of our customers will be an important component of our future performance. We analyze customer lifetime value not only by tracking the "contribution" of customers over their lifetime with us, but also by comparing this contribution to the CAC incurred in connection with originating such customers' initial loans. We define the contribution to include the interest income and fees collected on a cohort of customers' initial and repeat loans less acquisition costs for their repeat loans, estimated third party processing and servicing expenses for their initial and repeat loans, estimated funding costs (excluding any cost of equity capital) for their initial and repeat loans, and charge-offs of their initial and repeat loans. Comparing the customer lifetime

value for cohorts from 2013-2014 against like quarters, we have observed later cohorts exhibit improved return on investment, or ROI, due to economies of scale and improved efficiencies in marketing, cost of funds and processing and servicing costs, as well as credit improvements which resulted in larger average loan sizes.

In the future, we may incur greater marketing expenses to acquire new customers, we may decide to offer term loans with lower interest rates, our charge-offs may increase and our customers' repeat purchase behavior may change, any of which could adversely impact our customers' lifetime values to us and our operating results.

#### *Economic Conditions*

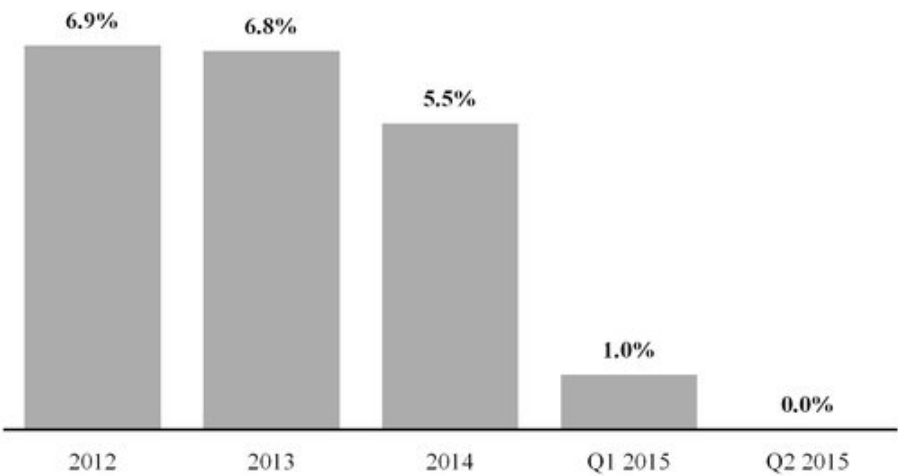
Changes in the overall economy may impact our business in several ways, including demand for our products, credit performance, and funding costs.

- *Demand for Our Products* . In a strong economic climate, demand for our products may increase as consumer spending increases and small businesses seek to expand. In addition, more potential customers may meet our underwriting requirements to qualify for a loan. At the same time, small businesses may experience improved cash flow and liquidity resulting in fewer potential customers requiring loans to manage their cash flows. In that climate, traditional lenders may also approve loans for a higher percentage of our potential customers. In a weakening economic climate or recession, the opposite may occur.
- *Credit Performance* . In a strong economic climate, our customers may experience improved cash flow and liquidity, which may result in lower loan losses. In a weakening economic climate or recession, the opposite may occur. We factor economic conditions into our loan underwriting analysis and reserves for loan losses, but changes in economic conditions, particularly sudden changes, may affect our actual loan losses. These effects may be partially mitigated by the short-term nature and repayment structure of our loans, which should allow us to react more quickly than if the terms of our loans were longer.
- *Loan Losses* . Our underwriting process is designed to limit our loan losses to levels compatible with our business strategy and financial model. Our aggregate loan loss rates from 2012 through 2014 have been consistent with our financial targets. Our overall loan losses are affected by a variety of factors, including external factors such as prevailing economic conditions, seasonality, general small business sentiment and unusual events such as natural disasters and adverse weather, as well as internal factors such as the accuracy of the OnDeck *Score* , the effectiveness of our underwriting process and the introduction of new products, such as our line of credit, with which we have less experience to draw upon when forecasting their loss rates. Our loan loss rates may vary in the future.
- *Funding Costs*. Changes in macroeconomic conditions may affect generally prevailing interest rates, and such effects may be amplified or reduced by other factors such as fiscal and monetary policies, economic conditions in other markets and other factors. Interest rates may also change for reasons unrelated to economic conditions. To the extent that interest rates rise, our funding costs will increase and the spread between our Effective Interest Yield and our Cost of Funds Rate may narrow to the extent we cannot correspondingly increase the payback rates we charge our customers. As we have grown, we have been able to lower our Cost of Funds Rate by negotiating more favorable interest rates on our debt and accessing new sources of funding, such as the OnDeck *Marketplace* and the securitization markets. While we will continue to seek to lower our Cost of Funds Rate, an increase in interest rates or access to financing facilities that offer us greater flexibility could result in an increase of our cost of funds. Should our cost of funds continue to decrease, we do not expect that our Cost of Funds Rate will continue to decline as significantly as it has since 2012.

#### *Historical Charge-Offs*

We illustrate below our historical loan losses by providing information regarding our net lifetime charge-off ratios by cohort. Net lifetime charge-offs are the unpaid principal balance charged off less recoveries of loans previously charged off, and a given cohort's net lifetime charge-off ratio equals the cohort's net lifetime charge-offs through June 30, 2015 divided by the cohort's total original loan volume. Repeat loans in both the numerator and denominator include the full renewal loan principal, rather than the net funded amount, which is the renewal loan's principal net of the unpaid principal balance on the existing loan. Loans are typically charged off after 90 days of nonpayment. Loans originated and charged off between January 1, 2012 and June 30, 2015 were on average charged off near the end of their loan term. The chart immediately below includes all term loan originations, regardless of funding source, including loans sold through our OnDeck *Marketplace* or held for sale on our balance sheet.

#### **Net Charge-off Ratios by Cohort Through June 30, 2015**



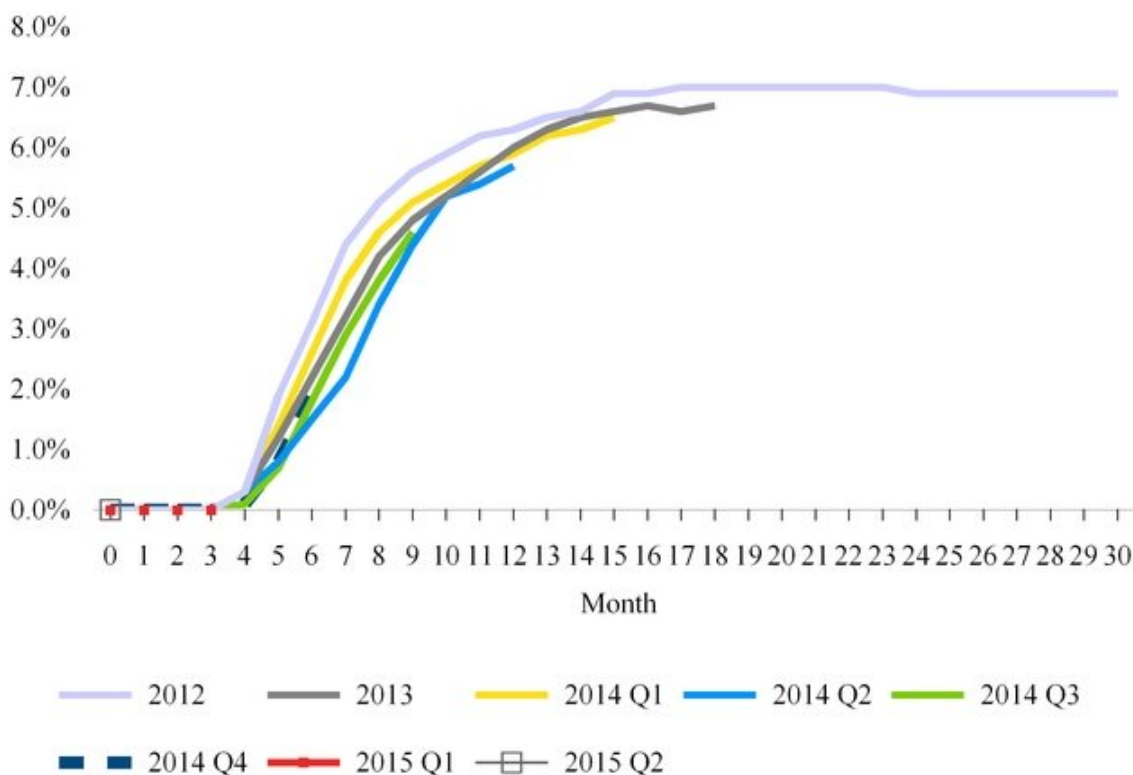
Principal Outstanding as of June 30, 2015	0.0%	0.3%	12.6%	55.7%	88.0%
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The following chart displays the historical lifetime cumulative net charge-off ratios by origination year. The chart reflects all term loan originations, regardless of funding source, including loans sold through our OnDeck *Marketplace* or held for sale on our balance sheet. The data is shown as a static pool for annual cohorts, illustrating how the cohort has performed given equivalent months of seasoning.

Given our loans are typically charged off after 90 days of nonpayment, all cohorts reflect approximately 0% for the first three months in the below chart.

## Net Cumulative Lifetime Charge-off Ratios

### All Loans



Originations	2012	2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015
All term loans (in thousands)	\$173,246	\$455,931	\$220,935	\$237,730	\$297,288	\$345,004	\$384,703	\$381,490
Weighted average term (months)	9.2	10.0	10.8	10.9	11.5	11.5	11.9	11.9

## Components of Our Results of Operations

### Revenue

**Interest Income** . We generate revenue primarily through interest and origination fees earned on the term loans we originate and hold to maturity, and to a lesser extent, interest earned on lines of credit. Our interest and origination fee revenue is amortized over the term of the loan using the effective interest method. Origination fees collected but not yet recognized as revenue are netted with direct origination costs and recorded as a component of loans on our condensed consolidated balance sheets and recognized over the term of the loan. Direct origination costs include costs directly attributable to originating a loan, including commissions, vendor costs and personnel costs directly related to the time spent by those individuals performing activities related to loan origination.

**Gain on Sales of Loans** . In October 2013, we began selling term loans to third-party institutional investors through *OnDeck Marketplace* . We recognize a gain or loss on the sale of such loans as the difference between the proceeds received from the purchaser and the carrying value, which is the unpaid principal balance plus net deferred origination costs, of the loan.

*Other Revenue* . Our other revenue consists of servicing income from loans sold to third-party institutional investors, and marketing fees earned from our issuing bank partner. We treat loans referred to, and funded by, our issuing bank partner and later purchased by us as part of our originations.

#### *Cost of Revenue*

*Provision for Loan Losses* . Provision for loan losses consists of amounts charged to income during the period to maintain an allowance for loan losses, or ALLL, estimated to be adequate to provide for probable credit losses inherent in our existing loan portfolio. Our ALLL represents our estimate of the expected credit losses inherent in our portfolio of term loans and lines of credit and is based on a variety of factors, including the composition and quality of the portfolio, loan specific information gathered through our collection efforts, delinquency levels, our historical charge-off and loss experience and general economic conditions. We expect our aggregate provision for loan losses to increase in absolute dollars as the amount of term loans and lines of credit we originate increases.

*Funding Costs* . Funding costs consist of the interest expense we pay on the debt we incur to fund our lending activities, certain fees and the amortization of deferred debt issuance costs incurred in connection with obtaining this debt, such as banker fees, origination fees and legal fees. Such costs are expensed immediately upon early extinguishment of the related debt. We expect funding costs to continue to increase in absolute dollars in the near future as we incur additional debt to support future term loan and line of credit originations. In addition, funding costs as a percentage of gross revenue will fluctuate based on the applicable interest rates payable on the debt we incur to fund our lending activities and our OnDeck *Marketplace* revenue mix. While we will continue to seek to lower our Cost of Funds Rate, an increase in interest rates or access to financing facilities that offer us greater flexibility could result in an increase of our cost of funds. Should our cost of funds continue to decrease, we do not expect that our Cost of Funds Rate will continue to decline as significantly as it has since 2012.

#### *Operating Expense*

Operating expense consists of sales and marketing, technology and analytics, processing and servicing, and general and administrative expenses. Salaries and personnel-related costs, including benefits, bonuses and stock-based compensation expense, comprise a significant component of each of these expense categories. We expect our stock-based compensation expense to increase in the future. The number of employees related to these operating expense categories was 444 and 576 at December 31, 2014 and June 30, 2015 , respectively. We expect to continue to hire new employees in order to support our growth strategy. All operating expense categories also include an allocation of overhead, such as rent and other overhead, which is based on employee headcount.

*Sales and Marketing* . Sales and marketing expense consists of salaries and personnel-related costs of our sales and marketing and business development employees, as well as direct marketing and advertising costs, online and offline customer acquisition costs (such as direct mail, paid search and search engine optimization costs), public relations, radio and television advertising, promotional event programs and sponsorships, corporate communications and allocated overhead. We expect our sales and marketing expense to increase in absolute dollars in the foreseeable future as we further increase the number of sales and marketing professionals and increase our marketing activities in order to continue to expand our direct customer acquisition efforts and build our brand. Future sales and marketing expense may include the expense associated with warrants issued to a strategic partner if performance conditions are met as described in Note 8 of Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2014 .

*Technology and Analytics* . Technology and analytics expense consists primarily of the salaries and personnel-related costs of our engineering and product employees as well as our credit and analytics employees who develop our proprietary credit-scoring models. Additional expenses include third-party data acquisition expenses, professional services, consulting costs, expenses related to the development of new products and technologies and maintenance of existing technology assets, amortization of capitalized internal-use software costs related to our technology platform and allocated overhead. We believe continuing to invest in technology is essential to maintaining our competitive position, and we expect these costs to increase in the near term on an absolute basis and as a percentage of gross revenue.

*Processing and Servicing* . Processing and servicing expense consists primarily of salaries and personnel-related costs of our credit analysis, underwriting, funding, fraud detection, customer service and collections employees. Additional expenses include vendor costs associated with third-party credit checks, lien filing fees and other costs to evaluate, close and fund loans and overhead costs. We anticipate that our processing and servicing expense will increase in absolute dollars as we grow originations.

*General and Administrative* . General and administrative expense consists primarily of salary and personnel-related costs for our executive, finance and accounting, legal and people operations employees. Additional expenses include a provision for the unfunded portion of our lines of credit, consulting and professional fees, insurance, legal, occupancy, travel, foreign exchange,

and other corporate expenses. Subsequent to our initial public offering, these expenses also include costs associated with compliance with the Sarbanes-Oxley Act and other regulations governing public companies, directors' and officers' liability insurance and increased accounting expenses. We anticipate that our general and administrative expense will increase in absolute dollars as we continue to grow and expand our operations but will decline as a percentage of gross revenue over the longer term.

*Other (Expense) Income*

*Interest Expense* . Interest expense consists of interest expense and amortization of deferred debt issuance costs incurred on debt associated with our corporate activities. It does not include interest expense incurred on debt associated with our lending activities.

*Warrant Liability Fair Value Adjustment* . We issued warrants to purchase shares of our Series E redeemable convertible preferred stock in connection with certain consulting and commercial agreements in 2014. As the warrant holders had the right to demand that their redeemable convertible preferred stock be settled in cash after the passage of time, we recorded the warrants as liabilities on our condensed consolidated balance sheet. The fair values of our redeemable convertible preferred stock warrant liabilities are re-measured at the end of each reporting period and any changes in fair values are recognized in other (expense) income. During 2014, a majority of these warrants were exercised, eliminating the associated warrant liabilities. At the completion of our initial public offering in December 2014, the remaining outstanding warrants were converted into warrants to purchase common stock, which resulted in the reclassification of the warrant liability to additional paid-in-capital, and no further changes in fair value will be recognized in other (expense) income. Future warrant liability fair value adjustment may include adjustments associated with warrants issued to a strategic partner as described in Note 8 of Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2014 .

*Provision for Income Taxes*

Provision for income taxes consists of U.S. federal, state and foreign income taxes, if any. To date, we have not been required to pay U.S. federal or state income taxes because of our current and accumulated net operating losses. As of December 31, 2014 , we had \$32.2 million of federal net operating loss carryforwards and \$31.4 million of state net operating loss carryforwards available to reduce future taxable income, unless limited due to historical or future ownership changes. The federal net operating loss carryforwards will begin to expire at various dates beginning in 2027.

The Internal Revenue Code of 1986, as amended, or the Code, imposes substantial restrictions on the utilization of net operating losses and other tax attributes in the event of an "ownership change" of a corporation. Events which may cause limitation in the amount of the net operating losses and other tax attributes that are able to be utilized in any one year include, but are not limited to, a cumulative ownership change of more than 50% over a three-year period, which has occurred as a result of historical ownership changes. Accordingly, our ability to use pre-change net operating loss and certain other attributes are limited as prescribed under Sections 382 and 383 of the Code. Therefore, if we earn net taxable income in the future, our ability to reduce our federal income tax liability with our existing net operating losses is subject to limitation. Future offerings, as well as other future ownership changes that may be outside our control could potentially result in further limitations on our ability to utilize our net operating loss and tax attributes. Accordingly, achieving profitability may not result in a full release of the valuation allowance.

As of December 31, 2014 , a full valuation allowance of \$26.1 million was recorded against our net deferred tax assets.

## Results of Operations

The following table summarizes our results of operations for the periods presented and as a percentage of our total revenue for those periods. Interim results and the period-to-period comparison are not necessarily indicative of results for future periods.

### Comparison of Three Months Ended June 30, 2015 and 2014

	Three Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Percentage of		Percentage of			
	Amount	Gross Revenue	Amount	Gross Revenue	Amount	Percentage
(dollars in thousands)						
Revenue:						
Interest income	\$ 50,248	79.4 %	\$ 32,864	92.6 %	\$ 17,384	52.9 %
Gain on sales of loans	11,710	18.5	1,584	4.5	10,126	639.3
Other revenue	1,354	2.1	1,054	3.0	300	28.5
Gross revenue	63,312	100.0	35,502	100.0	27,810	78.3
Cost of revenue:						
Provision for loan losses	15,526	24.5	13,073	36.8	2,453	18.8
Funding costs	4,771	7.5	3,801	10.7	970	25.5
Total cost of revenue	20,297	32.1	16,874	47.5	3,423	20.3
Net revenue	43,015	67.9	18,628	52.5	24,387	130.9
Operating expenses:						
Sales and marketing	14,981	23.7	7,113	20.0	7,868	110.6
Technology and analytics	10,206	16.1	3,799	10.7	6,407	168.6
Processing and servicing	3,015	4.8	2,084	5.9	931	44.7
General and administrative	9,991	15.8	4,434	12.5	5,557	125.3
Total operating expenses	38,193	60.3	17,430	49.1	20,763	119.1
Income from operations	4,822	7.6	1,198	3.4	3,624	302.5
Other (expense) income:						
Interest expense	(74)	(0.1)	(62)	(0.2)	(12)	19.4
Warrant liability fair value adjustment	—	—	(2,190)	(6.2)	2,190	(100.0)
Total other (expense) income:	(74)	(0.1)	(2,252)	(6.3)	2,178	(96.7)
Income (loss) before provision for income taxes	4,748	7.5	(1,054)	(3.0)	5,802	(550.5)
Provision for income taxes	—	—	—	—	—	—
Net income (loss)	\$ 4,748	7.5 %	\$ (1,054)	(3.0)%	\$ 5,802	(550.5)%

## Revenue

	Three Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Percentage of		Percentage of			
	Amount	Gross Revenue	Amount	Gross Revenue	Amount	Percentage
(dollars in thousands)						
Revenue:						
Interest income	\$ 50,248	79.4%	\$ 32,864	92.6%	\$ 17,384	52.9%
Gain on sales of loans	11,710	18.5	1,584	4.5	10,126	639.3
Other revenue	1,354	2.1	1,054	3.0	300	28.5
Gross revenue	\$ 63,312	100.0%	\$ 35,502	100.0%	\$ 27,810	78.3%

Gross revenue increased by \$27.8 million , or 78.3% , from \$35.5 million in the second quarter of 2014 to \$63.3 million in the second quarter of 2015 . This growth was in part attributable to a \$17.4 million , or 52.9% , increase in interest income, which was primarily driven by an increase in the average total loans outstanding. In the second quarter of 2015 , our originations increased 68.9% to \$419.0 million compared to the second quarter of 2014 and over the same period, our Average Loans increased 67.7% from \$319.1 million to \$535.2 million . As a result of the increase in term length and other factors described under the subheading "Key Factors Affecting Our Performance - Pricing," Effective Interest Yield on loans outstanding declined from 41.2% in the second quarter of 2014 to 37.6% in the second quarter of 2015 .

Gain on sales of loans increased by \$10.1 million , from \$1.6 million in the second quarter of 2014 to \$11.7 million in the second quarter of 2015 . This growth was attributable to an increase in the sale of term loans through OnDeck *Marketplace* of \$124.4 million and an increase in *Marketplace* Gain on Sale Rate from 6.3% in the second quarter of 2014 to 7.8% in the second quarter of 2015 .

## Cost of Revenue

	Three Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Percentage of		Percentage of			
	Amount	Gross Revenue	Amount	Gross Revenue	Amount	Percentage
(dollars in thousands)						
Cost of revenue:						
Provision for loan losses	\$ 15,526	24.5%	\$ 13,073	36.8%	\$ 2,453	18.8%
Funding costs	4,771	7.5	3,801	10.7	970	25.5
Total cost of revenue	\$ 20,297	32.1%	\$ 16,874	47.5%	\$ 3,423	20.3%

*Provision for Loan Losses* . Provision for loan losses increased by \$2.5 million , or 18.8% , from \$13.1 million in the second quarter of 2014 to \$15.5 million in the second quarter of 2015 . The increase in provision for loan losses was primarily attributable to the increase in originations of term loans and lines of credit. This increase was partially offset by the growth in sales of loans through OnDeck *Marketplace* as a percentage of originations in the second quarter of 2015 . Additionally, a portion of the growth in OnDeck *Marketplace* is attributable to the sale of loans held for investment originated in prior periods. The sale of these loans generated a beneficial effect to our provision through the release of allowance for loan losses no longer required related to the sold loans. Although we recognize revenue on loans over their term, we provide for probable credit losses on the loans at the time they are originated and then adjust periodically based on actual performance and changes in loss expectations. As a result, we believe that our Provision Rate (provision for loan losses divided by the new originations volume of loans held for investment and not sold in a period), rather than provision for loan losses as a percentage of gross revenue, provides more useful insight into

our operating performance. The Provision Rate decreased from 5.8% in the second quarter of 2014 to 5.3% in the second quarter of 2015 . This drop in Provision Rate was primarily attributable to the previously mentioned release of allowance for loan losses related to the sale of loans in the second quarter of loans held for investment. Absent the sale of loans in the second quarter of loans held for investment, the Provision Rate would have been comparable with historical averages over the last four quarters.

**Funding Costs** . Funding costs increased by \$1.0 million , or 25.5% , from \$3.8 million in the second quarter of 2014 to \$4.8 million in the second quarter of 2015 . The increase in funding costs was primarily attributable to the increases in our aggregate outstanding borrowings substantially offset by lower interest rates we pay. Our Average Funding Debt Outstanding during the second quarter of 2015 was \$383.4 million as compared to \$236.6 million in the second quarter of 2014 . As a percentage of gross revenue, funding costs decreased from 10.7% in the second quarter of 2014 to 7.5% in the second quarter of 2015 . The decrease in funding costs as a percentage of gross revenue was primarily the result of more favorable interest rates on our debt facilities associated with our lending activities and the growth of OnDeck *Marketplace* , as a substantial portion of loans sold through OnDeck *Marketplace* do not incur funding costs from our debt facilities. The decrease in funding costs can be seen in the decrease in our Cost of Funds Rate which decreased from 6.4% in the second quarter of 2014 to 5.0% in the second quarter of 2015 .

### **Operating Expense**

#### *Sales and Marketing*

Three Months Ended June 30,					
2015		2014		Period-to-Period Change	
Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
(dollars in thousands)					
Sales and marketing	\$ 14,981 23.7%	\$ 7,113 20.0%		\$ 7,868	110.6%

Sales and marketing expense increased by \$7.9 million , or 110.6% , from \$7.1 million in the second quarter of 2014 to \$15.0 million in the second quarter of 2015 . The increase was in part attributable to a \$5.2 million increase in direct marketing, general marketing and advertising costs as we expanded our marketing programs to drive increased customer acquisition and brand awareness. In addition, salaries and personnel-related costs increased \$2.7 million primarily as a result of an increase in the number of personnel necessary to support our sales and marketing efforts.

#### *Technology and Analytics*

Three Months Ended June 30,					
2015		2014		Period-to-Period Change	
Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
(dollars in thousands)					
Technology and analytics	\$ 10,206 16.1%	\$ 3,799 10.7%		\$ 6,407	168.6%

Technology and analytics expense increased by \$6.4 million , or 168.6% , from \$3.8 million in the second quarter of 2014 to \$10.2 million in the second quarter of 2015 . The increase was primarily attributable to a \$4.1 million increase in salaries and personnel-related costs, as we increased the number of technology personnel developing our platform, as well as analytics personnel to further improve upon algorithms underlying the OnDeck *Score* and our marketing models. In addition, we incurred a \$2.1 million increase in amortization of capitalized internal-use software costs, investments related to our technology platform and costs to support our larger employee base.

### Processing and Servicing

	Three Months Ended June 30,					
	2015		2014		Period-to-Period Change	
	Percentage of Gross Revenue		Percentage of Gross Revenue		Change	
	Amount		Amount		Amount	Percentage
	(dollars in thousands)					
Processing and servicing	\$ 3,015	4.8%	\$ 2,084	5.9%	\$ 931	44.7%

Processing and servicing expense increased by \$0.9 million , or 44.7% , from \$2.1 million in the second quarter of 2014 to \$3.0 million in the second quarter of 2015 . The increase was primarily attributable to a \$0.9 million increase in salaries and personnel-related costs, as we increased the number of processing and servicing personnel to support the increased volume of loan applications and approvals and increased loan servicing requirements.

### General and Administrative

	Three Months Ended June 30,					
	2015		2014		Period-to-Period Change	
	Percentage of Gross Revenue		Percentage of Gross Revenue		Change	
	Amount		Amount		Amount	Percentage
	(dollars in thousands)					
General and administrative	\$ 9,991	15.8%	\$ 4,434	12.5%	\$ 5,557	125.3%

General and administrative expense increased by \$5.6 million , or 125.3% , from \$4.4 million in the second quarter of 2014 to \$10.0 million in the second quarter of 2015 . The increase was primarily attributable to a \$2.7 million increase in salaries and personnel-related costs, as we increased the number of general and administrative personnel in the later period to support the growth of our business and to meet the operational needs of a newly public company. We also incurred \$0.4 million of expense in the second quarter of 2015 related to the accrual for losses on the unfunded portion of our lines of credit, due to the growth of that product. Furthermore, we incurred a \$1.4 million increase in legal, insurance, accounting, and consulting services in the second quarter of 2015 , mainly due to the additional costs of operating as a public company. In addition, we incurred a one time fee in the second quarter of 2015 of \$0.4 million associated with the termination of a lease in Denver, Colorado and experienced an increase of \$0.7 million in other miscellaneous expenses resulting primarily from increases in bank fees, a loss on foreign currency transactions and increases in travel and entertainment expense.

*Comparison of Six Months Ended June 30, 2015 and 2014*

	Six Months Ended June 30,				Period-to-Period Change	
	2015		2014			
	Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
	(dollars in thousands)					
Revenue:						
Interest income	\$ 98,947	82.6 %	\$ 59,212	92.4 %	\$ 39,735	67.1 %
Gain on sales of loans	18,389	15.4	2,927	4.6	15,462	528.3
Other revenue	2,434	2.0	1,925	3.0	509	26.4
Gross revenue	119,770	100.0	64,064	100.0	55,706	87.0
Cost of revenue:						
Provision for loan losses	38,626	32.3	29,652	46.3	8,974	30.3
Funding costs	9,816	8.2	8,441	13.2	1,375	16.3
Total cost of revenue	48,442	40.4	38,093	59.5	10,349	27.2
Net revenue	71,328	59.6	25,971	40.5	45,357	174.6
Operating expenses:						
Sales and marketing	27,656	23.1	13,474	21.0	14,182	105.3
Technology and analytics	18,794	15.7	6,708	10.5	12,086	180.2
Processing and servicing	5,717	4.8	3,693	5.8	2,024	54.8
General and administrative	19,576	16.3	7,826	12.2	11,750	150.1
Total operating expenses	71,743	59.9	31,701	49.5	40,042	126.3
Loss from operations	(415)	(0.3)	(5,730)	(8.9)	5,315	(92.8)
Other (expense) income:						
Interest expense	(180)	(0.2)	(219)	(0.3)	39	(17.8)
Warrant liability fair value adjustment	—	—	(8,822)	(13.8)	8,822	(100.0)
Total other (expense) income:	(180)	(0.2)	(9,041)	(14.1)	8,861	(98.0)
Loss before provision for income taxes	(595)	(0.5)	(14,771)	(23.1)	14,176	(96.0)
Provision for income taxes	—	—	—	—	—	—
Net loss	\$ (595)	(0.5)%	\$ (14,771)	(23.1)%	\$ 14,176	(96.0)%

**Revenue**

	Six Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
	(dollars in thousands)					
Revenue:						
Interest income	\$ 98,947	82.6%	\$ 59,212	92.4%	\$ 39,735	67.1%
Gain on sales of loans	18,389	15.4	2,927	4.6	15,462	528.3
Other revenue	2,434	2.0	1,925	3.0	509	26.4
Gross revenue	\$ 119,770	100.0%	\$ 64,064	100.0%	\$ 55,706	87.0%

Gross revenue increased by \$55.7 million , or 87.0% , from \$64.1 million for the six months ended June 30, 2014 to \$119.8 million for the six months ended June 30, 2015 . This growth was in part attributable to a \$39.7 million , or 67.1% , increase in interest income, which was primarily driven by an increase in the average total loans outstanding. For the six months ended June 30, 2015 , our originations increased 75.6% to \$835.0 million compared to the six months ended June 30, 2014 and over the same period, our Average Loans increased 82.9% from \$286.9 million for the six months ended June 30, 2014 to \$524.8 million for the six months ended June 30, 2015 . As a result of the increase in term length and other factors described under the subheading "Key Factors Affecting Our Performance - Pricing," Effective Interest Yield on loans outstanding declined from 41.3% for the six months ended June 30, 2014 to 37.7% for the six months ended June 30, 2015 .

Gain on sales of loans increased by \$15.5 million , from \$2.9 million for the six months ended June 30, 2014 to \$18.4 million for the six months ended June 30, 2015 . This growth was attributable to an increase in the sale of term loans of \$187.8 million , or 331.1% , through OnDeck *Marketplace* and an increase in *Marketplace* Gain on Sale Rate from 5.2% for the six months ended June 30, 2014 to 7.5% for the six months ended June 30, 2015 .

### Cost of Revenue

	Six Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Percentage of		Percentage of			
	Amount	Gross Revenue	Amount	Gross Revenue	Amount	Percentage
(dollars in thousands)						
Cost of revenue:						
Provision for loan losses	\$ 38,626	32.3%	\$ 29,652	46.3%	\$ 8,974	30.3%
Funding costs	9,816	8.2	8,441	13.2	1,375	16.3
Total cost of revenue	\$ 48,442	40.4%	\$ 38,093	59.5%	\$ 10,349	27.2%

*Provision for Loan Losses* . Provision for loan losses increased by \$9.0 million , or 30.3% , from \$29.7 million for the six months ended June 30, 2014 to \$38.6 million for the six months ended June 30, 2015 . The increase in provision for loan losses was primarily attributable to the increase in originations of term loans and lines of credit. A portion of the growth in OnDeck *Marketplace* was attributed to the sale of seasoned loans held for investment, with the sale of these loans generating a beneficial effect to our provision through the release of allowance for loan losses no longer required related to the sold loans. Although we recognize revenue on loans over their term, we provide for probable credit losses on the loans at the time they are originated and then adjust periodically based on actual performance and changes in loss expectations. As a result, we believe that our Provision Rate (provision for loan losses divided by the new originations volume of loans held for investment and not sold in a period), rather than provision for loan losses as a percentage of gross revenue, provides more useful insight into our operating performance. The Provision Rate decreased from 7.0% for the six months ended June 30, 2014 to 6.6% for the six months ended June 30, 2015 . The drop in Provision rate was primarily attributable to improved credit quality of new originations.

*Funding Costs* . Funding costs increased by \$1.4 million , or 16.3% , from \$8.4 million for the six months ended June 30, 2014 to \$9.8 million for the six months ended June 30, 2015 . The increase in funding costs was primarily attributable to the increases in our aggregate outstanding borrowings substantially offset by lower interest rates we pay. Our Average Funding Debt Outstanding during the six months ended June 30, 2015 was \$384.9 million as compared to \$220.5 million for the six months ended June 30, 2014 . As a percentage of gross revenue, funding costs decreased from 13.2% for the six months ended June 30, 2014 to 8.2% for the six months ended June 30, 2015 . The decrease in funding costs as a percentage of gross revenue was primarily the result of more favorable interest rates on our debt facilities associated with our lending activities and the growth of OnDeck *Marketplace* , as a substantial portion of loans sold through OnDeck *Marketplace* do not incur funding costs from our debt facilities. The decrease in funding costs as a percentage of gross revenue can be seen in the decrease in our Cost of Funds Rate which decreased from 7.7% for the six months ended June 30, 2014 to 5.1% for the six months ended June 30, 2015 .

## Operating Expense

### Sales and Marketing

	Six Months Ended June 30,				Period-to-Period Change	
	2015		2014			
	Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
(dollars in thousands)						
Sales and marketing	\$ 27,656	23.1%	\$ 13,474	21.0%	\$ 14,182	105.3%

Sales and marketing expense increased by \$14.2 million , or 105.3% , from \$13.5 million for the six months ended June 30, 2014 to \$27.7 million for the six months ended June 30, 2015 . The increase was in part attributable to a \$9.1 million increase in direct marketing, general marketing and advertising costs as we expanded our marketing programs to drive increased customer acquisition and brand awareness. In addition, salaries and personnel-related costs increased by \$5.1 million primarily as a result of an increase in the number of personnel necessary to support our sales and marketing efforts.

### Technology and Analytics

	Six Months Ended June 30,				Period-to-Period Change				
	2015		2014						
	Percentage of Gross Revenue		Percentage of Gross Revenue		Amount	Percentage			
	Amount		Amount						
	(dollars in thousands)								
Technology and analytics	\$	18,794	15.7%	\$	6,708	10.5%	\$	12,086	180.2%

Technology and analytics expense increased by \$12.1 million , or 180.2% , from \$6.7 million for the six months ended June 30, 2014 to \$18.8 million for the six months ended June 30, 2015 . The increase was primarily attributable to a \$7.8 million increase in salaries and personnel-related costs, as we increased the number of technology personnel developing our platform, as well as analytics personnel to further improve upon algorithms underlying the OnDeck *Score* and our marketing models. In addition, we incurred a \$1.0 million increase in amortization of capitalized internal-use software costs and an increase of \$3.0 million in our investments related to our technology platform and costs to support our larger employee base.

### Processing and Servicing

	Six Months Ended June 30,				Period-to-Period Change	
	2015		2014			
	Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
	(dollars in thousands)					
Processing and servicing	\$ 5,717	4.8%	\$ 3,693	5.8%	\$ 2,024	54.8%

Processing and servicing expense increased by \$2.0 million , or 54.8% , from \$3.7 million for the six months ended June 30, 2014 to \$5.7 million for the six months ended June 30, 2015 . The increase was primarily attributable to a \$1.5 million increase in salaries and personnel-related costs, as we increased the number of processing and servicing personnel to support the increased volume of underwriting and servicing requirements. In addition, we incurred a \$0.5 million increase in third-party processing costs, credit information and filing fees as a result of the increased volume of loan applications and originations in the later period.

## General and Administrative

	Six Months Ended June 30,				Period-to-Period	
	2015		2014		Change	
	Amount	Percentage of Gross Revenue	Amount	Percentage of Gross Revenue	Amount	Percentage
	(dollars in thousands)					
General and administrative	\$ 19,576	16.3%	\$ 7,826	12.2%	\$ 11,750	150.1%

General and administrative expense increased by \$11.8 million , or 150.1% , from \$7.8 million for the six months ended June 30, 2014 to \$19.6 million for the six months ended June 30, 2015 . The increase was primarily attributable to a \$5.2 million increase in salaries and personnel-related costs, as we increased the number of general and administrative personnel in the later period to support the growth of our business and to meet the operational needs of a newly public company. We also incurred \$0.8 million of expense for the six months ended June 30, 2015 related to the accrual for losses on the unfunded portion of our lines of credit, due to the growth of that product. Furthermore, we incurred a \$2.1 million increase in legal, insurance, accounting, and consulting services for the six months ended June 30, 2015 , mainly due to the additional costs of operating as a public company. Due to our expanded physical presence we experienced an increase in rent and depreciation of leasehold improvements of \$0.5 million and \$0.2 million , respectively. In addition, we incurred a one time fee of \$0.4 million for the six months ended June 30, 2015 associated with the termination of a lease in Denver, Colorado and experienced an increase of \$2.5 million in other miscellaneous expenses resulting primarily from increases in bank fees, a loss on foreign currency transactions, and increases in various expenses associated with expanded headcount.

## Liquidity and Capital Resources

### Sources of Liquidity

Prior to our initial public offering, or IPO, we funded our lending activities and operations primarily through private placements of redeemable convertible preferred stock, issuances of debt facilities, cash from operating activities and, beginning in October 2013, the sale of term loans to third-party institutional investors through OnDeck *Marketplace* .

Our IPO in December 2014 resulted in proceeds to us of \$210.0 million, net of underwriting discounts, commissions and offering expenses. As of June 30, 2015 , we had unrestricted cash and cash equivalents of \$179.7 million and had the ability to borrow up to an additional \$291.2 million under our current funding and corporate debt facilities, subject to various borrowing conditions and limitations.

### Preferred Equity Financings

Since inception, we raised \$182.9 million from the sale of redeemable convertible preferred stock to third parties, including \$77.0 million in our Series E financing in February 2014. The funds received from the issuance of our Series E redeemable convertible preferred stock were our primary source of capital for operating expenditures in 2014. We also used a portion of this capital to finance a small percentage of our loans.

### Current Debt Facilities

The following table summarizes our current debt facilities available, subject to borrowing conditions, for funding our lending activities and our operating expenditures as of June 30, 2015 :

Description	Maturity Date	Interest Rate at June 30, 2015	Maximum Borrowing Capacity	Principal Outstanding
(in millions)				
<b>Funding debt:</b>				
OnDeck Asset Securitization Trust LLC	May 2018	3.4%	\$ 175.0	\$ 175.0
OnDeck Account Receivables Trust 2013-1 LLC	September 2016	3.7%	167.6	86.8
On Deck Asset Company, LLC	May 2017	8.4%	50.0	18.8
OnDeck Asset Pool, LLC	August 2016	5.0%	75.0	22.7
Prime OnDeck Receivable Trust, LLC	June 2017	2.4%	100.0	15.0
Receivable Assets of OnDeck, LLC	May 2017	3.2%	50.0	28.2
Small Business Asset Fund 2009 LLC	Various (1)	7.4%	16.9	16.9
Partner Synthetic Participation	Various (2)	Various	5.0	5.0
Total funding debt			\$ 639.5	\$ 368.4
<b>Corporate debt:</b>				
On Deck Capital, Inc.	October 2015	4.5%	\$ 20.0	\$ —

- (1) Maturity dates range from July 2015 through May 2017  
(2) Maturity dates range from July 2015 through June 2017

While the lenders under our corporate debt facility and holders of Partner Synthetic Participation have direct recourse to us as the borrower thereunder, lenders to our subsidiaries do not have direct recourse to us.

We are currently planning to renew or replace the \$20 million On Deck Capital, Inc. revolving facility (corporate debt) which is scheduled to mature in October 2015. Although we believe we will be able to do so on market terms, there is no assurance that we will be able to obtain a new credit facility of similar size on similar or better terms from our existing or a different lender.

#### *OnDeck Marketplace*

Our OnDeck *Marketplace* is our proprietary whole loan sale platform that allows participating third-party institutional investors to directly purchase small business loans from us. Pursuant to a whole loan purchase agreement, each OnDeck *Marketplace* participant commits to purchase, on a forward flow basis, a pre-determined dollar amount of loans that satisfy certain eligibility criteria. The loans are sold to the participant at a pre-determined purchase price above par. We recognize a gain or loss from OnDeck *Marketplace* loans when sold. The loan sales typically are conducted daily. We currently act as servicer in exchange for a servicing fee with respect to the loans purchased by the applicable OnDeck *Marketplace* participant. We expect to continue growing the OnDeck *Marketplace* business.

#### *Cash and Cash Equivalents, Loans (Net of Allowance for Loan Losses), and Cash Flows*

The following table summarizes our cash and cash equivalents, loans (net of ALLL) and cash flows:

	Six Months Ended June 30,	
	2015	2014
(in thousands)		
Cash and cash equivalents	\$ 179,692	\$ 18,983
Loans, net of allowance for loan losses	\$ 460,867	\$ 261,844
Cash provided by (used in):		
Operating activities	\$ 50,286	\$ 40,834
Investing activities	\$ (63,500)	\$ (161,898)
Financing activities	\$ (27,404)	\$ 135,377

Our cash and cash equivalents at June 30, 2015 were held primarily for working capital purposes. We may, from time to time, use excess cash and cash equivalents including proceeds from our IPO to fund our lending activities. We do not enter into investments for trading or speculative purposes. Our policy is to invest any cash in excess of our immediate working capital requirements in investments designed to preserve the principal balance and provide liquidity. Accordingly, our excess cash is invested primarily in demand deposit accounts that are currently providing only a minimal return.

#### *Cash Flows*

##### *Operating Activities*

For the six months ended June 30, 2015, net cash provided by our operating activities was \$50.3 million, which was primarily the result of our cash received from our customers attributable to interest payments totaling approximately \$119.7 million, less the amount of cash we utilized to pay our operating expenses of approximately \$62.3 million and \$8.1 million we used to pay the interest on our debt (both funding and corporate). During that same period, accounts payable and accrued expenses and other liabilities increased by approximately \$10.3 million.

For the six months ended June 30, 2014, net cash provided by our operating activities was \$40.8 million, which was primarily the result of our cash received from our customers attributable to interest payments totaling approximately \$73.5 million, less the amount of cash we utilized to pay our operating expenses of approximately \$28.8 million and \$7.5 million we used to pay the interest on our debt (both funding and corporate). During that same period, accounts payable and accrued expenses and other liabilities decreased by approximately \$1.9 million.

##### *Investing Activities*

Our investing activities have consisted primarily of funding our term loan and line of credit originations including payment of associated direct costs and receipt of associated fees offset by customer repayments of term loans and lines of credit, purchases of property, equipment and software, capitalized internal-use software development costs, proceeds from the sale of term loans which were not specifically identified at origination as loans held for sale through OnDeck Marketplace, and changes in restricted cash. Purchases of property, equipment and software and capitalized internal-use software development costs may vary from period to period due to the timing of the expansion of our operations, the addition of employee headcount and the development cycles of our internal-use technology.

For the six months ended June 30, 2015, net cash used to fund our investing activities was \$ 63.5 million and consisted primarily of \$ 100.1 million of loan originations in excess of loan repayments received, proceeds from sale of loans held for investment of \$58.9 million, \$ 17.3 million of origination costs paid in excess of fees collected, and \$ 6.2 million for the purchase of property, equipment and software and capitalized internal-use software development costs. We also restricted less cash as collateral for financing arrangements, resulting in a \$ 1.2 million increase in unrestricted cash during the year.

For the six months ended June 30, 2014, net cash used to fund our investing activities was \$ 161.9 million and consisted primarily of \$ 140.0 million of loan originations in excess of loan repayments received, \$ 15.6 million of origination costs paid in excess of fees collected, and \$ 6.1 million for the purchase of property, equipment and software and capitalized internal-use software development costs. We also restricted more cash as collateral for financing arrangements, resulting in a \$ 0.2 million decrease in unrestricted cash during the year.

##### *Financing Activities*

Our financing activities have consisted primarily of the issuance of common stock and redeemable convertible preferred stock and net borrowings from our revolving debt facilities.

For the six months ended June 30, 2015, net cash used to fund our financing activities was \$ 27.4 million and consisted primarily of \$31.5 million in net repayments on our revolving debt facilities, \$7.1 million of cash received for investment by noncontrolling interest in On Deck Capital Australia PTY LTD and \$1.8 million of payments of IPO costs. Borrowings from our funding facilities decreased from the prior year period due to growth of OnDeck Marketplace and our use of available cash from our IPO, which permitted us to fund more loans without drawing corresponding debt, thereby reducing interest expense.

For the six months ended June 30, 2014, net cash provided by our financing activities was \$ 135.4 million and consisted primarily of \$ 62.0 million in net borrowings from our revolving debt facilities, primarily associated with the increase in loan originations during the year, and \$ 77.0 million in net proceeds from the issuance of redeemable convertible preferred stock.

### ***Operating and Capital Expenditure Requirements***

We believe that our existing cash balances, the cash flows provided by our operations and the available borrowing capacity under our revolving lines of credit will be sufficient to meet our anticipated cash operating expense and capital expenditure requirements through at least the next 12 months. If we should require additional liquidity, we will seek additional equity or debt financing. The sale of equity may result in dilution to our stockholders, and those securities may have rights senior to those of our common shares. If we raise additional funds through the issuance of additional debt, the agreements governing such debt could contain covenants that would restrict our operations and such debt would rank senior to shares of our common stock. We may require additional capital beyond our currently anticipated amounts and additional capital may not be available on reasonable terms, or at all.

### **Contractual Obligations**

Other than as described below, there have been other no material changes in our commitments under contractual obligations from those disclosed in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 and our Annual Report on Form 10-K for the year ended December 31, 2014.

#### ***ODAC Credit Agreement Amendment***

On May 22, 2015, On Deck Asset Company, LLC, or ODAC, one of our wholly-owned subsidiaries, amended and repurposed the ODAC Facility which is its existing asset-backed revolving debt facility, so that the ODAC Facility could be used in its entirety to finance our line of credit product. On that date, ODAC entered into Amendment No. 1 to the Second Amended and Restated Credit Agreement, referred to as the ODAC Credit Agreement Amendment, with the Lender party thereto and WC 2014-1, LLC, as Administrative Agent for the Lenders, or the ODAC Administrative Agent. The ODAC Credit Agreement Amendment amends the Second Amended and Restated Credit Agreement, or the ODAC Credit Agreement, dated as of December 19, 2014, by and among ODAC, as Borrower, the Lenders party thereto from time to time, the ODAC Administrative Agent and Deutsche Bank Trust Company Americas, as Paying Agent and as Collateral Agent. The ODAC Credit Agreement was previously filed as Exhibit 10.16 to our Annual Report on Form 10-K for the year ended December 31, 2014. As a result of the ODAC Credit Agreement Amendment, we may obtain funding for our line of credit product through the ODAC Facility, subject to customary borrowing conditions, in addition to certain other funding sources available to us.

The ODAC Credit Agreement Amendment provides for:

- ♦ the utilization of up to the entire ODAC Facility solely for the financing of our line of credit product;
- ♦ the extension of the commitment termination date of the ODAC Facility by approximately seven months to May 22, 2017;  
the extension of the date on or prior to which early termination fees may be payable in the event of a termination or other permanent
- ♦ reductions of the revolving commitments by approximately seven months to May 22, 2016; and
- ♦ various related technical, definitional, conforming and other changes.

The foregoing description of the ODAC Credit Agreement Amendment does not purport to be complete and is qualified in its entirety by reference to the ODAC Credit Agreement Amendment, which is filed as Exhibit 10.1 to this report and incorporated herein by reference. At June 30, 2015, there were \$18.8 million in borrowings outstanding under this facility.

#### ***RAOD Debt Facility***

On May 22, 2015, Receivable Assets of OnDeck, LLC, or RAOD, one of our wholly-owned subsidiaries, established a new asset-backed revolving debt facility, or the RAOD Facility, by and among RAOD, as Borrower, the Lenders party thereto from time to time, SunTrust Bank, as Administrative Agent for the Class A Revolving Lenders, referred to as the SunTrust Administrative Agent, and Wells Fargo Bank, N.A., as Paying Agent and as Collateral Agent for the Secured Parties. We may obtain funding through the ROAD Facility, subject to customary borrowing conditions, in addition to its other funding sources.

The following table summarizes certain aspects of the RAOD Facility:

Facility Size	\$50 million
Borrowing Base Advance Rate	80% (Class A)
Interest Rate	LIBOR + 3.00% (Class A)
Commitment Termination Date	May 22, 2017

The RAOD Facility also contemplates the introduction, at RAOD's election and with the SunTrust Administrative Agent's consent, of one or more Class B Revolving Lenders resulting in Class B commitments of up to \$9,375,000 thereby potentially increasing the facility size to up to \$59,375,000. The borrowing base advance rate for Class B revolving loans is 95%. The interest rate for Class B revolving loans will not exceed LIBOR + 7.00%. Early termination fees may be payable under the SunTrust Facility in the event of a termination or other permanent reductions of the revolving commitments prior to May 22, 2016.

Under the RAOD Facility, the Lenders party thereto commit to make loans to RAOD, the proceeds of which are used to finance RAOD's purchase of small business loans from us in a bankruptcy remote transaction. The revolving pool of small business loans purchased by RAOD serves as collateral for the loans made to RAOD under the RAOD Facility. RAOD repays the borrowings from collections received on the loans.

RAOD can voluntarily repay and re-borrow principal amounts under the RAOD Facility subject to satisfaction of borrowing conditions, including borrowing base requirements. In order for our loans to be eligible for purchase by RAOD under this facility, they must meet all applicable eligibility criteria. Eligibility criteria include, among others, that the applicable loan is denominated in U.S. dollars, that the customer under such loan had a certain OnDeck *Score* at the time of underwriting, that such loan was originated in accordance with our underwriting policies and that such loan is a legal, valid and binding obligation of the obligor under such loan. RAOD's collateral pools are subject to certain concentration limits that, when exceeded, will require RAOD to add or maintain additional collateral and, if not cured, an event of default will occur. Concentration limitations include, among others, geographic, industry, time in business and outstanding principal balance.

The loans and other assets to be transferred by our to RAOD in connection with this facility will be owned by RAOD, will be pledged to secure the payment of the obligations incurred by RAOD, will be assets of RAOD and will not be available to satisfy any of the Company's obligations. Lenders under the RAOD Facility do not have direct recourse to On Deck Capital, Inc.

Our ability to utilize the RAOD Facility is subject to RAOD's compliance with various covenants and other specified requirements of the facility. The failure to comply with such requirements may result in events of default, the accelerated repayment of amounts owed under the facility and/or the termination of the facility.

Such requirements include:

- *Financial Covenants.* Financial covenants include, among others, requirements with respect to minimum tangible net worth, maximum leverage ratio, minimum consolidated liquidity and minimum unrestricted cash.
- *Portfolio Performance Covenants .* Portfolio performance covenants include, among others, requirements that the pool not exceed certain default and delinquency rates and that the excess spread on the pool not be less than stated minimum levels. Excess spread is generally the amount by which income received by RAOD during a collection period (primarily interest collections and fees) exceeds its fees and expenses during such collection period (including interest expense, servicing fees and charged-off receivables).
- *Other Events.* Other events may include, among others, change of control events, certain insolvency-related events, events constituting a servicer default, an inability to engage a replacement backup servicer following termination of the current backup servicer, the occurrence of certain events of default or acceleration under other facilities, the inability or failure by us to transfer loans to RAOD as required, failure to make required payments or deposits, ERISA-related events, events related to the entry of an order decreeing dissolution that remains undischarged, events related to the entry or filing of judgments, attachments or certain tax liens that remain undischarged, and events related to breaches of terms, representations, warranties or affirmative and restrictive covenants. Restrictive covenants, among other things, impose limitations or restrictions on RAOD's ability to pay dividends, redeem its stock or similar equity interests, make payments in order to retire or obtain the surrender of warrants, options or similar rights, or the ability of RAOD to incur additional indebtedness, make investments, engage in transactions with affiliates, sell assets, consolidate or merge, make changes in the nature of its business and create liens.

Following an event of default under the RAOD Facility, collections on the collateral are applied to repay principal rather than being available on a revolving basis to fund the origination activities of our business. Moreover, we will act as servicer with

respect to the small business loans held by RAOD. If we default in its servicing obligations or fails to meet certain financial covenants, an event of default could occur and/or the Company could be replaced by a designated backup servicer or another replacement servicer.

The foregoing description of the RAOD Facility does not purport to be complete and is qualified in its entirety by reference to the RAOD Facility, which is filed as Exhibit 10.2 to this report and incorporated herein by reference. At June 30, 2015, there were \$28.2 million in borrowings outstanding under this facility.

### **PORT Debt Facility**

On June 12, 2015, Prime OnDeck Receivable Trust, LLC, or PORT, one of our wholly-owned subsidiaries, established a new asset-backed revolving debt facility, the PORT Facility, by and among PORT, as Borrower, the Lenders party thereto from time to time, Bank of America, N.A., as Administrative Agent for the Class A Revolving Lenders, referred to as the PORT Administrative Agent, and Wells Fargo Bank, N.A., as Paying Agent and as Collateral Agent for the Secured Parties. We may obtain funding through the PORT Facility, subject to customary borrowing conditions, in addition to our other funding sources.

The following table summarizes certain aspects of the PORT Facility:

Facility Size	\$100 million
Borrowing Base Advance Rate	85% (Class A)
Interest Rate	LIBOR + 2.25% (Class A)
Commitment Termination Date	June 12, 2017

The PORT Facility also contemplates the introduction, at PORT's election, of one or more Class B Revolving Lenders (provided such Lenders are reasonably approved by the PORT Administrative Agent) resulting in Class B commitments of up to \$11,765,000, thereby potentially increasing the facility size to up to \$111,765,000. The borrowing base advance rate for Class B revolving loans is 95%. The interest rate for Class B revolving loans will not exceed LIBOR + 6.00%.

Under the PORT Facility, the Lenders party thereto commit to make loans to PORT, the proceeds of which are used to finance PORT's purchase of small business loans from us in a transaction structured to be bankruptcy remote. The revolving pool of small business loans purchased by PORT serves as collateral for the loans made to PORT under the PORT Facility. PORT is required to repay the borrowings from collections received on the loans.

PORT can voluntarily repay and re-borrow principal amounts under the PORT Facility subject to satisfaction of borrowing conditions, including borrowing base requirements. In order for our loans to be eligible for purchase by PORT under this facility, they must meet all applicable eligibility criteria. Eligibility criteria include, among others, that the applicable loan is denominated in U.S. dollars, that the customer under such loan had a certain minimum OnDeck *Score* at the time of underwriting, that such loan was originated in accordance with our underwriting policies and that such loan is a legal, valid and binding obligation of the obligor under such loan. PORT's collateral pool is subject to certain concentration limits that, when exceeded, will require PORT to add or maintain additional collateral and, if not cured, an event of default will occur. Concentration limitations include, among others, geography, industry, minimum credit scores, time in business and outstanding principal balance.

The loans and other assets to be transferred by us to PORT in connection with the PORT Facility will be owned by PORT, will be pledged to secure the payment of the obligations incurred by PORT, will be assets of PORT and will not be available to satisfy any of our obligations. Lenders under the PORT Facility do not have direct recourse to On Deck Capital, Inc.

Our ability to utilize the PORT Facility is subject to PORT's compliance with various covenants and other specified requirements of the facility. The failure to comply with such requirements may result in events of default, the accelerated repayment of amounts owed under the facility, often referred to as an early amortization event, and/or the termination of the facility.

Such requirements include:

- *Financial Covenants.* Financial covenants include, among others, requirements with respect to minimum tangible net worth, maximum leverage ratio, minimum consolidated liquidity and minimum unrestricted cash.

- *Portfolio Performance Covenants*. Portfolio performance covenants include, among others, requirements that the pool not exceed certain delinquency rates and that the excess spread on the pool not be less than stated minimum levels. Excess spread is generally the amount by which collections received by PORT during a collection period (primarily interest and fees) exceed its fees and expenses during such collection period (including interest expense, servicing fees and charged-off receivables).
- *Other Events*. Other events may include, among others, change of control events, certain insolvency-related events, events constituting a servicer default, an inability to engage a replacement backup servicer following termination of the current backup servicer, the occurrence of certain events of default or acceleration under other facilities, the inability or failure by us to transfer loans to PORT as required, failure to make required payments or deposits, ERISA-related events, events related to the entry of an order decreeing dissolution that remains undischarged, events related to the entry or filing of judgments, attachments or certain tax liens that remain undischarged, failure to effect a specified securitization involving the collateral by December 12, 2016, and events related to breaches of terms, representations, warranties or affirmative and restrictive covenants. Restrictive covenants, among other things, impose limitations or restrictions on PORT's ability to pay dividends, redeem its stock or similar equity interests, make payments in order to retire or obtain the surrender of warrants, options or similar rights, or the ability of PORT to incur additional indebtedness, make investments, engage in transactions with affiliates, sell assets, consolidate or merge, make changes in the nature of its business and create liens.

Following an event of default or an early amortization event under the PORT Facility, collections on the collateral are applied to repay principal. So long as such events are continuing, PORT may not make additional borrowings under the PORT Facility.

Moreover, we will act as servicer with respect to the small business loans held by PORT. If we default on our servicing obligations or fails to meet certain financial or other covenants, an event of default could occur and/or we could be replaced by a designated backup servicer or another replacement servicer.

The foregoing description of the PORT Facility does not purport to be complete and is qualified in its entirety by reference to the PORT Facility, which is filed as Exhibit 10.3 to this report and incorporated herein by reference. At June 30, 2015, there were \$15.0 million in borrowings outstanding under this facility.

### **Off-Balance Sheet Arrangements**

As of June 30, 2015, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

### **Critical Accounting Policies and Significant Judgments and Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reported period. In accordance with GAAP, we base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

There have been no material changes to our critical accounting policies and estimates as compared to those described in our Annual Report on Form 10-K for the year ended December 31, 2014.

### **Recently Issued Accounting Pronouncements and JOBS Act Election**

Refer to Note 2, Summary of Significant Accounting Policies, contained in Notes to Unaudited Condensed Consolidated Financial Statements in Item 1 of Part I of this report for a full description of the recent accounting pronouncements and our expectation of their impact, if any, on our results of operations and financial conditions.

Under the JOBS Act, we meet the definition of an "emerging growth company." We have irrevocably elected to opt out of the extended transition period for complying with new or revised accounting standards pursuant to Section 107(b) of the JOBS Act.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Except as disclosed below, there have been no material changes from the information previously reported under Part II, Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2014.

As a result of our growing Canadian operations and our expansion to Australia, at June 30, 2015, we are subject to greater foreign currency exchange rate risk as compared to December 31, 2014. Foreign currency exchange rate risk is the possibility that our financial position or results of operations could be positively or negatively impacted by fluctuations in exchange rates. To date, we have not utilized derivative instruments to hedge this risk since we deem the risk, in our opinion, to be insignificant relative to the potential costs of acquiring and maintaining such hedges. We may in the future elect to utilize derivative instruments to hedge our foreign currency exchange rate risk, however, there can be no assurance that any such hedging strategy will be effective in mitigating these risks.

**Item 4. Controls and Procedures**

**Disclosure Controls and Procedures**

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on the foregoing evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of June 30, 2015, the end of the period covered by this report, our disclosure controls and procedures were effective at a reasonable assurance level to ensure information required to be disclosed in the reports we file or submit under the Exchange Act are recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that information required to be disclosed by us in our reports that we file or submit under the Exchange Act are accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding our required disclosure.

## **PART II - OTHER INFORMATION**

### **Item 1. Legal Proceedings**

Two separate putative class actions were filed in August 2015 in the United States District Court for the Southern District of New York against us, certain of our executive officers, our directors and certain or all of the underwriters of our initial public offering, or IPO. The suits allege that the registration statement for our IPO contained materially false and misleading statements regarding, or failed to disclose, specified information in violation of the Securities Act of 1933, as amended. The suits seek a determination that the case is a proper class action and/or certification of the plaintiff as a class representative, rescission or a rescissory measure of damages and/or unspecified damages, interest, attorneys' fees and other fees and costs. The Company intends to defend itself vigorously in these matters, although at this time we cannot predict the outcome.

From time to time we are subject to other legal proceedings and claims in the ordinary course of business. The results of such matters cannot be predicted with certainty. However, we believe that the final outcome of any such current matters will not result in a material adverse effect on our consolidated financial condition, consolidated results of operations or consolidated cash flows.

### **Item 1A. Risk Factors**

For a discussion of certain risk factors affecting us, see Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2014; and "Cautionary Note Regarding Forward-Looking Statements" in this report.

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

There has been no material change in the planned use of proceeds from our initial public offering as described in our final prospectus filed with the SEC on December 17, 2014 pursuant to Rule 424(b)(4). During the quarter ended June 30, 2015 (the period covered by this report), pending their application, the net proceeds from our IPO were maintained as described in our final prospectus.

### **Item 3. Defaults Upon Senior Securities**

None.

### **Item 4. Mine Safety Disclosures**

None.

### **Item 5. Other Information**

None.

### **Item 6. Exhibits**

The documents listed in the Exhibit Index of this report are incorporated by reference or are filed with this Quarterly Report on Form 10-Q, in each case as indicated therein (numbered in accordance with Item 601 of Regulation S-K).

**SIGNATURES**

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

**On Deck Capital, Inc.**

/s/   Howard Katzenberg

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Howard Katzenberg  
*Chief Financial Officer*  
*(Principal Financial Officer)*

Date: August 11, 2015

/s/   Nicholas Sinigaglia

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Nicholas Sinigaglia  
*Senior Vice President*  
*(Principal Accounting Officer)*

Date: August 11, 2015

## Exhibit Index

<b>Exhibit Number</b>	<b>Description</b>	<b>Filed / Furnished / Incorporated by Reference from Form</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Date Filed</b>
3.1	Amended and Restated Certificate of Incorporation	8-K	3.2	12/22/2014
3.2	Amended and Restated Bylaws	8-K	3.2	12/22/2014
4.1	Form of common stock certificate.	S-1	4.1	11/10/2014
4.2	Ninth Amended and Restated Investors' Rights Agreement, dated March 13, 2014, by and among the Registrant and certain of its stockholders.	S-1	4.2	11/10/2014
4.3	Form of warrant to purchase Series E preferred stock.	S-1	4.5	11/10/2014
4.4	Form of warrant to purchase common stock.	S-1	4.6	11/10/2014
10.1	Amendment No. 1 to the Second Amended and Restated Credit Agreement, dated as of May 22, 2015, by and among On Deck Asset Management Company, LLC, the Lender party thereto and WC 2014-1, LLC, as Administrative Agent for the Lenders.	Filed herewith.		
10.2	Credit Agreement, dated as of May 22, 2015, by and among Receivable Assets of OnDeck, LLC, as Borrower, the Lenders party thereto from time to time, SunTrust Bank, as Administrative Agent for the Class A Revolving Lenders, and Wells Fargo Bank, N.A., as Paying Agent and as Collateral Agent for the Secured Parties.	Filed herewith.		
10.3	Credit Agreement, dated as of June 12, 2015, by and among Prime OnDeck Receivable Trust, LLC, as Borrower, the Lenders party thereto from time to time, Bank of America, N.A., as Administrative Agent for the Class A Revolving Lenders and Wells Fargo Bank, N.A., as Paying Agent and as Collateral Agent for the Secured Parties.	Filed herewith.		
31.1	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, Rule 13(a)- 14(a)/15d-14(a), by Chief Executive Officer.	Filed herewith.		
31.2	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, Rule 13(a)- 14(a)/15d-14(a), by Chief Financial Officer.	Filed herewith.		
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Chief Executive Officer.	Filed herewith.		
32.2	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Chief Financial Officer.	Filed herewith.		
101.INS	XBRL Instance Document	Filed herewith.		
101.SCH	XBRL Taxonomy Extension Schema Document	Filed herewith.		
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	Filed herewith.		
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	Filed herewith.		
101.LAB	XBRL Taxonomy Extension Labels Linkbase Document	Filed herewith.		
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	Filed herewith.		

**AMENDMENT NO. 1 TO THE  
SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

This **AMENDMENT NO. 1 TO THE SECOND AMENDED AND RESTATED CREDIT AGREEMENT** (this “**Amendment**”) dated as of May 22, 2015, is entered into by and among **ON DECK ASSET COMPANY, LLC**, a Delaware limited liability company (“**Company**”), the Lender party hereto which constitutes each affected Lender, and **WC 2014-1, LLC**, as Administrative Agent for the Lenders (in such capacity, “**Administrative Agent**”).

**RECITALS:**

**WHEREAS**, Company, the Lenders party thereto from time to time, the Administrative Agent and Deutsche Bank Trust Company Americas, as Paying Agent and as Collateral Agent, entered into a Second Amended and Restated Credit Agreement (the “**Credit Agreement**”), dated as of December 19, 2014, pursuant to which the Lenders have made advances and other financial accommodations to Company. Capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement;

**WHEREAS**, Company, the Lender party hereto and Administrative Agent, as applicable, have agreed to amend the Credit Agreement as set forth herein subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**SECTION 1. AMENDMENTS TO THE CREDIT AGREEMENT**

The Credit Agreement is, effective as of the First Amendment Effective Date and subject to the satisfaction of the conditions precedent set forth in Section 3.1 hereof, hereby amended as follows:

**1.1** Section 1.1 of the Credit Agreement. Section 1.1 of the Credit Agreement shall be amended to replace the definitions of “Adjusted EPOB”, “Applicable Advance Rate”, “Revolving Commitment Termination Date” and “Undertakings Agreement” as follows:

“**Adjusted EPOB**” means, as of any date of determination, the excess of (a) the Eligible Portfolio Outstanding Principal Balance as of such date over (b) the sum of, without duplication, (i) the aggregate Excess Concentration Amounts as of such date, (ii) the product of 70% and the aggregate Eligible Portfolio Outstanding Principal Balance of all 10-20 Day Delinquent Receivables as of such date, and (iii) the Delinquent LOC Receivable Balance.

“**Applicable Advance Rate**” means (a) for Eligible Receivables other than 91% Eligible Receivables and LOC Receivables, 95%, (b) for Eligible Receivables constituting both Term Receivables and 91% Eligible Receivables, 91%, and (c) for Eligible Receivables constituting LOC Receivables, 70% (or, if the Average LOC

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Excess Spread is 8% or less for any of the three most recently ended Monthly Periods, 55%), *provided* that the Applicable Advance Rate shall be zero for any LOC Receivable as to which the Receivables Obligor fails to pay in full the first Payment due after the extension of any advance under the related OnDeck LOC unless and until the first date (if any) thereafter upon which such LOC Receivable has a Missed Payment Factor of zero, in which case the Applicable Advance Rate for such Eligible Receivable shall be 70% (or, if the Average LOC Excess Spread is 8% or less for any of the three most recently ended Monthly Periods, 55%).

“ **Revolving Commitment Termination Date** ” means the earliest to occur of (i) May 22, 2017; (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.9(b); and (iii) the date of the termination of the Revolving Commitments pursuant to Section 7.1.

“ **Undertakings Agreement** ” means that certain Second Amended and Restated Undertakings Agreement, dated as of the First Amendment Effective Date, as the same may be amended, restated, supplemented or otherwise modified from time to time by and among Holdings, the Company, the lenders party thereto, the Paying Agent and the Administrative Agent.

**1.2** Section 1.1 of the Credit Agreement. Section 1.1 of the Credit Agreement shall be amended to add the following definitions:

“ **80% Drawn LOCs** ” means any Eligible Receivable that is an LOC Receivable and, as of the last day of each of the three (3) immediately preceding Monthly Periods (for the avoidance of any doubt, a Borrowing Base Certificate issued on a Monthly Reporting Date shall be calculated utilizing the last day of each of the three (3) months immediately preceding such Monthly Reporting Date), had a Combined LOC OPB that was, on a percentage basis, greater than 80% of the “Credit Limit” then applicable pursuant to the applicable Receivables Agreement of the Receivables Obligor thereunder.

“ **Co-Existence LOC Receivable** ” means, as of any date of determination, any LOC Receivable regarding which the Receivables Obligor thereunder is also an obligor under at least one other Term Receivable (whether or not such Term Receivable is owned by the Company).

“ **Delinquent LOC Receivable** ” means any LOC Receivable which, as of the date of its advance, (i) had a Missed Payment Factor of one (1) or higher as of the close of business on the immediately preceding Business Day, or (ii) the Receivables Obligor thereunder is the obligor under at least one other Receivable which had a Missed Payment Factor of one (1) or higher as of the close of business on the immediately preceding Business Day.

“ **Delinquent LOC Receivable Balance** ” means, with respect to any Delinquent LOC Receivable as of any date, the unpaid principal balance of such LOC Receivable as

set forth on the Servicer's books and records as of the close of business on the immediately preceding Business Day (but excluding, for the avoidance of doubt, the unpaid principal balance of any other LOC Receivable originated under the same OnDeck LOC).

**" Fee Letter "** means the letter agreement dated as of the First Amendment Effective Date between the Company and WC 2014-1, LLC.

**" First Amendment Effective Date "** has the meaning set forth herein.

**" Previously Originated LOC Receivable "** means any LOC Receivable relating to an OnDeck LOC with respect to which the date of the first advance thereunder occurred on or prior to the First Amendment Effective Date.

**1.3 Section 1.1 of the Credit Agreement.** Clause (e) of the definition of "Permitted Asset Sale" in Section 1.1 of the Credit Agreement shall be amended and restated in its entirety to read as follows:

"(e) the sale by Company of LOC Receivables (x) to Holdings who immediately thereafter sells such Receivables to a special-purpose Subsidiary of Holdings or (y) directly to a special-purpose Subsidiary of Holdings, in either case in connection with (i) a term securitization transaction occurring from and after the six-month anniversary of the First Amendment Effective Date involving the issuance of securities rated at least investment grade by one or more nationally recognized statistical rating organizations and such LOC Receivables and special-purpose Subsidiary or (ii) a financing transaction occurring from and after the six-month anniversary of the First Amendment Effective Date involving such LOC Receivables and special-purpose Subsidiary so long as, in either case, (A) the amount received by Company therefore and deposited into the Collection Account is no less than the aggregate Outstanding Principal Balances of such LOC Receivables, (B) such sale is made without representation, warranty or recourse of any kind by Company (other than customary representations regarding title, absence of liens on such LOC Receivables, status of Company, due authorization, enforceability, no conflict and no required consents in respect of such sale), (C) the manner in which such LOC Receivables were selected by Company does not adversely affect the Lenders, (D) the agreement pursuant to which such LOC Receivables were sold to Holdings or such special-purpose Subsidiary, as the case may be, contains an obligation on the part of Holdings or such special-purpose Subsidiary to not file or join in filing any involuntary bankruptcy petition against Company prior to the end of the period that is one year and one day after the payment in full of all Obligations of Company under this Agreement and not to cooperate with or encourage others to file involuntary bankruptcy petitions against Company during the same period, and (E) unless otherwise waived by the Requisite Lenders in accordance with this Agreement, on the Business Day prior to such sale, (1) the Pro Forma 15 Day Delinquency Percentage shall not be greater than the 15 Day Delinquency Percentage, before giving effect to such sale, and (2) the Pro Forma Delinquency Percentage shall not be greater than the Delinquency Percentage, before giving effect to such sale."

**1.4 Section 2.7 of the Credit Agreement.** Section 2.7 of the Credit Agreement shall be amended and restated in its entirety to read as follows:

## **2.7 Fees .**

(a) Company agrees to pay to the Person entitled to payment thereunder the amounts set forth in the Fee Letter.

(b) All fees referred to in Section 2.7(a) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on (i) each Interest Payment Date during the Revolving Commitment Period, commencing in June 2015, and (ii) on the Revolving Commitment Termination Date.

**1.5** Section 6.8 of the Credit Agreement . Section 6.8 of the Credit Agreement shall be amended and restated in its entirety to read as follows:

**6.8 Fundamental Changes; Disposition of Assets; Acquisitions** . Company shall not enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than acquisitions of Eligible Receivables, or Permitted Investments in a Controlled Account (and property received from time to time in connection with the workout or insolvency of any Receivables Obligor)) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, provided that, notwithstanding the foregoing, (a) Permitted Asset Sales of Term Receivables and LOC Receivables (other than Co-Existence LOC Receivables) may occur so long as no Event of Default pursuant to Section 7.1(a), 7.1(g), 7.1(h) or 7.1(p) has occurred and is continuing, (b) Permitted Asset Sales of Co-Existence LOC Receivables may occur (i) so long as no Event of Default has occurred and is continuing, and (ii) from and after the occurrence of any Event of Default so long as such Event of Default has been continuing for more than thirty (30) days, and (c) notwithstanding the limitations set forth in the foregoing clauses (a) and (b), Permitted Asset Sales under clause (d) of the definition thereof shall be permitted at all times subject to receipt of the consent required therein.

**1.6** Appendix C to the Credit Agreement . Appendix C to the Credit Agreement shall be amended to replace subsection (o) in its entirety to read as follows:

- (o) if a Term Receivable, such Receivable has a Receivables Yield greater than or equal to 19% per annum; and if
  - (i) an LOC Receivable (other than a Previously Originated LOC Receivable), such Receivable has a Receivables Yield greater than or equal to 36%, or
  - (ii) a Previously Originated LOC Receivable, such Receivable has a Receivables Yield greater than or equal to 29%;

**1.7** Appendix D to the Credit Agreement . Appendix D to the Credit Agreement shall be amended to replace subsection (c) in its entirety and to add subsections (d), (e) and (f) thereto thereafter to read as follows:

(c) On or after June 1, 2015, the aggregate amount by which the aggregate Outstanding Principal Balance of all Eligible Receivables that are Term Receivables exceeds 0% of the Outstanding Principal Balance of all Eligible Receivables;

(d) the aggregate amount by which the aggregate Outstanding Principal Balance of all 80% Drawn LOCs exceeds 40% of the Outstanding Principal Balance of all Eligible Receivables that are LOC Receivables;

(e) the aggregate amount by which the aggregate Outstanding Principal Balance of all Eligible Receivables that are LOC Receivables that have a Missed Payment Factor of three (3) or higher exceeds 5% of the Outstanding Principal Balance of all Eligible Receivables; and

(f) the aggregate amount by which the aggregate Outstanding Principal Balance of all Eligible Receivables that are LOC Receivables that are Delinquent Receivables exceeds 10% of the Outstanding Principal Balance of all Eligible Receivables.

**1.8** Appendix E to the Credit Agreement. Appendix E to the Credit Agreement shall be amended to replace subsection (f) in full to read as follows:

(f) For any Monthly Period beginning with June 2015, the Average LOC Excess Spread for such Monthly Period shall not be less than 6.5%; or

## **SECTION 2. REPRESENTATIONS AND WARRANTIES**

In order to induce the Administrative Agent and Lender party hereto to enter into this Amendment, Company represents and warrants to each Agent and Lender party hereto, on the First Amendment Effective Date, that the following statements are true and correct, it being understood and agreed that the representations and warranties made on the First Amendment Effective Date are deemed to be made concurrently with the consummation of the transactions contemplated hereby:

**2.1 Due Authorization.** The execution, delivery and performance of this Amendment, the Fee Letter and the Undertakings Agreement have been duly authorized by all necessary action on the part of Company.

**2.2 No Conflict.** The execution, delivery and performance by Company of this Amendment and the consummation of the transactions contemplated hereby, do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to it, its Organizational Documents, or any order, judgment or decree of any court or other agency of government binding on it; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation; or (c) result in or require the creation or imposition of any Lien upon any of its properties or assets (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval or consent of any Person under any of its Contractual Obligations, except

for such approvals or consents which will be obtained on or before the First Amendment Effective Date.

**2.3 Binding Obligation.** This Amendment has been duly executed and delivered by the Company and each is the legally valid and binding obligation of the Company enforceable against the Company in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**2.4 No Default.** No Default or Event of Default exists or is continuing as of the First Amendment Effective Date.

**2.5 Credit Document and Related Agreements Representations and Warranties .** All of the representations and warranties made by Company or Holdings in the Credit Documents and Related Agreements are true and correct in all material respects on and as of the First Amendment Effective Date as if made on the First Amendment Effective Date, except to the extent any such representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct in all material respects as of such date.

### **SECTION 3. MISCELLANEOUS**

**3.1 Conditions of Effectiveness .** This Amendment shall become effective as of the date (such date, the “ **First Amendment Effective Date** ”) when, and only when Administrative Agent shall have received counterparts of (a) this Amendment executed by Company, the Administrative Agent and the Lender party hereto, (b) the Second Amended and Restated Underwriting Agreement executed by the Company, Holdings, the Paying Agent and the Administrative Agent and (c) the Fee Letter.

#### **3.2 Reference to and Effect on the Credit Agreement and the Other Credit Documents .**

(a) On and after the First Amendment Effective Date, (i) each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the Credit Documents and the Related Agreements to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended by this Amendment. This Amendment is hereby designated as a Credit Document for all purposes of the Credit Documents.

(b) Except as expressly set forth herein, no other amendments, changes or modifications to the Credit Agreement and each other Credit Document are intended or implied, and in all other respects the Credit Agreement and each other Credit Document are and shall continue to be in full force and effect and are hereby in all respects specifically ratified, restated and confirmed by all parties hereto as of the First Amendment Effective Date and Company shall not be entitled to any other further amendment by virtue of the provisions of this Amendment or with respect to the subject matter of this Amendment. To the extent of conflict between the terms of this Amendment

and the other Credit Documents, the terms of this Amendment shall control. The Credit Agreement and this Amendment shall be read and construed as one agreement.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender, Administrative Agent or Agent under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement.

**3.3 Binding Effect.** This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

**3.4 Governing Law .** This Amendment and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

**3.5 Execution in Counterparts .** This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by fax or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.

**3.6 Headings .** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

[Remainder of page intentionally left blank]

IN WITNESS THEREOF, the parties hereto have caused Amendment No. 1 to the Second Amended and Restated Credit Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**ON DECK ASSET COMPANY, LLC** , as Company

By: /s/ Cory Kampfer  
Name: Cory Kampfer  
Title: Corporate Secretary

**WC 2014-1**, as Administrative Agent

By: /s/ Patrick Lo  
Name: Patrick Lo  
Title: Authorized Person

**WC 2014-1**, as a Lender

By: /s/ Patrick Lo  
Name: Patrick Lo  
Title: Authorized Person

**CREDIT AGREEMENT**

**dated as of May 22, 2015**

**among**

**RECEIVABLE ASSETS OF ONDECK, LLC,**

**as Borrower**

**VARIOUS LENDERS,**

**and**

**SUNTRUST BANK,**

**as Administrative Agent**

**and**

**WELLS FARGO BANK, N.A.,**

**as Paying Agent and Collateral Agent**

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**\$50,000,000 Credit Facility**

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## CREDIT AGREEMENT

This **CREDIT AGREEMENT** , dated as of May 22, 2015, is entered into by and among **RECEIVABLE ASSETS OF ONDECK, LLC** , a Delaware limited liability company ( **“Company”** ), the Lenders party hereto from time to time and **SUNTRUST BANK** , as Administrative Agent for the Class A Revolving Lenders (in such capacity, **“Administrative Agent”** ) and **WELLS FARGO BANK, N.A.**, as Paying Agent (in such capacity, **“Paying Agent”** ) and as Collateral Agent for the Secured Parties (in such capacity, **“Collateral Agent”** ).

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

**WHEREAS** , the Class A Revolving Lenders have agreed to extend revolving credit facilities to Company consisting of up to \$50,000,000 aggregate principal amount of Class A Revolving Commitments, the proceeds of which will be used to (a) acquire Eligible Receivables, (b) purchase Subsidiary Receivables from Holdings, and (c) pay Transaction Costs related to the foregoing;

**WHEREAS** , after the Closing Date, subject to and in accordance with Section 2.24 , Class B Revolving Lenders may also agree to extend revolving credit facilities to Company consisting of up to \$9,375,000 aggregate principal amount of Class B Revolving Commitments, the proceeds of which will be used to (a) acquire Eligible Receivables, (b) purchase Subsidiary Receivables from Holdings, and (c) pay Transaction Costs related to the foregoing;

**WHEREAS** , Company has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on all of its assets;

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS AND INTERPRETATION

**1.1 Definitions** . The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

**“10-20 Day Delinquent Receivable”** means, as of any date of determination, any Receivable with a Missed Payment Factor of (x) with respect to Daily Pay Receivables, more than ten (10) but less than twenty-one (21) and a Payment has been received on such Receivable on at least one of the last three Payment Dates, and (y) with respect to Weekly Pay Receivables, more than two (2) but less than or equal to four (4), and a Payment has been received on such Receivable on the last Payment Date.

**“Accrued Interest Amount”** means, as of any day, the aggregate amount of all accrued and unpaid interest on the Revolving Loans payable hereunder.

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**“ACH Agreement”** has the meaning set forth in the Servicing Agreement.

**“ACH Receivable”** means each Receivable with respect to which the underlying Receivables Obligor has entered into an ACH Agreement.

**“Act”** as defined in Section 4.25.

**“Adjusted EPOB”** means, as of any date of determination, the excess of (a) the Eligible Portfolio Outstanding Principal Balance as of such date over (b) the sum of, without duplication, (i) the aggregate Excess Concentration Amounts as of such date and (ii) the product of 70% and the aggregate Eligible Portfolio Outstanding Principal Balance of all 10-20 Day Delinquent Receivables as of such date.

**“Adjusted Interest Collections”** means, with respect to any Monthly Period, an amount equal to (a) the product of (i) the sum of (x) all Collections received during such Monthly Period that were not applied by the Servicer to reduce the Outstanding Principal Balances of the Pledged Receivables in accordance with Section 2(a)(i) of the Servicing Agreement and (y) all Collections received during such Monthly Period that were recoveries with respect to Charged-Off Receivables (net of amounts, if any, retained by any third party collection agent) and (ii) the quotient of 21 divided by the number of Business Days in such Monthly Period minus (b) the aggregate amount paid by Company on the related Interest Payment Date pursuant to clauses (a)(i), (a)(ii), (a)(iii), (a)(v) and (a)(vii) of Section 2.12.

**“Administrative Agent”** as defined in the preamble hereto.

**“Adverse Effect”** means, with respect to any action, that such action will (a) result in the occurrence of an Event of Default or (b) materially and adversely affect (i) the amount or timing of payments to be made to the Lenders pursuant to this Agreement or (ii) the existence, perfection, priority or enforceability of any security interest in a material amount of the Pledged Receivables taken as a whole or in any material part.

**“ Adverse Proceeding ”** means any non-frivolous action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or Holdings) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of Company or Holdings, threatened in writing against Company or Holdings, or any of their respective property (it being acknowledged that any action, suit, proceeding, governmental investigation or arbitration by a Governmental Authority against Company and/or Holdings, as applicable, will not be considered frivolous for purposes of this definition).

**“Affected Party”** means any Lender, SunTrust Bank, in its individual capacity and in its capacity as Administrative Agent, Paying Agent and, with respect to each of the foregoing, the parent company or holding company that controls such Person.

**“Affiliate”** means, with respect to any 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. For purposes of this definition, “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and “controlled” and “controlling” have meanings correlative to the foregoing.

“**Agent**” means each of the Administrative Agent, the Paying Agent and the Collateral Agent.

“**Aggregate Amounts Due**” as defined in Section 2.14.

“**Agreement**” means this Credit Agreement, dated as of May 22, 2015, as it may be amended, supplemented or otherwise modified from time to time.

“**Applicable Class A Advance Rate**” means 80%.

“**Applicable Class B Advance Rate**” means 95%.

“**Approved Fund**” means any Person that, in the ordinary course of its business, is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit that generally have an original par amount in excess of \$10,000,000 and that is administered or managed by an entity that is not included in the list of entities set forth in clause (b) of the definition of Direct Competitor or any Affiliate thereof.

“**Approved State**” shall mean each of the 50 United States of America and the District of Columbia.

“**Asset Purchase Agreement**” means that certain Asset Purchase Agreement dated as of the date hereof, by and between Company, as Purchaser, and the Seller, as amended, modified or supplemented from time to time, whereby the Seller has agreed to sell and Company has agreed to purchase Eligible Receivables from time to time.

“**Assignment Agreement**” means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

“**Augmenting Lender**” as defined in Section 2.24.

“**Authorized Officer**” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, chief financial officer, general counsel, treasurer, corporate secretary or controller (or, in each case, the equivalent thereof).

“**Average Excess Spread**” means, with respect to any Monthly Period, the average of the Excess Spread determined for such Monthly Period and the Monthly Period immediately preceding such Monthly Period.

**“Backup Servicer”** means Portfolio Financial Servicing Company or any replacement thereof appointed pursuant to the Backup Servicing Agreement.

**“Backup Servicing Agreement”** means one or more agreements entered into from time to time between Company, the Administrative Agent and Backup Servicer, as it may be amended, modified or supplemented from time to time.

**“Backup Servicing Fee”** shall have the meaning attributed to such term in the Backup Servicing Agreement.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “ **Bankruptcy** ,” as now and hereafter in effect, or any successor statute.

**“Base Rate”** means, for any day, a rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) equal to the greatest of (a) the Prime Rate in effect on such day (or if such day is not a Business Day, the immediately preceding Business Day), (b) the Federal Funds Effective Rate in effect on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 0.50%, and (c) the LIBO Rate for such day plus 1.00%.

**“Blocked Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Borrowing Base Certificate”** means a certificate substantially in the form of Exhibit C-2, executed by an Authorized Officer of Company and delivered to Administrative Agent, Paying Agent, Collateral Agent and each Lender, which sets forth the calculation of the Class A Borrowing Base and the Class B Borrowing Base, including a calculation of each component thereof.

**“Borrowing Base Deficiency”** means either a Class A Borrowing Base Deficiency or a Class B Borrowing Base Deficiency, as applicable.

**“Borrowing Base Report”** means a report substantially in the form of Exhibit C-2, executed by an Authorized Officer of Company and delivered to Administrative Agent, Paying Agent, Collateral Agent and each Lender, which attaches a Borrowing Base Certificate.

**“Business Day”** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in New York are authorized or required by law or other governmental action to close.

**“Capital Lease”** means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a “synthetic lease” (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership

interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

**“Cash”** means money, currency or a credit balance in any demand, securities account or deposit account; *provided, however* , that notwithstanding anything to the contrary contained herein, “Cash” shall exclude any amounts that would not be considered “cash” under GAAP or “cash” as recorded on the books of Holdings and its Subsidiaries.

**“Cash Equivalents”** means, as of any day, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such day; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such day and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one year after such day and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000 and (iii) has the highest rating obtainable from either S&P or Moody’s.

**“Certificate Regarding Non-Bank Status”** means a certificate substantially in the form of Exhibit E.

**“Change of Control”** means, at any time: (a) any “person” or “group” of related persons (as such terms are given meaning in the Exchange Act and the rules of the SEC thereunder) is or becomes the owner, beneficially or of record, directly or indirectly, of more than 35% (on a fully diluted basis) of the economic and voting interests (including the right to elect directors or similar representatives) in the Capital Stock of Holdings; (b) the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of Holdings and its Subsidiaries taken as a whole to any “person” (as such term is given meaning in the Exchange Act and the rules of the SEC thereunder); (c) at any time during any consecutive two-year period after the Closing Date, individuals who at the beginning of such period constituted the board of directors of Holdings (together with any new directors whose election or appointment by the board of directors of Holdings or whose nomination for election by the shareholders of Holdings was approved by a vote of a majority of the directors of Holdings then still in office who were either directors at the beginning of such period or whose election, appointment or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors of Holdings then in office; or (d) Holdings shall cease to beneficially own and control

100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Company free and clear of any Lien (other than any Lien as to which the holder thereof (such holder, an “**Equity Lienholder**”) has provided the Administrative Agent, for the benefit of the Lenders, a Protective Undertakings Certification).

“**Charged-Off Receivable**” means a Receivable which, in each case, consistent with the Underwriting Policies, has or should have been written off Company’s books as uncollectable.

“**Chattel Paper**” means any “chattel paper”, as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired by the Company.

“**Class**” means a class of Revolving Loans hereunder, designated Class A Revolving Loans or Class B Revolving Loans.

“**Class A Applicable Margin**” means with respect to each Class A Revolving Lender, the “Class A Applicable Margin” described in the Fee Letter between Company and such Class A Revolving Lender.

“**Class A Borrowing Base**” means, as of any day, an amount equal to the lesser of:

(a) (i) the Applicable Class A Advance Rate multiplied by the Adjusted EPOB at such time, plus (ii) the aggregate amount of Collections in the Lockbox Account and the Collection Account to the extent such Collections and other funds have already been applied to reduce the Eligible Portfolio Outstanding Principal Balance minus (iii) 105% of the sum of the Accrued Interest Amount as of such day and the aggregate amount of all accrued and unpaid fees and expenses due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement; and

(b) the Class A Revolving Commitments on such day.

With respect to any calculation of the Class A Borrowing Base with respect to any Credit Date solely for the purpose of determining Class A Revolving Availability for a requested Class A Revolving Loan, the Class A Borrowing Base will be calculated on a pro forma basis giving effect to the Eligible Receivables to be purchased with the proceeds of such Loan. With respect to any calculation of the Class A Borrowing Base for any other purpose, the Class A Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Collateral Agent and the Administrative Agent, Paying Agent and each Lender with such adjustments as the Paying Agent identifies pursuant to Section 2.21.

“**Class A Borrowing Base Deficiency**” means, as of any day, the amount, if any, by which the Total Utilization of Class A Revolving Commitments exceeds the Class A Borrowing Base.

“**Class A Indemnitee**” means an Indemnitee who is a Class A Revolving Lender, an Affiliate of a Class A Revolving Lender or an officer, partner, director, trustee, employee or agent of a Class A Revolving Lender.

**“Class A Register”** as defined in Section 2.4(b)(i).

**“Class A Revolving Availability”** means, as of any date of determination, the amount, if any, by which the Class A Borrowing Base exceeds the Total Utilization of Class A Revolving Commitments.

**“Class A Revolving Commitment”** means the commitment of a Class A Revolving Lender to make or otherwise fund any Class A Revolving Loan and **“Class A Revolving Commitments”** means such commitments of all Class A Revolving Lenders in the aggregate. The amount of each Class A Revolving Lender’s Class A Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The Administrative Agent shall update Appendix A from time to time to reflect any changes in Class A Revolving Commitments. The aggregate amount of the Class A Revolving Commitments as of the Closing Date is \$50,000,000. The Class A Revolving Commitment of each Class A Revolving Lender will be equal to zero on the Revolving Commitment Termination Date.

**“Class A Revolving Exposure”** means, with respect to any Class A Revolving Lender as of any date of determination, (i) prior to the termination of the Class A Revolving Commitments, that Lender’s Class A Revolving Commitment; and (ii) after the termination of the Class A Revolving Commitments, the aggregate outstanding principal amount of the Class A Revolving Loans of that Lender.

**“Class A Revolving Lender”** means each financial institution listed on the signature pages hereto as a Class A Revolving Lender, and any other Person that becomes a party hereto as a Class A Revolving Lender pursuant to an Assignment Agreement.

**“Class A Revolving Loan”** means a Loan made by a Class A Revolving Lender to Company pursuant to Section 2.1.

**“Class A Revolving Loan Note”** means a promissory note in the form of Exhibit B-1 hereto, as it may be amended, supplemented or otherwise modified from time to time.

**“Class B Agent”** as defined in Section 8.1.

**“Class B Applicable Margin”** means with respect to each Class B Revolving Lender the “Class B Applicable Margin” described in any Fee Letter between Company and such Class B Revolving Lender.

**“Class B Borrowing Base”** means, as of any day, an amount equal to the lesser of:

(a) (i) the Applicable Class B Advance Rate multiplied by the Adjusted EPOB at such time, plus (ii) the aggregate amount of Collections in the Lockbox Account and the Collection Account to the extent such Collections and other funds have already been applied to reduce the Eligible Portfolio Outstanding Principal Balance, minus (iii) 105% of the sum of the Accrued Interest Amount as of such day and the aggregate amount of all accrued and unpaid fees

and expenses due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, minus (iv) the aggregate outstanding principal amount of the Class A Revolving Loans as of such date; and

(b) the Class B Revolving Commitments on such day.

With respect to any calculation of the Class B Borrowing Base with respect to any Credit Date solely for the purpose of determining Class B Revolving Availability for a requested Class B Revolving Loan, the Class B Borrowing Base will be calculated on a pro forma basis giving effect to the Eligible Receivables to be purchased with the proceeds of such Loan. With respect to any calculation of the Class B Borrowing Base for any other purpose, the Class B Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Collateral Agent, the Administrative Agent, Paying Agent and each Lender, as adjusted to reflect any adjustments identified by the Paying Agent pursuant to Section 2.21.

**“Class B Borrowing Base Deficiency”** means, as of any day, the amount, if any, by which the Total Utilization of Class B Revolving Commitments exceeds the Class B Borrowing Base.

**“Class B Indemnitee”** means an Indemnitee who is a Class B Revolving Lender, an Affiliate of a Class B Revolving Lender or an officer, partner, director, trustee, employee or agent of a Class B Revolving Lender.

**“Class B Register”** as defined in Section 2.4(b)(ii).

**“Class B Revolving Availability”** means, as of any date of determination, the amount, if any, by which the Class B Borrowing Base exceeds the Total Utilization of Class B Revolving Commitments.

**“Class B Revolving Commitment”** means the commitment of a Class B Revolving Lender to make or otherwise fund any Class B Revolving Loan and **“Class B Revolving Commitments”** means such commitments of all Class B Revolving Lenders in the aggregate. The aggregate amount of the Class B Revolving Commitments as of the Closing Date is \$0. The amount of any Class B Revolving Lender’s Class B Revolving Commitment after the Closing Date will be set forth in a Joinder Agreement. The Administrative Agent shall update Appendix A from time to time to reflect any changes in Class B Revolving Commitments. The Class B Revolving Commitment of each Class B Revolving Lender will be equal to zero on the Revolving Commitment Termination Date.

**“Class B Revolving Exposure”** means, with respect to any Class B Revolving Lender as of any date of determination, (i) prior to the termination of the Class B Revolving Commitments, that Lender’s Class B Revolving Commitment; and (ii) after the termination of the Class B Revolving Commitments, the aggregate outstanding principal amount of the Class B Revolving Loans of that Lender.

**“Class B Revolving Lender”** means each financial institution listed on the signature pages hereto as a Class B Revolving Lender, and any other Person that becomes a party hereto as a Class B Revolving Lender pursuant to an Assignment Agreement.

**“Class B Revolving Loan”** means a Loan made by a Class B Revolving Lender to Company pursuant to Section 2.1.

**“Class B Revolving Loan Note”** means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

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

**“Closing Date Certificate”** means a Closing Date Certificate substantially in the form of Exhibit F-1.

**“Collateral”** means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

**“Collateral Agent”** as defined in the preamble hereto, and any successors or assigns thereto.

**“Collateral Documents”** means the Security Agreement, the Control Agreements and all other instruments, documents and agreements delivered by, or on behalf or at the request of, Company or Holdings pursuant to this Agreement or any of the other Credit Documents, as the case may be, in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of Company as security for the Obligations or to protect or preserve the interests of Collateral Agent or the Secured Parties therein.

**“Collateral Receipt and Exception Report”** shall mean the “Trust Receipt” as defined in the Custodial Agreement.

**“Collection Account”** means a Securities Account with account number 84176300 at Wells Fargo Bank, N.A. in the name of Company.

**“Collections”** means, with respect to each Pledged Receivable, any and all cash collections and other cash proceeds of such Pledged Receivable (whether in the form of cash, checks, wire transfers, electronic transfers or any other form of cash payment), including, without limitation, all prepayments, all overdue payments, all prepayment penalties and early termination penalties, all finance charges, if any, all amounts collected as interest, fees (including, without limitation, any servicing fees, any origination fees, any loan guaranty fees and, any platform fees), or charges for late payments with respect to such Pledged Receivable, all recoveries with respect to each Charged-Off Receivable (net of amounts, if any, retained by any third party collection agent), all investment proceeds and other investment earnings (net of losses and investment expenses) on Collections as a result of the investment thereof pursuant to Section 6.7, all proceeds of any sale, transfer or other disposition of any Pledged Receivable by Company and all deposits, payments or recoveries made

in respect of any Pledged Receivable to any Controlled Account, or received by Company in respect of a Pledged Receivable, and all payments representing a disposition of any Pledged Receivable.

**“Company”** as defined in the preamble hereto.

**“Compliance Certificate”** means a Compliance Certificate substantially in the form of Exhibit C-1.

**“Compliance Review”** as defined in Section 5.5(b).

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

**“Consolidated Liquidity”** means, as of any day, an amount determined for Holdings and its Subsidiaries, on a consolidated basis, equal to the sum of (i) unrestricted Cash and Cash Equivalents of Holdings and its Subsidiaries, as of such day, (ii) amounts (if any) in the Reserve Account as of such date, (iii) the sum of the Class A Revolving Availability and the Class B Revolving Availability as of such day and (iv) the aggregate amount of all unused and available credit commitments under any credit facilities of Holdings and its Subsidiaries, as of such day; *provided*, that, as of such day, all of the conditions to funding such amounts under clause (iii) and (iv), as the case may be, have been fully satisfied (other than delivery of prior notice of funding and pre-funding notices, opinions and certificates that are reasonably capable of delivery as of such day) and no lender under such credit facilities shall have refused to make a loan or other advance thereunder at any time after a request for a loan was made thereunder.

**“Consolidated Total Debt”** means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Holdings and its Subsidiaries determined on a consolidated basis in accordance with GAAP, including all accrued and unpaid interest on the foregoing, provided, that accounts payable, accrued expenses, liabilities for leasehold improvements and deferred revenue of Holdings and its Subsidiaries shall not be included in any determination of Consolidated Total Debt.

**“Contractual Obligation”** means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**“Control Agreements”** means collectively, the Lockbox Account Control Agreement, the Securities Account Control Agreement and the Blocked Account Control Agreement.

**“Controlled Account”** means each of the Reserve Account, the Collection Account and the Lockbox Account, and the **“Controlled Accounts”** means all of such accounts.

**“Controlled Account Bank”** means Wells Fargo Bank, N.A.

**“Convertible Indebtedness”** means any Indebtedness of Holdings that (a) is convertible to equity, including convertible preferred stock, (b) requires no payment of principal thereof or interest thereon and (c) is fully subordinated to all indebtedness for borrowed money of Holdings, as to right and time of payment and as to any other rights and remedies thereunder, including, an agreement on the part of the holders of such Indebtedness that the maturity of such Indebtedness cannot be accelerated prior to the maturity date of such indebtedness for borrowed money.

**“Credit Date”** means the date of a Credit Extension.

**“Credit Document”** means any of this Agreement, the Revolving Loan Notes, if any, the Collateral Documents, the Asset Purchase Agreement, any Receivables Purchase Agreement, the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and all other documents, instruments or agreements executed and delivered by Company or Holdings for the benefit of any Agent or any Lender in connection herewith.

**“Credit Extension”** means the making of a Revolving Loan.

**“Custodial Agreement”** mean the Custodial Services Agreement to be executed by Company, Servicer, Custodian, Collateral Agent and Administrative Agent, as it may be amended, supplemented or otherwise modified from time to time.

**“Custodian”** means Wells Fargo Bank, N.A., in its capacity as the provider of services under the Custodial Agreement, or any successor thereto in such capacity appointed in accordance with the Custodial Agreement.

**“Daily Pay Receivable”** means any Receivable for which a Payment is generally due on every Business Day.

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

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Default Excess”** means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of Revolving Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Revolving Loans of such Defaulting Lender.

**“Default Period”** means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default, and ending on the earliest of the

following dates: (i) the date on which all Revolving Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any payments of the Revolving Loans in accordance with the terms of this Agreement), and (b) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Revolving Commitments, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

**“Defaulted Loan”** as defined in Section 2.18.

**“Defaulted Receivable”** means, with respect to any date of determination, a Receivable which (i) is a Charged-Off Receivable or (ii) has a Missed Payment Factor of (x) with respect to Daily Pay Receivables, sixty (60) or higher or (y) with respect to Weekly Pay Receivables, twelve (12) or higher.

**“Defaulting Lender”** as defined in Section 2.18.

**“Delinquent Receivable”** means, as of any date of determination, any Receivable with a Missed Payment Factor of one (1) or higher as of such date.

**“Deposit Account”** means a “deposit account” (as defined in the UCC), including a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**“Designated Officer”** means, with respect to Company, any Person with the title of Chief Executive Officer, Chief Financial Officer or General Counsel.

**“Determination Date”** means the last day of each Monthly Period.

**“Direct Competitor”** means (a) any Person engaged in the same or similar line of business as Holdings, (b) any Person that is a direct competitor of Holdings or any Subsidiary of Holdings and is identified as such by the Company to the Administrative Agent prior to the Closing Date (as such list is updated by the Company from time to time, and acknowledged in writing by the Administrative Agent (such acknowledgment not to be unreasonably withheld)) in the list set forth in the Undertakings Agreement, or (c) any Affiliate of any such Person; provided that, any Person (other than any Person listed in clause (b) and their Affiliates) that either (i) both (A) has a market capitalization equal to or greater than \$5 billion and (B) that is in the business of investing in commercial loans that generally have an original par amount in excess of \$10,000,000 or (ii) that is an Approved Fund, shall in either case not be deemed a “Direct Competitor” hereunder.

**“Disposition Notice”** as defined in Section 8.8(a).

**“Document Checklist”** shall have the meaning attributed to such term in the Custodial Agreement.

**“Dollars”** and the sign **“\$”** mean the lawful money of the United States.

**“E-Sign Receivable”** means any Receivable for which the signature or record of agreement of the Receivables Obligor is obtained through the use and capture of electronic signatures, click-through consents or other electronically recorded assents.

**“Eligible Assignee”** means (i) any Lender or any Lender Affiliate (other than a natural person), and (ii) any other Person (other than a natural Person) approved by Company, so long as no Default or Event of Default has occurred and is continuing, and Administrative Agent (each such approval not to be unreasonably withheld); provided, that (y) neither Holdings nor any Affiliate of Holdings shall, in any event, be an Eligible Assignee, and (z) no Direct Competitor shall be an Eligible Assignee so long as no Specified Event of Default has occurred and is continuing.

**“Eligible Portfolio Outstanding Principal Balance”** means, as of any date of determination, the sum of the Outstanding Principal Balance for all Eligible Receivables as of such date.

**“Eligible Product”** means the following Receivable product type: On Deck Core Loans.

**“Eligible Receivable”** means a Receivable with respect to which the Eligibility Criteria are satisfied as of the applicable date of determination.

**“Eligible Receivables Obligor”** means a Receivables Obligor that satisfies the criteria specified in Appendix C hereto under the definition of “Eligible Receivables Obligor”, subject to any changes agreed to by the Requisite Class A Revolving Lenders, the Requisite Class B Revolving Lenders and Company from time to time after the Closing Date.

**“Eligibility Criteria”** means the criteria specified in Appendix C hereto under the definition of “Eligibility Criteria”, subject to any changes agreed to by the Requisite Class A Revolving Lenders, the Requisite Class B Revolving Lenders and Company from time to time after the Closing Date.

**“Employee Benefit Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates.

**“Equity Lienholder”** has the meaning set forth in the definition of “Change of Control”.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“ERISA Affiliate”** means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within

the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Person shall continue to be considered an ERISA Affiliate of such Person within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person and with respect to liabilities arising after such period, but only to the extent that such Person could be liable under the Internal Revenue Code or ERISA as a result of its relationship with such former ERISA Affiliate.

**“ERISA Event”** means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty (30) day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan of Holdings, any of its Subsidiaries, or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates, or the assets thereof, or against Holdings, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify

under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

**“Event of Default”** means each of the events set forth in Section 7.1.

**“Excess Concentration Amounts”** means the amounts set forth on Appendix D hereto.

**“Excess Spread”** means, with respect to any Determination Date for any Monthly Period, the product of (a) 12 times (b) the percentage equivalent of a fraction (i) the numerator of which is the excess, if any, of (x) the Adjusted Interest Collections for such Monthly Period over (y) the aggregate Outstanding Principal Balance of all Pledged Receivables that became Defaulted Receivables during such Monthly Period and (ii) the denominator of which is the average daily Outstanding Principal Balance of Pledged Receivables for such Monthly Period.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Revolving Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Revolving Loan or Revolving Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16(b), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.16(d)(i) or Section 2.16(d)(ii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, as of the date of this agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), and any current or future regulations promulgated thereunder or official interpretations thereof.

**“Federal Funds Effective Rate”** means, 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 (rounded upwards, if necessary to the next 1/100th of 1%) of the

quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

**“Fee Letters”** means (a) each letter agreement dated as of the Closing Date between the Company and each Class A Revolving Lender party thereto (as such Fee Letters are amended, modified or supplemented from time to time), and (b) each letter agreement entered into thereafter between the Company and any Class B Revolving Lender (or agent thereof) a party hereto.

**“Financial Covenants ”** means the financial covenants set forth on Schedule 1.1 hereto.

**“Financial Officer Certification”** means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer (or the equivalent thereof) of Holdings that such financial statements fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“First Priority”** means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is perfected and is the only Lien to which such Collateral is subject.

**“Fiscal Quarter”** means a fiscal quarter of any Fiscal Year.

**“Fiscal Year”** means the fiscal year of Holdings and its Subsidiaries ending on December 31 of each calendar year.

**“Funding Default”** as defined in Section 2.18.

**“Funding Account”** has the meaning set forth in Section 2.11(a).

**“Funding Notice”** means a notice substantially in the form of Exhibit A-1.

**“GAAP”** means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

**“Governmental Authorization”** means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

**“Highest Concentration Industry Code”** means, on any date of determination, the Industry Code shared by Receivables Obligor of Eligible Receivables having the highest aggregate Outstanding Principal Balance.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Financial Statements”** means as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries, for the Fiscal Year ended 2014, consisting of balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year, and (ii) for the interim period from January 1, 2015 to the Closing Date, internally prepared, unaudited financial statements of Holdings and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders’ equity and cash flows for each quarterly period completed prior to forty-six (46) days before the Closing Date, in the case of clauses (i) and (ii), certified by the chief financial officer (or the equivalent thereof) of Holdings that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

**“Holdings”** means On Deck Capital, Inc., a Delaware corporation.

**“Increased-Cost Lenders”** as defined in Section 2.19.

**“Increasing Lender”** as defined in Section 2.24.

**“Indebtedness”** as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding trade payables incurred in the ordinary course of business that are unsecured and not overdue by more than six (6) months unless being contested in good faith and any such obligations incurred under ERISA); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect

thereof; (ix) any liability of such Person for an obligation of another through any Contractual Obligation (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements of any kind or nature whatsoever (excluding any amounts not otherwise payable by Company under Section 2.16(b)(iii) but including the reasonable and documented fees and disbursements of one (1) counsel for Class A Indemnitees, one counsel for Class B Indemnitees and one (1) counsel for the Collateral Agent and Paying Agent in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable and documented fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Credit Documents, any Related Agreement, or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral)).

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Company under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** as defined in Section 9.3.

**“Indemnitee Agent Party”** as defined in Section 8.6.

**“Independent Manager”** as defined in Section 6.15.

**“Industry Code”** means, with respect to any Receivables Obligor of an Eligible Receivable, the NAIC industry code under which the business of such Receivables Obligor has been classified by Holdings.

**“Intangible Assets”** means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

**“Interest Payment Date”** means the fifteenth calendar day after the end of each Monthly Period, and if such date is not a Business Day, the next succeeding Business Day.

**“Interest Period”** means an interest period (i) initially, commencing on and including the Closing Date and ending on but excluding the initial Interest Payment Date; and (ii) thereafter, commencing on and including each Interest Payment Date and ending on and excluding the immediately succeeding Interest Payment Date; provided, that no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is four (4) Business Days prior to each Interest Payment Date.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“Investment”** means (i) any direct or indirect purchase or other acquisition by Company of, or of a beneficial interest in, any of the Securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Company to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

**“Joinder Agreement”** as defined in Section 2.24.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

**“Largest OPB Receivable”** means, as of any date of determination, the aggregate Eligible Receivables owing by the single Receivables Obligor having the largest aggregate Outstanding Principal Balance.

**“Lender”** means each Class A Revolving Lender and each Class B Revolving Lender.

**“Lender Affiliate”** means, as applied to any Lender or Agent, any Related Fund and any Person directly or indirectly controlling (including any member of senior management of such Person), controlled by, or under common control with, such Lender or Agent. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession,

directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

**“Leverage Ratio”** means the ratio as of any day of (a) Consolidated Total Debt, excluding Subordinated Indebtedness and Convertible Indebtedness, as of such day, to (b) the sum of (i) Holdings’ total stockholders’ equity as of such day, (ii) Warranty Liability as of such day and (iii) the sum of Subordinated Indebtedness and Convertible Indebtedness as of such day.

**“LIBO Rate”** means, for any Revolving Loan (or portion thereof) for any Interest Period, the rate per annum determined by, with respect to the (i) Class A Revolving Loans, the Administrative Agent, and (ii) Class B Revolving Loans, the Paying Agent, in each case at approximately 11:00 a.m., London time, on the second Business Day before the first day of such Interest Period by reference to the 30-day ICE Benchmark Administration Limited London interbank offered rate per annum for deposits in Dollars for a period equal to one month (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent or the Paying Agent, as applicable, in its sole discretion); provided, that if such rate is not available at such time for any reason, then the “LIBO Rate” shall be the rate per annum (rounded upward to the nearest 1/16th of 1%) listed in The Wall Street Journal, “Money Rates” table at or about 10:00 a.m., New York City time, two Business Days prior to the beginning of the related Interest Period (or, if no such rate is listed two Business Days prior to the beginning of the related Interest Period, the rate listed on the Business Day on which such rate was last listed).

**“Lien”** means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

**“Limited Liability Company Agreement”** means the Amended and Restated Limited Liability Company Agreement of the Company, dated as of May 22, 2015.

**“Lockbox Account”** means a Deposit Account with account number 1830043117 at MB Financial Bank, N.A. in the name of Company.

**“Lockbox Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Lockbox System”** as defined in Section 2.11(d).

**“Margin Stock”** as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

**“Master Record”** as defined in the Custodial Agreement.

**“Material Adverse Effect”** means, with respect to any event or circumstance and any Person, a material adverse effect on: (i) the business, assets, financial condition or results of operations of such Person and its consolidated Subsidiaries, if any, taken as a whole; (ii) the ability of such Person to perform its material obligations under the Credit Documents; (iii) the validity or enforceability of any Credit Document to which such Person is a party; or (iv) the existence, perfection, priority or enforceability of any security interest in a material amount of the Pledged Receivables taken as a whole or in any material part.

**“Material Contract”** means any contract or other arrangement to which Company is a party (other than the Credit Documents or the Related Agreements) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

**“Material Modification”** means, with respect to any Receivable, a reduction in the interest rate, an extension of the term, a reduction in, or change in frequency of, any required Payment or extension of a Payment Date (other than a temporary modification made in accordance with the Underwriting Policies) or a reduction in the Outstanding Principal Balance.

**“Materials”** as defined in Section 5.5(b).

**“Maximum 15 Day Delinquency Rate”** means, with respect to any Monthly Period, the percentage equivalent of a fraction (i) the numerator of which is the aggregate Outstanding Principal Balance of all Delinquent Receivables (other than Defaulted Receivables) that are Pledged Receivables that have a Missed Payment Factor of three (3) or higher as of the last day of such Monthly Period and (ii) the denominator of which is the aggregate Outstanding Principal Balance of all Receivables (other than Defaulted Receivables) that are Pledged Receivables as of the last day of such Monthly Period.

**“Maximum Class B Interest Rate”** means the rate set forth in the Fee Letter among the Company, the Class A Lender and the Administrative Agent, as the same may be increased from time to time with the consent of each party thereto.

**“Maximum Default Rate”** means, with respect to any Monthly Period, the percentage equivalent of a fraction (i) the numerator of which is the aggregate Outstanding Principal Balance of all Pledged Receivables that became Defaulted Receivables during such Monthly Period and (ii) the denominator of which is the average daily Outstanding Principal Balance of all Pledged Receivables for such Monthly Period.

**“Maximum Delinquency Rate”** means, with respect to any Monthly Period, the percentage equivalent of a fraction (i) the numerator of which is the aggregate Outstanding Principal Balance of all Delinquent Receivables (other than Defaulted Receivables) that are Pledged Receivables as of the last day of such Monthly Period and (ii) the denominator of which is the aggregate Outstanding Principal Balance of all Receivables (other than Defaulted Receivables) that are Pledged Receivables as of the last day of such Monthly Period.

**“Maximum Upfront Fee”** means, with respect to each Receivable, the greater of (a) \$695 and (b) 3.5% of the original aggregate unpaid principal balance of such Receivable.

**“Missed Payment Factor”** means, in respect of any Receivable, an amount equal to the sum of (a) the amount equal to (i) the total past due amount of Payments in respect of such Receivable, divided by (ii) the required periodic Payment in respect of such Receivable as set forth in the related Receivables Agreement and (b) the number of Payment Dates, if any, past the Receivable maturity date on which a Payment was due but not received.

**“Monthly Period”** means the period from and including the first day of a calendar month to and including the last day of such calendar month, provided, however, that the initial Monthly Period will commence on the date hereof and end on the last day of the calendar month in which the Closing Date occurred.

**“Monthly Reporting Date”** means the third Business Day prior to each Interest Payment Date.

**“Monthly Servicing Report”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Moody’s”** means Moody’s Investor Services, Inc.

**“Multiemployer Plan”** means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

**“NAIC”** means The National Association of Insurance Commissioners, and any successor thereto.

**“Net Asset Sale Proceeds”** means, with respect to any Permitted Asset Sale, an amount equal to: (i) Cash payments received by, or on behalf of, Company from such Permitted Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Permitted Asset Sale to the extent paid or payable to non-Affiliates, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Permitted Asset Sale during the tax period the sale occurs and (b) a reasonable reserve for any recourse for a breach of the representations and warranties made by Company to the purchaser in connection with such Permitted Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

**“Net Cash Proceeds”** shall mean with respect to any equity issuance, the cash proceeds thereof, net of all taxes and reasonable investment banker’s fees, underwriting discounts or commissions, reasonable legal fees and other reasonable costs and other expenses incurred in connection therewith.

**“Non-Consenting Lender”** as defined in Section 2.19.

**“Non-US Lender”** as defined in Section 2.16(d)(i).

**“Obligations”** means all obligations of every nature of Company from time to time owed to the Agents (including former Agents), the Lenders or any of them, in each case under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Company, would have accrued on any Obligation, whether or not a claim is allowed against Company for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

**“On Deck Core Loans”** means Receivables designated as such in the Underwriting Policies.

**“On Deck Score”** means that numerical value that represents Holdings’ evaluation of the creditworthiness of a business and its likelihood of default on a commercial loan or other similar credit arrangement generated by “version 5” of the proprietary methodology developed and maintained by Holdings, as such methodology is applied in accordance with the other aspects of the Underwriting Policies, as such methodology may be revised and updated from time to time in accordance with Section 6.17.

**“Organizational Documents”** means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization or certificate of formation, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

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

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

**“Outstanding Principal Balance”** means, as of any date with respect to any Receivable, the unpaid principal balance of such Receivable as set forth on the Servicer’s books and records as of the close of business on the immediately preceding Business Day; *provided*,

however , that the Outstanding Principal Balance of any Pledged Receivable that has become a Charged-Off Loan will be zero.

**“Participant Register”** as defined in Section 9.6(h).

**“Paying Agent”** as defined in the preamble hereto, and any successors or assigns thereto.

**“ Payment ”** means, with respect to any Receivable, the required scheduled loan payment in respect of such Receivable, as set forth in the applicable Receivable Agreement.

**“ Payment Dates ”** means, with respect to any Receivable, the date a payment is due in accordance with the Receivable Agreement with respect to such Receivable as in effect as of the date of determination.

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

**“Pension Plan”** means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

**“Permitted Asset Sale”** means so long as all Net Asset Sale Proceeds are contemporaneously remitted to the Collection Account, (a) the sale by Company of Receivables to Holdings pursuant to any repurchase obligations of Holdings under the Asset Purchase Agreement, (b) the sale by the Servicer on behalf of Company of Charged-Off Receivables to any third party in accordance with the Servicing Standard, provided, that such sales are made without representation, warranty or recourse of any kind by Company (other than customary representations regarding title and absence of liens on the Charged-Off Receivables, and the status of Company, due authorization, enforceability, no conflict and no required consents in respect of such sale), (c) the sale by Company of Receivables to Holdings who immediately thereafter sells such Receivables to a special-purpose Subsidiary of Holdings, so long as, (i) the amount received by Company therefore and deposited into the Collection Account is no less than the aggregate Outstanding Principal Balances of such Receivables, (ii) such sale is made without representation, warranty or recourse of any kind by Company (other than customary representations regarding title, absence of liens on the Receivables, status of Company, due authorization, enforceability, no conflict and no required consents in respect of such sale), (iii) the manner in which such Receivables were selected by Company does not adversely affect the Lenders and (iv) the agreement pursuant to which such Receivables were sold to Holdings or such special-purpose Subsidiary, as the case may be, contains an obligation on the part of Holdings or such special-purpose Subsidiary to not file or join in filing any involuntary bankruptcy petition against Company prior to the end of the period that is one year and one day after the payment in full of all Obligations of Company under this Agreement and not to cooperate with or encourage others to file involuntary bankruptcy petitions against Company during the same period, and (d) the sale by Company of Receivables with the written consent of the Administrative Agent, the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders.

**“Permitted Discretion”** means, with respect to any Person, a determination or judgment made by such Person in good faith in the exercise of reasonable (from the perspective of a secured lender) credit or business judgment.

**“Permitted Investments”** means the following, subject to qualifications hereinafter set forth: (i) obligations of, or obligations guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America; (ii) federal funds, unsecured certificates of deposit and time deposits of any bank, the short-term debt obligations of which are rated A-1+ (or the equivalent) by each of the rating agencies and, if it has a term in excess of three months, the long-term debt obligations of which are rated AAA (or the equivalent) by each of the Moody’s and S&P; (iii) deposits that are fully insured by the Federal Deposit Insurance Corp. (FDIC); (iv) only to the extent permitted by Rule 3a-7 under the Investment Company Act of 1940, investments in money market funds which invest substantially all their assets in securities of the types described in clauses (i) through (iii) above that are rated in the highest rating category by Moody’s or S&P; and (v) such other investments as to which the Administrative Agent consent in its sole discretion. Each of the Permitted Investments may be purchased by the Paying Agent or Collateral Agent through an affiliate of the Paying Agent or Collateral Agent.

Notwithstanding the foregoing, **“ Permitted Investments ”** (i) shall exclude any security with the S&P’s “r” symbol (or any other rating agency’s corresponding symbol) attached to the rating (indicating high volatility or dramatic fluctuations in their expected returns because of market risk), as well as any mortgage-backed securities and any security of the type commonly known as “strips”; (ii) shall not have maturities in excess of one year; (iii) shall be limited to those instruments that have a predetermined fixed dollar of principal due at maturity that cannot vary or change; and (iv) shall exclude any investment where the right to receive principal and interest derived from the underlying investment provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment. Interest may either be fixed or variable, and any variable interest must be tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with that index. No investment shall be made which requires a payment above par for an obligation if the obligation may be prepaid at the option of the issuer thereof prior to its maturity. All investments shall mature or be redeemable upon the option of the holder thereof on or prior to the earlier of (x) three months from the date of their purchase or (y) the Business Day preceding the day before the date such amounts are required to be applied hereunder.

**“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“ Pledged Receivables ”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Portfolio”** means the Receivables purchased by Company from Holdings pursuant to the Asset Purchase Agreement.

**“Portfolio Performance Covenant”** means the portfolio performance covenants specified in Appendix E.

**“Portfolio Weighted Average Receivable Yield”** means as of any date of determination, the quotient, expressed as a percentage, obtained by dividing (a) the sum, for all Eligible Receivables, of the product of (i) the Receivable Yield for each such Receivable multiplied by (ii) the Outstanding Principal Balance of such Receivable as of such date, by (b) the Eligible Portfolio Outstanding Principal Balance as of such date.

**“Prime Rate”** means, as of any day, the rate of interest per annum equal to the prime rate publicly announced by the majority of the eleven largest commercial banks chartered under United States Federal or State banking law as its prime rate (or similar base rate) in effect at its principal office. The determination of such eleven largest commercial banks shall be based upon deposits as of the prior year-end, as reported in the American Banker or such other source as may be reasonably selected by the Paying Agent.

**“Principal Office”** means, for Administrative Agent, Administrative Agent’s “Principal Office” as set forth on Appendix B, or such other office as Administrative Agent may from time to time designate in writing to Company and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be as set forth on Appendix B (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Company and each Lender).

**“Pro Rata Share”** means with respect to (i) any Class A Revolving Lender, the percentage obtained by dividing (a) the Class A Revolving Exposure of that Lender by (b) the aggregate Class A Revolving Exposure of all Lenders, and (ii) any Class B Revolving Lender, the percentage obtained by dividing (a) the Class B Revolving Exposure of that Lender by (b) the aggregate Class B Revolving Exposure of all Lenders.

**“Protective Undertaking Certification”** means a certification provided by an Equity Lienholder to the Administrative Agent, for the benefit of the Lenders, in form and substance reasonably satisfactory to the Administrative Agent, whereby such Equity Lienholder certifies that such Equity Lienholder will not (a) cause the Company to commence a voluntary or involuntary proceeding under any Debtor Relief Law, (b) in connection with any such proceeding, challenge the “true sale” characterization of any sale of Receivables by Holdings to the Company, or (c) in connection with any such proceeding, attempt to cause the Company to be “substantively consolidated” with Holdings or any other Person.

**“Ramp-Up Period”** means the period beginning on the Closing Date and ending on the date that is the earlier of (i) the date that is the 60th day after (but excluding) the Closing Date, and (ii) the first date upon which the aggregate outstanding principal amount of the Class A Revolving Loans is greater than or equal to \$12,500,000.

**“Re-Aged”** means returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

**“Receivable”** means any loan or similar contract with a Receivables Obligor pursuant to which Holdings or the Receivables Account Bank extends credit to such Receivables Obligor including all rights under any and all security documents or supporting obligations related thereto, including the applicable Receivable Agreements.

**“Receivable Agreements”** means, collectively, with respect to any Receivable, a Business Loan and Security Agreement, a Business Loan and Security Agreement Supplement or Loan Summary, the Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit), in each case, in substantially the form provided to the Administrative Agent on or prior to the Closing Date and as may be amended, supplemented or modified from time to time in accordance with the terms of this Agreement and the other documents related thereto to which the Receivables Obligor is a party.

**“Receivable File”** means, with respect to any Receivable, (i) copies of each applicable document listed in the definition of “Receivable Agreements,” (ii) the UCC financing statement, if any, filed against the Receivables Obligor in connection with the origination of such Receivable and (iii) copies of each of the documents required by, and listed in, the Document Checklist attached to the Custodial Agreement, each of which may be in electronic form.

**“Receivable Yield”** means, with respect to any Receivable, the imputed interest rate that is calculated on the basis of the expected aggregate annualized rate of return (calculated inclusive of all interest and fees (other than any Upfront Fees)) of such Receivable over the life of such Receivable.

Such calculation shall assume:

- (a) 52 Payment Dates per annum, for Weekly Pay Receivables; and
- (b) 252 Payment Dates per annum, for Daily Pay Receivables.

**“Receivables Account Bank”** means, with respect to any Receivable, (i) BofI Federal Bank, a federal savings institution, or (ii) with the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed), any other institution organized under the laws of the United States of America or any State thereof and subject to supervision and examination by federal or state banking authorities that originates and owns Loans for the Seller pursuant to a Receivables Program Agreement.

**“Receivables Guarantor”** means with respect to any Receivables Obligor, (a) each holder of the Capital Stock (or equivalent ownership or beneficial interest) of such Receivables Obligor in the case of a Receivables Obligor which is a corporation, partnership, limited liability company, trust or equivalent entity, who has agreed to unconditionally guarantee all of the obligations of the related Receivables Obligor under the related Receivable Agreements or (b) the natural person operating as the Receivables Obligor, if the Receivables Obligor is a sole proprietor.

**“Receivables Obligor”** means with respect to any Receivable, the Person or Persons obligated to make payments with respect to such Receivable, excluding any Receivables Guarantor referred to in clause (a) of the definition of “Receivables Guarantor.”

**“Receivables Program Agreement”** means the (i) Master Business Loan Marketing Agreement, dated as of July 19, 2012, between Holdings and BofI Federal Bank, a federal savings institution (as amended, modified or supplemented from time to time) and (ii) any other agreement between Holdings and a Receivables Account Bank pursuant to which Holdings may refer applicants for small business loans conforming to the Underwriting Policies to such Receivables Account Bank and such Receivables Account Bank has the discretion to fund or not fund a loan to such applicant based on its own evaluation of such applicant and containing those provisions as are reasonably necessary to ensure that the transfer of small business loans by such Receivables Account Bank to Holdings thereunder are treated as absolute sales.

**“Receivables Purchase Agreement”** means a Bill of Sale and Assignment of Assets, by and between Holdings and any Subsidiary of Holdings, in substantially the form of Exhibit H hereto.

**“Register”** means a Class A Register or Class B Register, as applicable.

**“Regulation D”** means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

**“Related Agreements”** means, collectively the Organizational Documents of Company and each Receivables Program Agreement.

**“Related Fund”** means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Related Security”** shall have the meaning attributed to such term in the Asset Purchase Agreement.

**“Replacement Lender”** as defined in Section 2.19.

**“Requirements of Law”** means as to any Person, any law (statutory or common), treaty, rule, ordinance, order, judgment, Governmental Authorization, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

**“Requisite Class A Revolving Lenders”** means one or more Class A Revolving Lenders having or holding Class A Revolving Exposure and representing more than 50% of the sum of the aggregate Class A Revolving Exposure of all Class A Revolving Lenders.

**“Requisite Class B Revolving Lenders”** means one or more Class B Revolving Lenders having or holding Class B Revolving Exposure and representing more than 50% of the sum of the aggregate Class B Revolving Exposure of all Class B Revolving Lenders.

**“Requisite Lenders”** means (a) until the Revolving Commitment Termination Date shall have occurred and all Class A Revolving Loans and all other Obligations owing to the Class A Revolving Lender Groups have been paid in full in cash, the Requisite Class A Revolving Lenders and (b) thereafter, the Requisite Class B Revolving Lenders.

**“ Reserve Account ”** means a Deposit Account with account number 84176301 at Wells Fargo Bank N.A. in the name of Company.

**“Reserve Account Funding Amount”** means, on any day during a Reserve Account Funding Period, the excess, if any, of (a) the product of (i) 0.75% and (ii) the aggregate Class A Revolving Commitments of the Lenders, over (b) the amount then on deposit in the Reserve Account.

**“Reserve Account Funding Event”** means, as of any date of determination with respect to the Monthly Period most recently ended, that any one of the following events shall have occurred with respect to such Monthly Period: (a) the Average Excess Spread was less than 15.0%; (b) the Maximum Delinquency Rate was greater than 13.0%; or (c) the Maximum 15 Day Delinquency Rate was greater than 6.75%. Notwithstanding the foregoing, the Reserve Account Funding Event shall be deemed to no longer exist from and after any date upon which the Reserve Account Funding Event Cure has occurred (provided that only one Reserve Account Funding Event Cure shall be permitted hereunder).

**“Reserve Account Funding Event Cure”** means, as of any date of determination with respect to the three Monthly Periods most recently ended, that each of the following conditions has been satisfied with respect to each such Monthly Period after the occurrence of a Reserve Account Funding Event: (a) the Average Excess Spread was greater than 15.0%; (b) the Maximum Delinquency Rate was less than 12.0%; (c) the Maximum 15 Day Delinquency Rate was less than 6.75% and (d) no Reserve Account Funding Event Cure shall have previously occurred.

**“Reserve Account Funding Period”** means the period commencing on the first day after the Closing Date on which a Reserve Account Funding Event shall occur and ending on the first day thereafter on which the Reserve Account Funding Event Cure shall occur, and the period commencing on the first day thereafter on which another Reserve Account Funding Event shall occur and ending on the Termination Date.

**“Responsible Officer”** means, when used with respect to any Person, any officer of such Person, including any president, vice president, executive vice president, assistant vice president, treasurer, secretary, assistant secretary or any other officer thereof customarily performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any matter is referred because of such officer’s knowledge of or familiarity with the particular subject and having direct responsibility for the administration of this Agreement and the other Credit Documents to which such Person is a party.

**“Restricted Junior Payment”** means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Company now or hereafter outstanding, except a dividend payable solely in shares of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for

value, direct or indirect, of any shares of any class of Capital Stock of Company now or hereafter outstanding; and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Company now or hereafter outstanding.

**“Revolving Availability”** means Class A Revolving Availability or Class B Revolving Availability, as applicable.

**“Revolving Commitment”** means a Class A Revolving Commitment or Class B Revolving Commitment, as applicable.

**“Revolving Commitment Period”** means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

**“Revolving Commitment Termination Date”** means the earliest to occur of (i) the date that is the second anniversary of the Closing Date; (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.9(a); and (iii) the date of the termination of the Revolving Commitments pursuant to Section 7.1.

**“Revolving Exposure”** means, (a) with respect to any Class A Revolving Lender as of any date of determination, such Class A Revolving Lender’s Class A Revolving Exposure and (b) with respect to any Class B Revolving Lender as of any date of determination, such Class B Revolving Lender’s Class B Revolving Exposure.

**“Revolving Loan”** means a Class A Revolving Loan or a Class B Revolving Loan, as applicable.

**“Revolving Loan Note”** means Class A Revolving Loan Note or a Class B Revolving Loan Note, as applicable.

**“Rolling 3-Month Average Maximum 15 Day Delinquency Rate”** means, for any Monthly Period, the arithmetic average Maximum 15 Day Delinquency Rate for such Monthly Period and the two (2) Monthly Periods immediately preceding such Monthly Period.

**“Rolling 3-Month Average Maximum Default Rate”** means, for any Monthly Period, the arithmetic average Maximum Default Rate for such Monthly Period and the two (2) Monthly Periods immediately preceding such Monthly Period.

**“Rolling 3-Month Average Maximum Delinquency Rate”** means, for any Monthly Period, the arithmetic average Maximum Delinquency Rate for such Monthly Period and the two (2) Monthly Periods immediately preceding such Monthly Period.

**“S&P”** means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its permitted successors and assigns.

**“Secured Parties”** shall have the meaning attributed to such term in the Security Agreement.

**“Securities”** means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**“Securities Account”** means a “securities account” (as defined in the UCC).

**“Securities Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, and any successor statute.

**“Security Agreement”** means that certain Security Agreement dated as of the date hereof between Company and the Collateral Agent, as it may be amended, restated or otherwise modified from time to time.

**“Seller”** has the meaning set forth in the Asset Purchase Agreement.

**“Servicer”** means Holdings, in its capacity as the “Servicer” under the Servicing Agreement, and, after any removal or resignation of Holdings as the “Servicer” in accordance with the Servicing Agreement, any Successor Servicer.

**“Servicer Default”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Servicing Agreement”** means that certain Servicing Agreement dated as of the date hereof between Company, Holdings and the Administrative Agent, as it may be amended, restated or otherwise modified from time to time, and, after the appointment of any Successor Servicer, the Successor Servicing Agreement to which such Successor Servicer is a party, as it may be amended, restated or otherwise modified from time to time.

**“Servicing Fees”** shall have the meaning attributed to such term in the Servicing Agreement; provided, however that, after the appointment of any Successor Servicer, the Servicing Fees shall mean the Successor Servicer Fees payable to such Successor Servicer.

**“Servicing Reports”** means the Servicing Reports delivered pursuant to the Servicing Agreement, including the Monthly Servicing Report.

**“Servicing Standard”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Servicing Transition Expenses”** means all reasonable, out-of-pocket costs and expenses actually incurred by the Successor Servicer in connection with the assumption of servicing

of the Pledged Receivables by a Successor Servicer after the delivery of a Termination Notice to the Servicer.

**“Servicing Transition Period”** means the period commencing on the giving of a Termination Notice and ending such number of days thereafter as shall be determined by the Administrative Agent in its Permitted Discretion.

**“Solvency Certificate”** means a Solvency Certificate of the chief financial officer (or the equivalent thereof) of each of Holdings and Company substantially in the form of Exhibit F-2.

**“Solvent”** means, with respect to Company or Holdings, that as of the date of determination, both (i) (a) the sum of such entity’s debt (including contingent liabilities) does not exceed the present fair saleable value of such entity’s present assets; (b) such entity’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date; and (c) such entity has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such entity is “solvent” within the meaning given that term and similar terms under laws applicable to it relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

**“Specified Event of Default”** means any Event of Default occurring under Sections 7.1(a), (g) or (h).

**“Subordinated Indebtedness”** means any Indebtedness of Holdings that is fully subordinated to all senior indebtedness for borrowed money of Holdings, as to right and time of payment and as to any other rights and remedies thereunder, including, an agreement on the part of the holders of such Indebtedness that the maturity of such Indebtedness cannot be accelerated prior to the maturity date of such senior indebtedness for borrowed money.

**“Subsidiary”** means, with respect to any Person, any corporation, partnership, limited liability company, association, or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

**“Subsidiary Receivables”** means certain Receivables (i) owned by any Subsidiary of Holdings, and (ii) sold by such Subsidiary of Holdings to Holdings pursuant to a Receivables Purchase Agreement, and immediately thereafter sold by Holdings to Company, in each case, on one or more Transfer Dates.

**“Successor Servicer”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Successor Servicing Agreement”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Successor Servicer Fees”** means the servicing fees payable to a Successor Servicer pursuant to a Successor Servicing Agreement.

**“Tangible Net Worth”** means, as of any day, the total of (a) Holdings’ total stockholders’ equity, minus (b) all Intangible Assets of Holdings, minus (c) all amounts due to Holdings from its Affiliates, plus (d) any Convertible Indebtedness, plus (e) any Warranty Liability.

**“Tax”** means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including any interest, additions to tax or penalties applicable thereto.

**“Terminated Lender”** as defined in Section 2.19.

**“Termination Date”** means the date on, and as of, which (a) all Revolving Loans have been repaid in full in cash, (b) all other Obligations (other than contingent indemnification obligations for which demand has not been made) under this Agreement and the other Credit Documents have been paid in full in cash or otherwise completely discharged, and (c) the Revolving Commitment Termination Date shall have occurred.

**“Termination Notice”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Total Utilization of Class A Revolving Commitments”** means, as at any date of determination, the aggregate principal amount of all outstanding Class A Revolving Loans.

**“Total Utilization of Class B Revolving Commitments”** means, as at any date of determination, the aggregate principal amount of all outstanding Class B Revolving Loans.

**“Transaction Costs”** means the fees, costs and expenses payable by Holdings or Company on or within ninety (90) days after the Closing Date in connection with the transactions contemplated by the Credit Documents.

**“Transfer Date”** has the meaning assigned to such term in the Asset Purchase Agreement.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

**“UCC Agent”** means Corporation Service Company, a Delaware corporation, in its capacity as agent for Holdings or other entity providing secured party representation services for Holdings from time to time.

**“Undertakings Agreement”** means that certain agreement, dated as of the date hereof, by and among Holdings, the Company, the lenders party thereto, the Paying Agent and the Administrative Agent.

**“Underwriting Policies”** means the credit policies and procedures of Holdings, including the underwriting guidelines and OnDeck Score methodology, and the collection policies and procedures of Holdings, in each case in effect as of the Closing Date and in substantially the form provided to the Administrative Agent on or prior to the Closing Date, as such policies, procedures, guidelines and methodologies may be amended from time to time in accordance with Section 6.17.

**“Upfront Fees”** means, with respect to any Receivable, the sum of any fees charged by Holdings or the Receivables Account Bank, as the case may be, to a Receivables Obligor in connection with the disbursement of a loan, as set forth in the Receivables Agreement related to such Receivable, which are deducted from the initial amount disbursed to such Receivables Obligor, including the “Origination Fee” set forth on the applicable Receivable Agreement.

**“Volcker Rule”** means the common rule entitled “Proprietary Trading and Certain Interests and Relationships with Covered Funds” published at 79 Fed. Reg. 5779 et seq.

**“Warranty Liability”** means, as of any day, the aggregate stated balance sheet fair value of all outstanding warrants exercisable for redeemable convertible preferred shares of Holdings determined in accordance with GAAP.

**“Weekly Pay Receivable”** means any Receivable for which a Payment is generally due once per week.

**1.2 Accounting Terms** . Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to Section 5.1(a) and Section 5.1(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(d), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either Company, the Requisite Lenders or the Administrative Agent shall so request, the Administrative Agent, the Lenders and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP and accounting principles and policies in conformity with those used to prepare the Historical

Financial Statements and (b) Company shall provide to the Administrative Agent and each Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. If Administrative Agent, Company and the Administrative Agent cannot agree upon the required amendments within thirty (30) days following the date of implementation of any applicable change in GAAP, then all financial statements delivered and all calculations of financial covenants and other standards and terms in accordance with this Agreement and the other Credit Documents shall be prepared, delivered and made without regard to the underlying change in GAAP.

**1.3 Interpretation, etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

## **SECTION 2. LOANS**

### **2.1 Revolving Loans .**

#### **(a) Revolving Commitments.**

(i) During the Revolving Commitment Period, subject to the terms and conditions hereof, including, without limitation delivery of an updated Borrowing Base Certificate and Borrowing Base Report pursuant to Section 3.2(a)(i), each Class A Revolving Lender severally agrees to make Class A Revolving Loans to Company in an aggregate amount up to but not exceeding such Class A Revolving Lender’s Revolving Commitment; provided that no Class A Revolving Lender shall make any such Class A Revolving Loan or portion thereof to the extent that, after giving effect to such Class A Revolving Loan:

(a) the Total Utilization of Class A Revolving Commitments exceeds the Class A Borrowing Base; or

(b) the aggregate outstanding principal amount of the Class A Revolving Loans funded by such Class A Revolving Lender hereunder shall exceed its Class A Revolving Commitment.

(ii) During the Revolving Commitment Period, subject to the terms and conditions hereof, including, without limitation delivery of an updated Borrowing Base Certificate and Borrowing Base Report pursuant to Section 3.2(a)(i), each Class B Revolving Lender severally agrees to make Class B Revolving Loans to Company in an aggregate amount up to but not

exceeding such Lender's Class B Revolving Commitment; provided that no Class B Revolving Lender shall make any such Class B Revolving Loan or portion thereof to the extent that, after giving effect to such Class B Revolving Loan:

(a) the Total Utilization of Class B Revolving Commitments exceeds the Class B Borrowing Base; or

(b) the aggregate outstanding principal amount of the Class B Revolving Loans funded by such Class B Revolving Lender hereunder shall exceed its Class B Revolving Commitment.

(b) Amounts borrowed pursuant to Section 2.1(a) may be repaid and reborrowed during the Revolving Commitment Period, and any repayment of the Revolving Loans (other than (i) pursuant to Section 2.10 (which circumstance shall be governed by Section 2.10), (ii) on any Interest Payment Date upon which no Event of Default has occurred and is continuing (which circumstance shall be governed by Section 2.12(a)) or (iii) on a date upon which an Event of Default has occurred and is continuing (which circumstances shall be governed by Section 2.12(b))) shall be applied as directed by Company, provided that the Company (A) may not repay the Revolving Loans more than three (3) times per week, (B) must deliver to the Administrative Agent, the Paying Agent and each Class B Revolving Lender a Controlled Account Voluntary Payment Notice pursuant to Section 2.11(c)(vii) in connection with such repayment and (C) each repayment of the Class A Revolving Loans or Class B Revolving Loans shall be in a minimum amount of \$250,000. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(c) Borrowing Mechanics for Revolving Loans.

(i) Class A Revolving Loans shall be made in an aggregate minimum amount of \$50,000, and Class B Revolving Loans shall be made in an aggregate minimum amount of \$50,000.

(ii) Whenever Company desires that Lenders make Revolving Loans, Company shall deliver to Administrative Agent, each Class B Revolving Lender, the Paying Agent and the Custodian a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least one (1) Business Day in advance of the proposed Credit Date. Each such Funding Notice shall be delivered with a Borrowing Base Certificate reflecting sufficient Class A Revolving Availability and Class B Revolving Availability, as applicable, for the requested Revolving Loans and a Borrowing Base Report.

(iii) Each Lender shall make the amount of its Revolving Loan available to the Paying Agent not later than 1:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars to the Funding Account, and the Paying Agent shall remit such funds to the Company not later than 3:00 p.m. (New York City time) by wire transfer of same day funds in Dollars from the Funding Account to another account of Company designated in the related Funding Notice.

(iv) Company may borrow Class A Revolving Loans pursuant to this Section 2.1, purchase Eligible Receivables pursuant to Section 2.11(c)(vii)(C) and/or repay Class A Revolving Loans pursuant to Section 2.11(c)(vii)(B) no more than three (3) times per week. Company may borrow Class B Revolving Loans pursuant to this Section 2.1 no more than three (3) times a week.

(d) Deemed Requests for Revolving Loans to Pay Required Payments. All payments of principal, interest, fees and other amounts payable to Lenders of any Class under this Agreement or any Credit Document, and amounts required to be funded into the Reserve Account to maintain the then applicable Reserve Account Funding Amount, may be paid from the proceeds of Revolving Loans of such Class, made pursuant to a Funding Notice from Company pursuant to Section 2.1(c).

**2.2 Pro Rata Shares** . All Revolving Loans of each Class shall be made by Class A Revolving Lenders or Class B Revolving Lenders, as applicable, simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Revolving Loan requested hereunder nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Revolving Loan requested hereunder.

**2.3 Use of Proceeds** . The proceeds of Revolving Loans, if any, made on the Closing Date shall be applied by Company to (a) acquire Eligible Receivables from Holdings pursuant to the Asset Purchase Agreement and (b) pay Transaction Costs. The proceeds of the Revolving Loans made after the Closing Date shall be applied by Company to (a) finance the acquisition of Eligible Receivables from Holdings pursuant to the Asset Purchase Agreement, (b) pay Transaction Costs and ongoing fees and expenses of Company hereunder, (c) make other payments in accordance with Section 2.12 . and (d) in the case of Revolving Loans made pursuant to Section 2.1(d) , to make payments of principal, interest, fees and other amounts owing to the Lenders under the Credit Documents or to fund the Reserve Account. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

**2.4 Evidence of Debt; Register; Lenders' Books and Records; Notes** .

(a) Lenders' Evidence of Debt . Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Revolving Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided , that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or Company's Obligations in respect of any applicable Revolving Loans; and provided further , in the event of any inconsistency between the Registers and any Lender's records, the recordations in the Registers shall govern absent manifest error.

(b) Registers .

(i) Class A Register. The Administrative Agent, acting for this purpose as an agent of the Company, shall maintain at its Principal Office a register for the recordation of the names and addresses of the Class A Revolving Lenders and the Class A Revolving Commitments and Class A Revolving Loans of each Class A Revolving Lender from time to time (the “**Class A Register**”). The Class A Register shall be available for inspection by Company or any Class A Revolving Lender at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall record in the Class A Register the Class A Revolving Commitments and the Class A Revolving Loans, and each repayment or prepayment in respect of the principal amount of the Class A Revolving Loans, and any such recordation shall be conclusive and binding on Company and each Class A Revolving Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Class A Lender’s Class A Revolving Commitments or Company’s Obligations in respect of any Class A Revolving Loan. Company hereby designates the entity serving as the Administrative Agent to serve as Company’s agent solely for purposes of maintaining the Class A Register as provided in this Section 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as the Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute “**Indemnitees**.”

(ii) Class B Register. The Class B Agent, acting for this purpose as an agent of the Company, shall maintain at its Principal Office a register for the recordation of the names and addresses of the Class B Revolving Lenders and the Class B Revolving Commitments and Class B Revolving Loans of each Class B Revolving Lender from time to time (the “**Class B Register**”). The Class B Register shall be available for inspection by Company or any Class B Revolving Lender at any reasonable time and from time to time upon reasonable prior notice. The Class B Agent shall record in the Class B Register the Class B Revolving Commitments and the Class B Revolving Loans, and each repayment or prepayment in respect of the principal amount of the Class B Revolving Loans, and any such recordation shall be conclusive and binding on Company and each Class B Revolving Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Class B Lender’s Class B Revolving Commitments or Company’s Obligations in respect of any Class B Revolving Loan. Company hereby designates the entity serving as the Class B Agent to serve as Company’s agent solely for purposes of maintaining the Class B Register as provided in this Section 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as the Class B Agent and its officers, directors, employees, agents and affiliates shall constitute “**Indemnitees**.”

(c) Revolving Loan Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 9.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company’s receipt of such notice) a Class A Revolving Loan Note or Class B Revolving Loan Note, as applicable, to evidence such Lender’s Revolving Loans.

## **2.5 Interest on Loans .**

(a) Except as otherwise set forth herein, (i) the Class A Revolving Loans shall accrue interest daily in an amount equal to the product of (A) the unpaid principal amount thereof as of such day and (B) (x) during any period in which no Event of Default has occurred and is continuing, the LIBO Rate for such period plus the Applicable Margin, and (y) during any period in which an Event of Default has occurred and is continuing, the Base Rate for such period plus the Applicable Margin, and (ii) the Class B Revolving Loans shall accrue interest daily in an amount equal to the lesser of (i) the rate set forth in any Fee Letter between the Company and any Class B Revolving Lender and (ii) the Maximum Class B Interest Rate.

(b) Interest payable pursuant to Section 2.5(a) shall be computed on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Revolving Loan, the date of the making of such Revolving Loan or the first day of an Interest Period applicable to such Revolving Loan shall be included, and the date of payment of such Revolving Loan or the expiration date of an Interest Period applicable to such Revolving Loan shall be excluded; provided, if a Revolving Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Revolving Loan. Each Lender shall provide an invoice of the interest accrued and to accrue to each Interest Payment Date on its Revolving Loans not later than 3:00 p.m. (New York city time) on the Interest Rate Determination Date immediately preceding such Interest Payment Date.

(c) Except as otherwise set forth herein, interest on each Revolving Loan shall be payable in arrears (i) on and to each Interest Payment Date; (ii) upon the request of the Administrative Agent, upon any prepayment of that Revolving Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity.

## **2.6 Reserved .**

## **2.7 Fees.**

(a) Company agrees to pay to each Person entitled to payment thereunder, in the amounts and at the times set forth in the Fee Letters.

(b) All fees (other than any fees payable on the Closing Date) referred to in Section 2.7(a) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on (i) each Interest Payment Date during the Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and (ii) on the Revolving Commitment Termination Date.

**2.8 Repayment on or Before Revolving Commitment Termination Date .** Company shall repay (i) the Revolving Loans and (ii) all other Obligations (other than contingent indemnification obligations for which demand has not been made) under this Agreement and the other Credit Documents, in each case, in full in cash on or before the Revolving Commitment Termination Date.

## **2.9 Voluntary Commitment Reductions .**

(a) Subject to payment of any prepayment premium described in Section 2.9(c), Company may, upon not less than three (3) Business Days' prior written notice to Administrative Agent and each Class B Revolving Lender, at any time and from time to time terminate in whole or permanently reduce in part the Revolving Commitments in an amount up to the amount by which the Class A Revolving Commitments exceed the Total Utilization of Class A Revolving Commitments or the Class B Revolving Commitments exceed the Total Utilization of Class B Revolving Commitments, as applicable, in each case at the time of such proposed termination or reduction; provided, any such partial reduction of the Class A Revolving Commitments shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount and any such partial reduction of the Class B Revolving Commitments shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$100,000 in excess of that amount.

(b) Company's notice shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Company's notice and shall reduce the Revolving Commitment of each applicable Class A Revolving Lender and/or Class B Revolving Lender proportionately to its applicable Pro Rata Share thereof.

(c) If Company voluntarily reduces or terminates any Class A Revolving Commitments as provided in Section 2.9(a), Company shall pay to Paying Agent, on behalf of the Class A Revolving Lenders whose Class A Revolving Commitments were terminated or reduced, on the date of such reduction or termination, the amounts (if any) described in the Undertakings Agreement.

**2.10 Borrowing Base Deficiency .** Company shall prepay the Revolving Loans within two (2) Business Day of the earlier of (i) an Authorized Officer or the Chief Financial Officer (or in each case, the equivalent thereof) of Company becoming aware that a Borrowing Base Deficiency exists and (ii) receipt by Company of notice from any Agent or any Lender that a Borrowing Base Deficiency exists, in each case in an amount equal to such Borrowing Base Deficiency, which shall be applied first, to prepay the Class A Revolving Loans as necessary to cure any Class A Borrowing Base Deficiency, and, second, to prepay the Class B Revolving Loans as necessary to cure any Class B Borrowing Base Deficiency.

## **2.11 Controlled Accounts .**

(a) Company shall establish and maintain cash management systems reasonably acceptable to the Administrative Agent, including, without limitation, with respect to blocked account arrangements. Other than a segregated trust account (the "**Funding Account** ") maintained at the Paying Agent into which proceeds of Revolving Loans may be funded at the direction of Company, Company shall not establish or maintain a Deposit Account or Securities Account other than a Controlled Account and Company shall not, and shall cause Servicer not to deposit Collections or proceeds thereof in a Securities Account or Deposit Account which is not a Controlled Account ( provided, that, inadvertent and non-reoccurring errors by Servicer in applying

such Collections or proceeds that are promptly, and in any event within two (2) Business Days after Servicer or Company has (or should have had in the exercise of reasonable diligence) knowledge thereof, cured shall not be considered a breach of this covenant). All Collections and proceeds of Collateral shall be subject to an express trust for the benefit of Collateral Agent on behalf of the Secured Parties and shall be delivered to Lenders for application to the Obligations or any other amount due under any other Credit Document as set forth in this Agreement.

(b) On or prior to the date hereof, Company shall cause to be established and maintained, (i) a trust account (or sub-accounts) in the name of Company and under the sole dominion and control of, the Collateral Agent designated as the “**Collection Account**” in each case bearing a designation clearly indicating that the funds and other property credited thereto are held for Collateral Agent for the benefit of the Lenders and subject to the applicable Securities Account Control Agreement and (ii) a Deposit Account into which the proceeds of all Pledged Receivables, including by automatic debit from Receivables Obligor’s operating accounts, shall be deposited in the name of Company designated as the “**Lockbox Account**” as to which the Collateral Agent has sole dominion and control over such account for the benefit of the Secured Parties within the meaning of Section 9-104(a)(2) of the UCC pursuant to the Lockbox Account Control Agreement. The Lockbox Account Control Agreement will provide that all funds in the Lockbox Account will be swept daily into the Collection Account.

(c) Lockbox System.

(i) Company has established pursuant to the Lockbox Account Control Agreement and the other Control Agreements for the benefit of the Collateral Agent, on behalf of the Secured Parties, a system of lockboxes and related accounts or deposit accounts as described in Sections 2.11(a) and (b) (the “**Lockbox System**”) into which (subject to the proviso in Section 2.11(a)) all Collections shall be deposited.

(ii) Company shall have identified a method reasonably satisfactory to Administrative Agent to grant Backup Servicer (and its delegates) access to the Lockbox Account when the Backup Servicer has become the Successor Servicer in accordance with the Credit Documents, for purposes of initiating ACH transfers from Receivables Obligor’s operating accounts after the date hereof.

(iii) Company shall not establish any lockbox or lockbox arrangement without the consent of the Administrative Agent in its sole discretion, and prior to establishing any such lockbox or lockbox arrangement, Company shall cause each bank or financial institution with which it seeks to establish such a lockbox or lockbox arrangement, to enter into a control agreement with respect thereto in form and substance satisfactory to the Administrative Agent in its sole discretion.

(iv) Without the prior written consent of the Administrative Agent, Company shall not (A) change the general instructions given to the Servicer in respect of payments on account of Pledged Receivables to be deposited in the Lockbox System or (B) change any instructions given to any bank or financial institution which in any manner

redirects any Collections or proceeds thereof in the Lockbox System to any account which is not a Controlled Account.

(v) Company acknowledges and agrees that (A) the funds on deposit in the Lockbox System shall continue to be collateral security for the Obligations secured thereby, and (B) upon the occurrence and during the continuance of an Event of Default, at the election of the Requisite Lenders, the funds on deposit in the Lockbox System may be applied as provided in Section 2.12(b).

(vi) Company has directed, and will at all times hereafter direct, the Servicer to direct payment from each of the Receivables Obligor on account of Pledged Receivables directly to the Lockbox System. Company agrees (A) to instruct the Servicer to instruct each Receivables Obligor to make all payments with respect to Pledged Receivables directly to the Lockbox System and (B) promptly (and, except as set forth in the proviso to this Section 2.11(c)(vi), in no event later than two (2) Business Days following receipt) to deposit all payments received by it on account of Pledged Receivables, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, in the Lockbox System in precisely the form in which they are received (but with any endorsements of Company necessary for deposit or collection), and until they are so deposited to hold such payments in trust for and as the property of the Collateral Agent; provided, however, that with respect to any payment received that does not contain sufficient identification of the account number to which such payment relates or cannot be processed due to an act beyond the control of the Servicer, such deposit shall be made no later than the second Business Day following the date on which such account number is identified or such payment can be processed, as applicable.

(vii) So long as no Event of Default has occurred and shall be continuing, Company or its designee shall be permitted to direct the investment of the funds from time to time held in the Collection Account (A) in Permitted Investments and to sell or liquidate such Permitted Investments and reinvest proceeds from such sale or liquidation in other Permitted Investments (but none of the Collateral Agent, the Administrative Agent or the Lenders shall have liability whatsoever in respect of any failure by the Controlled Account Bank to do so), with all such proceeds and reinvestments to be held in the Collection Account; provided, however, that the maturity of the Permitted Investments on deposit in the Collection Account shall be no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn therefrom pursuant to this Agreement, (B) to repay the Revolving Loans in accordance with Section 2.1(b), provided, however, that (w) in order to effect any such repayment from a Controlled Account, Company shall deliver to the Administrative Agent, the Paying Agent and each Class B Revolving Lender a Controlled Account Voluntary Payment Notice in substantially the form of Exhibit G hereto no later than 12:00 p.m. (New York City time) on the Business Day prior to the date of any such repayment specifying the date of prepayment, the amount to be repaid per Class and the Controlled Account from which such repayment shall be made, (x) no more than three (3) repayments of Class A Revolving Loans pursuant to Section 2.1 may be made in any calendar week, (y) the minimum amount of any such repayment on the Revolving Loans

shall be \$50,000, and (z) after giving effect to each such repayment, an amount equal to not less than the sum of (i) during any Reserve Account Funding Period, any Reserve Account Funding Amount and (ii) the aggregate of 105% of the aggregate pro forma amount of interest, fees and expenses projected to be due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, if any, for the remainder of the applicable Interest Period, based on the Accrued Interest Amount on such date and a projection of the interest to accrue on the Revolving Loans during the remainder of the applicable Interest Period using the same assumptions as are contained in the calculation of the Accrued Interest Amount, and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments on such date (after giving effect to such repayments), shall remain in the Controlled Accounts, or (C) to purchase additional Eligible Receivables pursuant to the terms and conditions of the Asset Purchase Agreement, provided, that a Borrowing Base Certificate (evidencing sufficient Revolving Availability after giving effect to the release of Collections and the making of any Revolving Loan being made on such date and that after giving effect to the release of Collections, no event has occurred and is continuing that constitutes, or would result from such release that would constitute, a Borrowing Base Deficiency, Default or Event of Default) and a Borrowing Base Report shall be delivered to the Administrative Agent, the Paying Agent, the Custodian and each Class B Revolving Lender no later than 11:00 a.m. (New York City time) at least two (2) Business Days in advance of any such proposed purchase or release, (x) if such purchase of Eligible Receivables were being funded with Revolving Loans, the conditions for making such Revolving Loans on such date contained in Section 3.2(a)(iii) and Section 3.2(a)(vi) would be satisfied as of such date, and provided further, that if such withdrawal from the Collection Account does not occur simultaneously with the making of a Revolving Loan by the Lenders hereunder pursuant to the delivery of a Funding Notice, such withdrawal shall be considered a "Revolving Loan" solely for purposes of Section 2.1(c)(iv), (y) no more than three (3) borrowings of each of Class A Revolving Loans and Class B Revolving Loans pursuant to Section 2.1 may be made in any calendar week and (z) after giving effect to such release, an amount equal to not less than the sum of (i) during any Reserve Account Funding Period, any Reserve Account Funding Amount and (ii) the aggregate of 105% of the aggregate pro forma amount of interest, fees and expenses projected to be due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, if any, for the remainder of the applicable Interest Period, based on the Accrued Interest Amount on such date and a projection of the interest to accrue on the Revolving Loans during the remainder of the applicable Interest Period using the same assumptions as are contained in the calculation of the Accrued Interest Amount, and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments on such date shall remain in the Controlled Accounts.

(viii) All income and gains from the investment of funds in the Collection Account shall be retained in the Collection Account until each Interest Payment Date, at which time such income and gains shall be applied in accordance with Section 2.12(a) or (b) (or, if sooner, until utilized for a repayment pursuant to Section 2.11(c)(vii)(B) or a purchase of additional Eligible Receivables pursuant to Section 2.11(c)(vii)(C)), as the case

may be. As between Company and Collateral Agent, Company shall treat all income, gains and losses from the investment of amounts in the Collection Account as its income or loss for federal, state and local income tax purposes.

(d) Reserve Account. On or prior to the date hereof, Company shall cause to be established and maintained a Deposit Account in the name of Company designated as the “Reserve Account” as to which the Collateral Agent has control over such account for the benefit of the Lenders within the meaning of Section 9-104(a)(2) of the UCC pursuant to the Blocked Account Control Agreement. The Reserve Account will be funded during a Reserve Account Funding Period with (i) funds available therefor pursuant to Section 2.12(a), and (ii) at the written direction of Company, proceeds of Revolving Loans as described in Section 2.1(d). At any time after the giving of a Termination Notice by the Administrative Agent, the Paying Agent shall at the written direction of the Administrative Agent withdraw an amount from the Reserve Account required to pay Servicing Transition Expenses during the Servicing Transition Period (provided, for the avoidance of doubt, only one such withdrawal may be made from the Reserve Account to pay Servicing Transition Expenses). On the first Interest Payment Date after the occurrence and during the continuance of an Event of Default, the Paying Agent shall at the written direction of the Administrative Agent transfer into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(b) the amount by which the amount in the Reserve Account exceeds the excess, if any, of \$100,000 over the aggregate amount previously withdrawn from the Reserve Account to pay Servicing Transition Expenses. If the first Interest Payment Date after the end of a Servicing Transition Period is during the continuance of an Event of Default, the Paying Agent shall at the written direction of the Administrative Agent transfer into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(b) all amounts in the Reserve Account. If, after the first Reserve Account Funding Event to occur hereunder, a Reserve Account Funding Event Cure occurs, on the next Interest Payment Date after the occurrence of such Reserve Account Funding Event Cure the Paying Agent shall, at the direction of Company, transfer all amounts in the Reserve Account into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(a). For the avoidance of doubt, only one Reserve Account Funding Event Cure shall be permitted hereunder.

## **2.12 Application of Proceeds.**

(a) Application of Amounts in the Collection Account. So long as no Event of Default has occurred and is continuing (after giving effect to the application of funds in accordance herewith on the relevant date) and the Revolving Commitment Termination Date has not yet occurred, on each Interest Payment Date, all amounts in the Collection Account shall be applied by the Paying Agent based on the Monthly Servicing Report as follows:

(i) *first*, to Company, on a *pari passu* basis, (A) amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$1,000 in any Fiscal Year, and only to the extent not previously distributed to Company during such Fiscal Year pursuant to clause (ix) below, and (B) to pay any accrued and unpaid Servicing Fees;

(ii) *second*, on a *pari passu* basis, (A) to the Backup Servicer to pay any accrued and unpaid Backup Servicing Fees; (B) to the Custodian to pay any costs, fees and indemnities then due and owing to the Custodian; and (C) to the Controlled Account Bank to pay any costs, fees and indemnities then due and owing to the Controlled Account Bank (in respect of the Controlled Accounts), (D) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; (E) to Collateral Agent to pay any costs, fees or indemnities then due and owing to Collateral Agent under the Credit Documents; and (F) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents; *provided, however*, that the aggregate amount of costs, fees or indemnities payable to the Backup Servicer, Administrative Agent, the Custodian, the Collateral Agent, the Controlled Account Bank (in respect of the Controlled Accounts) and the Paying Agent pursuant to this clause (ii) shall not exceed \$450,000 in any Fiscal Year;

(iii) *third*, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders to pay costs, fees, and accrued interest (calculated in accordance with Section 2.5(a)) on the Class A Revolving Loans and expenses payable pursuant to the Credit Documents;

(iv) *fourth*, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Lenders in an amount necessary to reduce any Class A Borrowing Base Deficiency to zero;

(v) *fifth*, to the Class B Agent for further distribution on a *pro rata* basis, to the Class B Revolving Lenders to pay costs, fees, and accrued interest (calculated in accordance with Section 2.5(a)) on the Class B Revolving Loans and expenses payable pursuant to the Credit Documents;

(vi) *sixth*, to the Class B Agent for further distribution on a *pro rata* basis, to the Class B Revolving Lenders in an amount necessary to reduce any Class B Borrowing Base Deficiency to zero;

(vii) *seventh*, to pay to the Backup Servicer, the Administrative Agent, the Custodian, the Collateral Agent, the Controlled Account Bank (in respect of the Controlled Accounts) and the Paying Agent any costs, fees or indemnities not paid in accordance with clause (ii) above;

(viii) *eighth*, during a Reserve Account Funding Period, to the Reserve Account an amount equal to any Reserve Account Funding Amount;

(ix) *ninth*, to pay all other Obligations or any other amount then due and payable hereunder;

(x) *tenth*, at the election of Company, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders and the Class B Revolving Lenders, as applicable, to repay the principal of the Revolving Loans; and

(xi) *eleventh* , provided that no Borrowing Base Deficiency would occur after giving effect to such distribution, any remainder to Company or as Company shall direct consistent with Section 6.5.

(b) Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, on each Interest Payment Date, all amounts in the Controlled Accounts shall be applied by the Paying Agent based on the Monthly Servicing Report as follows:

(i) *first*, to Company, on a *pari passu* basis, (A) amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$1,000 in any Fiscal Year, and only to the extent not previously distributed to Company during such Fiscal Year pursuant to Section 2.12(a)(i) or 2.12(a)(xi) above, and (B) to pay any accrued and unpaid Servicing Fees;

(ii) *second*, on a *pari passu* basis, (A) to the Backup Servicer to pay any accrued and unpaid Backup Servicing Fees; (B) to the Custodian to pay any costs, fees and indemnities then due and owing to the Custodian; and (C) to the Controlled Account Bank to pay any costs, fees and indemnities then due and owing to the Controlled Account Bank (in respect of the Controlled Accounts), (D) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; (E) to Collateral Agent to pay any costs, fees or indemnities then due and owing to Collateral Agent under the Credit Documents; and (F) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents;

(iii) *third*, to the Administrative Agent for further distribution on a *pro rata* basis, to the Class A Revolving Lenders to pay costs, fees, and accrued interest (calculated in accordance with Section 2.5(a)) on the Class A Revolving Loans and expenses payable pursuant to the Credit Documents;

(iv) *fourth* , to the Administrative Agent for further distribution on a *pro rata* basis, to the Class A Revolving Lenders until the Class A Revolving Loans are paid in full;

(v) *fifth*, to the Class B Agent for further distribution on a *pro rata* basis, to the Class B Revolving Lenders to pay costs, fees, and accrued interest (calculated in accordance with Section 2.5(a)) on the Class B Revolving Loans and expenses payable pursuant to the Credit Documents;

(iv) *sixth* , to the Class B Agent for further distribution on a *pro rata* basis, to the Class B Revolving Lenders until the Class B Revolving Loans are paid in full;

(vii) *seventh*, to pay all other Obligations or any other amount then due and payable hereunder; and

(viii) *eighth*, any remainder to Company.

### **2.13 General Provisions Regarding Payments .**

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and paid not later than 12:00 p.m. (New York City time) on the date due via wire transfer of immediately available funds. Funds received after that time on such due date shall be deemed to have been paid by Company on the next Business Day (provided, that any repayment made pursuant to Section 2.11(c)(vii)(B) or any application of funds by Paying Agent pursuant to Section 2.12 on any Interest Payment Date shall be deemed for all purposes to have been made in accordance with the deadlines and payment requirements described in this Section 2.13 ).

(b) All payments in respect of the principal amount of any Revolving Loan (other than, unless requested by the Administrative Agent, voluntary prepayments of Revolving Loans or payments pursuant to Section 2.10 ) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Paying Agent shall promptly distribute to each Class A Revolving Lender and each Class B Revolving Lender, at such address as such Lender shall indicate in writing, the applicable Pro Rata Share of each such Lender of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Paying Agent.

(d) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Except as set forth in the proviso to Section 2.13(a), Paying Agent shall deem any payment by or on behalf of Company hereunder to them that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Paying Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Paying Agent shall give prompt notice via electronic mail to Company and Administrative Agent if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 7.1(a) . Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate otherwise applicable to such paid amount from the date such amount was due and payable until the date such amount is paid in full.

**2.14 Ratable Sharing .** Lenders hereby agree among themselves that, except as otherwise provided herein or in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Revolving Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross

action or by the enforcement of any right under the Credit Documents, or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the “**Aggregate Amounts Due**” to such Lender) which is greater than such Lender would be entitled pursuant to this Agreement (after giving effect to the priority of payments determining application of payments to the Class A Lenders and the Class B Lenders, respectively), then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent, Paying Agent and each Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that the recovery of such Aggregate Amounts Due shall be shared by the applicable Lenders in proportion to the Aggregate Amounts Due to them pursuant to this Agreement; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker’s lien, setoff or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

## **2.15 Increased Costs; Capital Adequacy.**

(a) Compensation for Increased Costs and Taxes . Subject to the provisions of Section 2.16 (which shall be controlling with respect to the matters covered thereby), in the event that any Affected Party shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Affected Party with any guideline, request or directive issued or made after the date hereof (or with respect to any Lender which becomes a Lender after the date hereof, effective after such date) by any central bank or other Governmental Authority or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Affected Party (or its applicable lending office) to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Affected Party (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC or other insurance or charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Affected Party; or (iii) imposes any other condition (other than with

respect to a Tax matter) on or affecting such Affected Party (or its applicable lending office) or its obligations hereunder; and the result of any of the foregoing is to increase the cost to such Affected Party of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Affected Party (or its applicable lending office) with respect thereto; then, in any such case, if such Affected Party deems such change to be material, Company shall promptly pay to such Affected Party, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Affected Party in its sole discretion shall determine) as may be necessary to compensate such Affected Party for any such increased cost or reduction in amounts received or receivable hereunder and any reasonable expenses related thereto. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Affected Party shall have determined in its sole discretion (which determination shall, absent manifest effort, be final and conclusive and binding upon all parties hereto) that (i) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (ii) compliance by any Affected Party (or its applicable lending office) or any company controlling such Affected Party with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Affected Party or any company controlling such Affected Party as a consequence of, or with reference to, such Affected Party's Loans or Revolving Commitments, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Affected Party or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Affected Party or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Company from such Affected Party of the statement referred to in the next sentence, Company shall pay to such Affected Party such additional amount or amounts as will compensate such Affected Party or such controlling company on an after-tax basis for such reduction. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (i) and (ii) of this Section 2.15 shall apply, without limitation, to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any Governmental Authority (x) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended to the date hereof and from time to time hereafter, and any successor statute and (y) in connection with the implementation of the recommendations of the Bank for International

Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

(c) Delay in Requests. Failure or delay on the part of any Affected Party to demand compensation pursuant to the foregoing provisions of this Section 2.15 shall not constitute a waiver of such Affected Party's right to demand such compensation, provided that Company shall not be required to compensate an Affected Party pursuant to the foregoing provisions of this Section 2.15 for any increased costs incurred or reductions suffered more than one hundred twenty (120) days prior to the date that such Affected Party notifies Company of the matters giving rise to such increased costs or reductions and of such Affected Party's intention to claim compensation therefor.

Notwithstanding anything to the contrary in this Section 2.15, with respect to any Affected Party, the Company shall not be required to pay any increased costs under this Section 2.15 if the payment of such increased cost would cause the Company's all-in cost of borrowing hereunder, for the applicable period to be in excess of the LIBO Rate plus 10%.

## **2.16 Taxes; Withholding, etc.**

(a) Payments to Be Free and Clear. Subject to Section 2.16(b), all sums payable by Company hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States or any political subdivision in or of the United States or any other jurisdiction from or to which a payment is made by or on behalf of Company or by any federation or organization of which the United States or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If Company or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Company to an Affected Party under any of the Credit Documents: (i) Company shall notify Paying Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company or the Paying Agent shall make such deduction or withholding and pay any such Tax to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Company) for its own account or (if that liability is imposed on Paying Agent or such Affected Party, as the case may be) on behalf of and in the name of Paying Agent or such Affected Party; (iii) if such Tax is an Indemnified Tax, the sum payable by Company in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (and any withholdings imposed on additional amounts payable under this paragraph), such Affected Party receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Company shall deliver to Paying Agent evidence satisfactory to the other Affected Parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Indemnification by Company. Company shall indemnify each Affected Party, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by such Affected Party or required to be withheld or deducted from a payment to such Affected Party and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Company by an Affected Party (with a copy to the Paying Agent), or by the Paying Agent on its own behalf or on behalf of an Affected Party, shall be conclusive absent manifest error.

(d) Evidence of Exemption or Reduced Rate From U.S. Withholding Tax.

(i) Each Lender and the Administrative Agent that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a **“Non-US Lender”**) shall, to the extent it is legally entitled to do so, deliver to Paying Agent and the Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Paying Agent (each in the reasonable exercise of its discretion), (A) two original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY, as applicable (with appropriate attachments) (or any successor forms), properly completed and duly executed by such the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or the Paying Agent to establish that the Administrative Agent or such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to any payments to Administrative Agent or such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (B) if such the Administrative Agent or such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver Internal Revenue Service Form W-8IMY or W-8ECI pursuant to clause (A) above and is relying on the so called “portfolio interest exception”, a Certificate Regarding Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor form), properly completed and duly executed by the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or the Paying Agent to establish that the Administrative Agent or such Lender is not subject, or is eligible for a reduction in the rate of, to deduction or withholding of United States federal income tax with respect to any payments to the Administrative Agent or such Lender of interest payable under any of the Credit Documents. The Administrative Agent and each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.16(d)(i) or Section 2.16(d)(ii) hereby agrees, from time to time after the initial delivery by the Administrative Agent or such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that the Administrative Agent or such Lender shall promptly deliver

to Company and the Paying Agent two new original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8IMY, or W-8ECI, or, if relying on the “portfolio interest exception”, a Certificate Regarding Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor form), as the case may be, properly completed and duly executed by the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or Paying Agent to confirm or establish that the Administrative Agent or such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to payments to the Administrative Agent or such Lender under the Credit Documents, or notify Paying Agent and Company of its inability to deliver any such forms, certificates or other evidence.

(ii) Any Lender and the Administrative Agent that is a U.S. Person shall deliver to Company and the Paying Agent on or prior to the date on which such Lender becomes a Lender under this Agreement on the Closing Date or pursuant to an Assignment Agreement (and from time to time thereafter upon the reasonable request of Company or the Paying Agent), executed originals of IRS Form W-9 certifying that such Lender is a U.S. Person and exempt from U.S. federal backup withholding tax.

(iii) If a payment made to the Administrative Agent or a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Administrative Agent or such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Administrative Agent or such Lender shall deliver to Company and the Paying Agent at the time or times reasonably requested by Company or the Paying Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Company or the Paying Agent as may be necessary for Company and the Paying Agent to comply with their obligations under FATCA and to determine that the Administrative Agent or such Lender has complied with the Administrative Agent’s or such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(d)(iii), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iv) To the extent that a Class B Agent is appointed hereunder, the Class B Agent shall deliver to the Paying Agent and the Company such information as is required to be delivered by the Administrative Agent pursuant to this Section 2.16.

(e) Payment of Other Taxes by the Company. The Company shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

**2.17 Obligation to Mitigate** . Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Revolving Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an

Affected Lender or that would entitle such Lender to receive payments under Section 2.15 and/or Section 2.16, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to 2.15 and/or 2.16 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Commitments or Revolving Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Commitments or Revolving Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.17 unless Company agrees to pay all reasonable and incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.17 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

**2.18 Defaulting Lenders** . Anything contained herein to the contrary notwithstanding, in the event that other than at the direction or request of any regulatory agency or authority, any Lender defaults (in each case, a **“Defaulting Lender”** ) in its obligation to fund (a **“Funding Default”** ) any Revolving Loan (in each case, a **“Defaulted Loan”** ), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a “Lender” for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) to the extent permitted by applicable law, until such time as the Default Excess, if any, with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Revolving Loans shall be applied to the Revolving Loans of other Lenders of the applicable Class as if such Defaulting Lender had no Revolving Loans outstanding and the Revolving Exposure of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Revolving Loans of the applicable Class shall be applied to the Revolving Loans of other Lenders (but not to the Revolving Loans of such Defaulting Lender) of such Class as if such Defaulting Lender had funded all Defaulted Loans of such Class of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Revolving Loans of the applicable Class that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b); and (c) the Total Utilization of Class A Revolving Commitments or the Total Utilization of Class B Revolving Commitments, as applicable, as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender. No Revolving Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.18, performance by Company of its obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.18. The rights and remedies against a Defaulting Lender under this Section 2.18 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default or violation of Section 8.5(c).

**2.19 Removal or Replacement of a Lender** . Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **“Increased-Cost Lender”** ) shall give notice to Company that such Lender is entitled to receive payments under Section 2.15 and/or Section 2.16, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after Company’s request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after Company’s request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.5(b), the consent of Administrative Agent and Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **“Non-Consenting Lender”** ) whose consent is required shall not have been obtained and (ii) no Default or Event of Default shall then exist; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the **“Terminated Lender”** ), Company may, by giving written notice to any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender and, if applicable, each other such Lender hereby irrevocably agrees) to assign its outstanding Revolving Loans and its Revolving Commitments, if any, in full to one or more Eligible Assignees identified by Company (each a **“Replacement Lender”** ) in accordance with the provisions of Section 9.6 ; provided , (1) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender and, if applicable, such other Lenders, an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Revolving Loans of the Terminated Lender and, if applicable, such other Lenders, and (B) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender and, if applicable, such other Lenders, pursuant to Section 2.7 ; (2) on the date of such assignment, Company shall pay any amounts payable to such Terminated Lender and, if applicable, such other Lenders pursuant to Section 2.15 and/or Section 2.16 and any other amounts due to such Terminated Lender and, if applicable, such other Lenders; and (3) in the event such Terminated Lender is an Increased-Cost Lender, such assignment will result in a reduction in any claims for payments under Section 2.15 and/or Section 2.16 , as applicable, and (4) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and, if applicable, such other Lenders and the termination of such Terminated Lender’s Revolving Commitments and, if applicable, the Revolving Commitments of such other Lenders, such Terminated Lender and, if applicable, such other Lenders shall no longer constitute a “Lender” for purposes hereof; provided , any rights of such Terminated Lender and, if applicable, such other Lenders to indemnification hereunder shall survive as to such Terminated Lender and such other Lenders.

## **2.20 The Paying Agent.**

(a) The Lenders hereby appoint Wells Fargo Bank, N.A. as the initial Paying Agent. All payments of amounts due and payable in respect of the Obligations that are to be made from amounts withdrawn from the Collection Account pursuant to Section 2.12 shall be made by

the Paying Agent based on the Monthly Servicing Report (upon which the Paying Agent shall be entitled to conclusively rely).

(b) The Paying Agent hereby agrees that, subject to the provisions of this Section, it shall:

(i) hold any sums held by it for the payment of amounts due with respect to the Obligations in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) give the Administrative Agent and each Class B Revolving Lender notice of any default by the Company in the making of any payment required to be made with respect to the Obligations of which it has actual knowledge;

(iii) comply with all requirements of the Internal Revenue Code and any applicable State law with respect to the withholding from any payments made by it in respect of any Obligations of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith; and

(iv) provide to the Agents such information as is required to be delivered under the Internal Revenue Code or any State law applicable to the particular Paying Agent, relating to payments made by the Paying Agent under this Agreement.

(c) Each Paying Agent (other than the initial Paying Agent) shall be appointed by the Lenders with the prior written consent of the Company.

(d) The Company shall indemnify the Paying Agent and its officers, directors, employees and agents for, and hold them harmless against any loss, liability or expense incurred, other than in connection with the willful misconduct, fraud, gross negligence or bad faith on the part of the Paying Agent, arising out of or in connection with the performance of its obligations under and in accordance with this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement. All such amounts shall be payable in accordance with Section 2.12 and such indemnity shall survive the termination of this Agreement and the resignation or removal of the Paying Agent.

(e) The Paying Agent undertakes to perform such duties, and only such duties, as are expressly set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against the Paying Agent. The Paying Agent may conclusively rely on the truth of the statements and the correctness of the opinions expressed in any certificates or opinions furnished to the Paying Agent pursuant to and conforming to the requirements of this Agreement.

(f) The Paying Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the direction or request of Requisite Lenders or the Administrative Agent,

or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction, no longer subject to appeal or review.

(g) The Paying Agent shall not be charged with knowledge of any Default or Event of Default unless a Responsible Officer of the Paying Agent obtains actual knowledge of such event or the Paying Agent receives written notice of such event from the Company, the Servicer, any Secured Party or any other Agent, as the case may be. The receipt and/or delivery of reports and other information under this Agreement by the Paying Agent shall not constitute notice or actual or constructive knowledge of any Default or Event of Default contained therein.

(h) The Paying Agent shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability shall not be reasonably assured to it, and none of the provisions contained in this Agreement shall in any event require the Paying Agent to perform, or be responsible for the manner of performance of, any of the obligations of the Company under this Agreement.

(i) The Paying Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate of an Authorized Officer, any Monthly Servicing Report, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(j) The Paying Agent may consult with counsel of its choice with regard to legal questions arising out of or in connection with this Agreement and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by the Paying Agent in good faith and in accordance therewith.

(k) The Paying Agent shall be under no obligation to exercise any of the rights, powers or remedies vested in it by this Agreement or to institute, conduct or defend any litigation under this Agreement or in relation to this Agreement, at the request, order or direction of the Administrative Agent, any Lender or any Agent pursuant to the provisions of this Agreement, unless the Administrative Agent, on behalf of the Secured Parties, such Lender or such Agent shall have offered to the Paying Agent security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby.

(l) Except as otherwise expressly set forth in Section 2.21, the Paying Agent shall not be bound to make any investigation into the facts of matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing so to do by a Lender or the Administrative Agent; provided, that if the payment within a reasonable time to the Paying Agent of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation shall be, in the opinion of the Paying Agent, not reasonably assured by the Company, the Paying Agent may require reasonable indemnity against such cost, expense or liability as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by

the Paying Agent, shall be reimbursed by the Company to the extent of funds available therefor pursuant to Section 2.12.

(m) The Paying Agent shall not be responsible for the acts or omissions of the Administrative Agent, the Company, the Servicer, any Agent, any Lender or any other Person.

(n) Any Person into which the Paying Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Paying Agent shall be a party, or any Person succeeding to the business of the Paying Agent, shall be the successor of the Paying Agent under this Agreement, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(o) The Paying Agent does not assume and shall have no responsibility for, and makes no representation as to, monitoring the value of any Collateral.

(p) If the Paying Agent shall at any time receive conflicting instructions from the Administrative Agent and the Company or the Servicer or any other party to this Agreement and the conflict between such instructions cannot be resolved by reference to the terms of this Agreement, the Paying Agent shall be entitled to rely on the instructions of the Administrative Agent. The Paying Agent may rely upon the validity of documents delivered to it, without investigation as to their authenticity or legal effectiveness, and the parties to this Agreement will hold the Paying Agent harmless from any claims that may arise or be asserted against the Paying Agent because of the invalidity of any such documents or their failure to fulfill their intended purpose.

(q) The Paying Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by any other party hereto or by any other person, firm or corporation, except only such notices or instructions as are herein provided for and orders or process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part hereof, then and in any of such events the Paying Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree, and if it complies with any such order, writ, judgment or decree it shall not be liable to any other party hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree maybe subsequently reversed, modified, annulled, set aside or vacated.

(r) The Paying Agent may: (i) terminate its obligations as Paying Agent under this Agreement (subject to the terms set forth herein) upon at least 30 days' prior written notice to the Company, the Servicer and the Administrative Agent; provided, however, that, without the consent of the Administrative Agent, such resignation shall not be effective until a successor Paying Agent reasonably acceptable to the Administrative Agent and Company shall have accepted appointment by the Lenders as Paying Agent, pursuant hereto and shall have agreed to be bound

by the terms of this Agreement; or (ii) be removed at any time by written demand, of the Requisite Lenders, delivered to the Paying Agent, the Company and the Servicer. In the event of such termination or removal, the Lenders with the consent of the Company shall appoint a successor paying agent. If, however, a successor paying agent is not appointed by the Lenders within sixty (60) days after the giving of notice of resignation, the Paying Agent may petition a court of competent jurisdiction for the appointment of a successor Paying Agent.

(s) Any successor Paying Agent appointed pursuant hereto shall (i) execute, acknowledge, and deliver to the Company, the Servicer, the Administrative Agent, and to the predecessor Paying Agent an instrument accepting such appointment under this Agreement. Thereupon, the resignation or removal of the predecessor Paying Agent shall become effective and such successor Paying Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties, and obligations of its predecessor as Paying Agent under this Agreement, with like effect as if originally named as Paying Agent. The predecessor Paying Agent shall upon payment of its fees and expenses deliver to the successor Paying Agent all documents and statements and monies held by it under this Agreement; and the Company and the predecessor Paying Agent shall execute and deliver such instruments and do such other things as may reasonably be requested for fully and certainly vesting and confirming in the successor Paying Agent all such rights, powers, duties, and obligations.

(t) The Company shall reimburse the Paying Agent for the reasonable out-of-pocket expenses of the Paying Agent actually incurred in connection with the succession of any successor Paying Agent including in transferring any funds in its possession to the successor Paying Agent.

(u) The Paying Agent shall have no obligation to invest and reinvest any cash held in the Controlled Accounts or any other moneys held by the Paying Agent pursuant to this Agreement in the absence of timely and specific written investment direction from Company. In no event shall the Paying Agent be liable for the selection of investments or for investment losses incurred thereon. The Paying Agent shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Company to provide timely written investment direction.

(v) If the Paying Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions from any of the parties hereto pursuant to this Agreement which, in the reasonable opinion of the Paying Agent, are in conflict with any of the provisions of this Agreement, the Paying Agent shall be entitled (without incurring any liability therefor to the Company or any other Person) to (i) consult with counsel of its choosing and act or refrain from acting based on the advice of such counsel and (ii) refrain from taking any action until it shall be directed otherwise in writing by all of the parties hereto or by final order of a court of competent jurisdiction.

(w) The Paying Agent shall incur no liability nor be responsible to Company or any other Person for delays or failures in performance resulting from acts beyond its control that significantly and adversely affect the Paying Agent's ability to perform with respect to this Agreement. Such acts shall include, but not be limited to, acts of God, strikes, work stoppages,

acts of terrorism, civil or military disturbances, nuclear or natural catastrophes, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(x) The Paying Agent may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent shall not be responsible for any misconduct or negligence on the part of or for the supervision of any agent or attorney appointed with due care by it hereunder.

(y) The Lenders hereby authorize and direct the Paying Agent to execute and deliver the Undertakings Agreement.

## **2.21 Duties of Paying Agent .**

(a) Borrowing Base Reports. Upon receipt of any Borrowing Base Report and the related Borrowing Base Certificate delivered pursuant to Section 2.1(c)(ii), Section 2.11(c)(vii)(B) or Section 2.11(c)(vii)(C), Paying Agent shall, on the Business Day following receipt of such Borrowing Base Report, to the extent that Paying Agent has access to all information necessary to perform the duties set forth herein:

(i) compare the beginning Eligible Portfolio Outstanding Principal Balance set forth in such Borrowing Base Report with the aggregate Outstanding Principal Balance of the Eligible Receivables listed in the Master Record and identify any discrepancy;

(ii) compare the number of Pledged Receivables listed in the Master Record with the number of Pledged Receivables provided to the Paying Agent by the Servicer pursuant to Section 4.3 of the Custodial Agreement as the number of Pledged Receivables for which the Custodian holds a Receivables File pursuant to the Custodial Agreement and identify any discrepancy;

(iii) confirm that each Pledged Receivable listed in the Master Record has a unique loan identification number;

(iv) compare the amount set forth in such Borrowing Base Report as the amount on deposit in the Collection Account with the amount shown on deposit in the Collection Account and identify any discrepancy;

(v) in the case of a Borrowing Base Report delivered pursuant to Section 2.11(c)(vii)(B) or Section 2.11(c)(vii)(C), recalculate the amount set forth in such Borrowing Base Report as the amount that will be on deposit in the Collection Account after giving effect to the related repayment of Loans or the related purchase of Eligible Receivables set forth therein and identify any discrepancy;

(vi) confirm that the Accrued Interest Amount and an estimate of accrued fees as of the date of repayment or the Transfer Date, as the case may be, multiplied by 105%, is the amount set forth in such Borrowing Base Request as 105% of the estimated amount of accrued interest and fees and identify any discrepancy;

(vii) recalculate the Class A Revolving Availability and the Class B Revolving Availability, based on the Class A Borrowing Base and the Class B Borrowing Base set forth in such Borrowing Base Report and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments set forth in the Paying Agent's records and identify any discrepancies;

(viii) in the case of a Borrowing Base Report delivered pursuant to Section 3.2(a)(i), (A) confirm that the Class A Revolving Loans requested in the related Funding Request are not greater than the Class A Revolving Availability and the amount of Class B Revolving Loans requested in the related Funding Request are not greater than the Class B Revolving Availability and (B) confirm that, after giving effect to such Revolving Loans, the Total Utilization of Class A Revolving Loans will not exceed the Class A Revolving Commitments and the Total Utilization of Class B Revolving Loans will not exceed the Class B Revolving Commitments; and

(ix) notify the Lenders of the results of such review.

(b) Monthly Servicing Reports. Upon receipt of any Monthly Servicing Report delivered pursuant to Section 5.1(f), Paying Agent shall, to the extent that Paying Agent has access to all information necessary to perform the duties set forth herein:

(i) compare the Eligible Portfolio Outstanding Principal Balance set forth therein with the aggregate Outstanding Principal Balance of the Eligible Receivables listed in the Master Record and identify any discrepancy;

(ii) confirm the aggregate repayments of Revolving Loans during the period covered by the Monthly Servicing Report set forth therein with the Borrowing Base Reports delivered to Paying Agent pursuant to Section 2.11(c)(vii)(B) during such period and identify any discrepancies;

(iii) compare the amount set forth therein as the amount on deposit in the Collection Account with the amount shown on deposit in the Collection Account and identify any discrepancy;

(iv) compare the amount of accrued and unpaid interest and unused fees payable to the Class A Revolving Lenders and the amount of accrued and unpaid interest and unused fees payable to the Class B Revolving Lenders, respectively, set forth therein to the amounts set forth in the related invoices received by Paying Agent and identify any discrepancies;

(v) compare the amount of Servicing Fees payable to the Servicer set forth therein to the amount set forth in the related invoice received by Paying Agent and identify any discrepancy;

(vi) compare the amount of Backup Servicing Fees and expenses payable to the Backup Servicer set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(vii) compare the amount of fees and expenses payable to the Custodian set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(viii) compare the amount of fees and expenses payable to the Collateral Agent set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(ix) compare the amount of fees and expenses payable to the Paying Agent set forth therein to the amounts set forth in the related invoice submitted by Paying Agent and identify any discrepancy;

(x) recalculate the Class A Revolving Availability and the Class B Revolving Availability based on the Class A Borrowing Base and the Class B Borrowing Base set forth therein and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments set forth in the Paying Agent's records and identify any discrepancies; and

(xi) notify the Lenders of the results of such review.

(c) For the avoidance of doubt, Paying Agent's sole responsibility with respect to the obligations set forth in Section 2.21 is to compare or confirm information in the Borrowing Base Report or Monthly Servicing Report, as applicable, in accordance with Section 2.21 based on the information indicated therein received by Paying Agent from Company, the Servicer or the Custodian, as the case may be.

## **2.22 Collateral Agent.**

(a) The Collateral Agent shall be entitled to the same rights, protections, indemnities and immunities as the Paying Agent hereunder.

(b) In addition to Section 2.22(a), the Collateral Agent shall be entitled to the following additional protections:

(i) The Collateral Agent shall have no duty (A) to see to any recording, filing, or depositing of this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, re-filing or re-depositing of any thereof, (B) to see to any insurance, or (C) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral;

(ii) The Collateral Agent shall be authorized to, but shall not be responsible for, filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting any security interest in the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for (A) monitoring the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral, (B) taking any necessary steps to preserve rights against any Person with respect to any Collateral, or (C) taking any action to protect against any diminution in value of the Collateral;

(iii) The Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement and any other Credit Document (A) if such action would, in the reasonable opinion of the Collateral Agent, in good faith (which may be based on the advice or opinion of counsel), be contrary to applicable law, this Agreement or any other Credit Document, (B) if such action is not provided for in this Agreement or any other Credit Document, (C) if, in connection with the taking of any such action hereunder, under any other Credit Document that would constitute an exercise of remedies, it shall not first be indemnified to its satisfaction by the Administrative Agent and/or the Lenders against any and all risk of nonpayment, liability and expense that may be incurred by it, its agents or its counsel by reason of taking or continuing to take any such action, or (D) if the Collateral Agent would be required to make payments on behalf of the Lenders pursuant to its obligations as Collateral Agent hereunder, it does not first receive from the Lenders sufficient funds for such payment;

(iv) The Collateral Agent shall not be required to take any action under this or any other Credit Document if taking such action (A) would subject the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax, or (B) would require the Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified;

(v) Neither the Collateral Agent nor its respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Administrative Agent or the Lenders, or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Administrative Agent or the Lenders for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

## **2.23 Intention of Parties .**

It is the intention of the parties that the Revolving Loans be characterized as indebtedness for federal income tax purposes. The terms of the Revolving Loans shall be interpreted to further this intention and neither the Lenders nor Company will take an inconsistent position on any federal, state or local tax return.

#### **2.24 Increase Option.**

As set forth in the definition of “Class B Revolving Commitment”, the aggregate amount of the Class B Revolving Commitments as of the Closing Date is \$0. The Company may, with the consent of Administrative Agent in its sole discretion (which consent may, for avoidance of doubt, be conditioned upon the effectiveness of an amendment or modification to one or more Credit Documents), from time to time elect to increase the Class B Revolving Commitment, so long as, after giving effect thereto, the aggregate amount of all such increases does not exceed \$9,375,000. Each existing Class B Revolving Lender (if any) shall have the right to provide its Pro Rata Share of such increase within ten (10) Business Days of the Company’s increase election pursuant to this Section 2.24 (each such consenting Lender, an “**Increasing Lender**”). If one or more of the Class B Revolving Lenders fail to consent or collectively fail to commit to fund the full amount of such increase, the Company may arrange for any such increase to be provided by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an “**Augmenting Lender**”); provided that each Augmenting Lender shall be subject to the approval of the Administrative Agent in its sole discretion. No consent of any Lender (other than any Class B Revolving Lender participating in the increase) shall be required for any increase in Class B Revolving Commitments pursuant to this Section. Increased and new Class B Revolving Commitments pursuant to this Section 2.24 shall become effective on the date agreed by the Company, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, as applicable, pursuant to a joinder agreement (each, a “**Joinder Agreement**”) in form and substance reasonably satisfactory to Company, Administrative Agent and such Increasing Lender or Augmenting Lender, as applicable, whereby each such Increasing Lender or Augmenting Lender, as applicable, assumes the rights and obligations of a Class B Revolving Lender hereunder. Each Joinder Agreement shall also set forth any other applicable terms of the Class B Revolving Commitments being provided thereby, including without limitation the Applicable Class B Advance Rate (which shall be identical among all Class B Revolving Lenders), other than pricing terms described in a separate Fee Letter. The Administrative Agent shall notify each Class A Revolving Lender, and the Company shall notify each Class B Revolving Lender, of each increase in Class B Revolving Commitments made pursuant to this Section 2.24. Notwithstanding the foregoing, no increase in the Revolving Commitment, (or in the Class B Revolving Commitment of any Lender) shall become effective under this paragraph if on the proposed date of the effectiveness of such increase, an Event of Default has occurred and is continuing. On the effective date of any increase in the Revolving Commitment, each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent determines, for the benefit of the other Class B Revolving Lenders, as being required to cause, after giving effect to such increase and paying such amounts to such other Class B Revolving Lenders, each Class B Revolving Lender’s portion of the outstanding Class B Revolving Loans of all the Class B Revolving Lenders to equal its Pro Rata Share of such outstanding Class B Revolving Loans. For so long as Class B

Revolving Commitments are \$0, all provisions in this Agreement (other than this Section 2.24.) relating to Class B Revolving Commitments, Class B Revolving Loans, Class B Revolving Lenders and related matters shall be without effect.

### **SECTION 3. CONDITIONS PRECEDENT**

**3.1 Closing Date** . The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 9.5, of the following conditions on or before the Closing Date:

(a) Credit Documents and Related Agreements . The Administrative Agent shall have received copies of each Credit Document, originally executed and delivered by each applicable Person and copies of each Related Agreement.

(b) Formation of Company . The Administrative Agent shall have received evidence satisfactory to it in its reasonable discretion that Company was formed as a bankruptcy remote, special purpose entity in the state of Delaware as a limited liability company.

(c) Organizational Documents; Incumbency . The Administrative Agent shall have received (i) copies of each Organizational Document executed and delivered by Company and Holdings, as applicable, and, to the extent applicable, (x) certified as of the Closing Date or a recent date prior thereto by the appropriate governmental official and (y) certified by its secretary or an assistant secretary as of the Closing Date, in each case as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each of Company and Holdings approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each of Company and Holdings' jurisdiction of incorporation, organization or formation and, with respect to Company, in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as the Administrative Agent may reasonably request.

(d) Organizational and Capital Structure . The organizational structure and capital structure of Company shall be as described in Section 4.2.

(e) Transaction Costs . On or prior to the Closing Date, Company shall have delivered to Administrative Agent, Company's reasonable best estimate of the Transaction Costs (other than fees payable to any Agent).

(f) Governmental Authorizations and Consents . Company and Holdings shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable to be obtained by them, in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form

and substance reasonably satisfactory to the Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(g) Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the Collateral, Company shall deliver:

(i) evidence satisfactory to the Administrative Agent of the compliance by Company of its obligations under the Security Agreement and the other Collateral Documents (including, without limitation, its obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of Company in the jurisdictions specified by Administrative Agent, together with copies of all such filings disclosed by such search, and UCC termination statements (or similar documents) duly authorized by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search;

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which Company or any personal property Collateral is located as the Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Administrative Agent;

(iv) opinions of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) with respect to the creation and perfection of the security interest in favor of Purchaser in the Pledged Receivables and Related Security under the Asset Purchase Agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent; and

(v) evidence that Company and Holdings shall have each taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Administrative Agent or the Collateral Agent.

(h) Financial Statements. The Administrative Agent shall have received from Company the Historical Financial Statements.

(i) Evidence of Insurance. Collateral Agent shall have received a certificate from Holdings' insurance broker, or other evidence satisfactory to the Administrative Agent that all insurance required to be maintained under the Servicing Agreement and Section 5.4 is in full force and effect.

(j) Opinions of Counsel to Company and Holdings. The Administrative Agent and counsel to Administrative Agent shall have received originally executed copies of the favorable written opinions of DLA Piper LLP, counsel for Company and Holdings, as to such matters (including the true sale of Pledged Receivables, bankruptcy remote nature of Company and covered fund matters under the Volcker Rule) as the Administrative Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to the Administrative Agent (and Company hereby instructs, and Holdings shall instruct, such counsel to deliver such opinions to Agents and Lenders). The Administrative Agent and counsel to the Administrative Agent shall have received an originally executed copy of a favorable written opinion of counsel to Holdings acceptable to the Administrative Agent to the effect that the Receivables Agreements governed by the law of Virginia are valid and enforceable obligations under the laws of Virginia in form and substance reasonably satisfactory to the Administrative Agent (and Company hereby instructs, and Holdings shall instruct, such counsel to deliver such opinions to the Administrative Agent and Lenders).

(k) Solvency Certificate. On the Closing Date, Administrative Agent, the Administrative Agent shall have received a Solvency Certificate from Holdings and Company dated as of the Closing Date and addressed to the Administrative Agent, and in form, scope and substance satisfactory to the Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the Credit Extensions to be made on the Closing Date, Holdings and Company are and will be Solvent.

(l) Closing Date Certificate. Holdings and Company shall have delivered to the Administrative Agent an originally executed Closing Date Certificate, together with all attachments thereto.

(m) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable discretion of the Administrative Agent, singly or in the aggregate, materially impairs any of the transactions contemplated by the Credit Documents or that would reasonably be expected to result in a Material Adverse Effect.

(n) No Material Adverse Change. Since December 31, 2014, no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(o) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto shall be satisfactory in form and substance to the Administrative Agent and counsel to Administrative Agent, and the Administrative Agent, and counsel to Administrative Agent shall have received all such counterpart originals or certified copies of such documents as they may reasonably request.

(p) Independent Manager. On the Closing Date, the Administrative Agent shall have received evidence satisfactory to it that Company has appointed an Independent Manager who is acceptable to it in its sole discretion.

(q) Representations and Warranties True and Correct. On the Closing Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects, other than those representations and warranties which are qualified by materiality, in which case such representation and warranty shall be true and correct in all respects.

The Administrative Agent and each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by the Administrative Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

### **3.2 Conditions to Each Credit Extension .**

(a) Conditions Precedent. The obligation of each Lender to make any Revolving Loan on any Credit Date, including if applicable the Closing Date, is subject to the satisfaction, or waiver in accordance with Section 9.5, of the following conditions precedent:

(i) Administrative Agent, the Paying Agent, Custodian and each Class B Revolving Lender shall have received a fully executed and delivered Funding Notice together with a Borrowing Base Certificate, evidencing sufficient Revolving Availability with respect to the requested Revolving Loans, and a Borrowing Base Report;

(ii) both before and after making any Revolving Loans requested on such Credit Date, the Total Utilization of Class A Revolving Commitments shall not exceed the Class A Borrowing Base and the Total Utilization of Class B Revolving Commitments shall not exceed the Class B Borrowing Base;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, other than those representations and warranties which are qualified by materiality, in which case, such representation and warranty shall be true and correct in all respects on and as of that Credit Date, except, in each case, to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall

have been true and correct in all material respects, or true and correct in all respects, as the case may be on and as of such earlier date;

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(v) the Administrative Agent, the Paying Agent and each Class B Revolving Lender shall have received the Borrowing Base Report for the Business Day prior to the Credit Date which shall be delivered on a pro forma basis for the first Credit Date hereunder;

(vi) in accordance with the terms of the Custodial Agreement, Company has delivered, or caused to be delivered to the Custodian, the Receivable File related to each Receivable that is, on such Credit Date, being transferred and delivered to Company pursuant to the Asset Purchase Agreement, and the Administrative Agent has received a Collateral Receipt and Exception Report from the Custodian, which Collateral Receipt and Exception Report is acceptable to the Administrative Agent in its Permitted Discretion; and

Notwithstanding anything contained herein to the contrary, neither the Paying Agent nor the Collateral Agent shall be responsible or liable for determining whether any conditions precedent to making a Loan have been satisfied.

(b) Notices. Any Funding Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent, the Paying Agent and each Class B Revolving Lender.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, Company represents and warrants to each Agent and Lender, on the Closing Date, on each Credit Date and on each Transfer Date, that the following statements are true and correct:

**4.1 Organization; Requisite Power and Authority; Qualification; Other Names** . Company (a) is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not reasonably be expected to result in a Material Adverse Effect. Company does not operate or do business under any assumed, trade or fictitious name. Company has no Subsidiaries.

**4.2 Capital Stock and Ownership** . The Capital Stock of Company has been duly authorized and validly issued and is fully paid and non-assessable. As of the date hereof, there is

no existing option, warrant, call, right, commitment or other agreement to which Company is a party requiring, and there is no membership interest or other Capital Stock of Company outstanding which upon conversion or exchange would require, the issuance by Company of any additional membership interests or other Capital Stock of Company or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Company. All membership interests in the Company as of the Closing Date are owned by Holdings.

**4.3 Due Authorization** . The execution, delivery and performance of the Credit Documents to which Company is a party have been duly authorized by all necessary action of Company.

**4.4 No Conflict** . The execution, delivery and performance by Company of the Credit Documents to which it is party and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate in any material respect any provision of any law or any governmental rule or regulation applicable to Company, any of the Organizational Documents of Company, or any order, judgment or decree of any court or other Governmental Authority binding on Company; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Company, except as would not reasonably be expected to result in a Material Adverse Effect.

**4.5 Governmental Consents** . The execution, delivery and performance by Company of the Credit Documents to which Company is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date other than (a) those that have already been obtained and are in full force and effect, or (b) any consents or approvals the failure of which to obtain will not have a Material Adverse Effect.

**4.6 Binding Obligation** . Each Credit Document to which Company is a party has been duly executed and delivered by Company and is the legally valid and binding obligation of Company, enforceable against Company in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**4.7 Eligible Receivables** . Each Receivable that is identified by Company as an Eligible Receivable in a Borrowing Base Certificate satisfies all of the criteria set forth in the definition of Eligibility Criteria.

**4.8 Historical Financial Statements** . The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position,

on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

**4.9 No Material Adverse Effect** . Since December 31, 2014, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

**4.10 Adverse Proceedings, etc.** There are no Adverse Proceedings (other than counter claims relating to ordinary course collection actions by or on behalf of Company) pending against Company that challenges Company's right or power to enter into or perform any of its obligations under the Credit Documents to which it is a party or that would reasonably be expected to result in a Material Adverse Effect. Company is not (a) in violation of any applicable laws in any material respect, or (b) subject to or in default with respect to any judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other Governmental Authority, except as would not reasonably be expected to result in a Material Adverse Effect.

**4.11 Payment of Taxes** . Except as otherwise permitted under Section 5.3, all material tax returns and reports of Company required to be filed by it have been timely filed, and all material taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company and upon its properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. Company knows of no proposed tax assessment against Company which is not being actively contested by Company in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

**4.12 Title to Assets** . Company has no fee, leasehold or other property interests in any real property assets. Company has good and valid title to all of its assets reflected in the most recent financial statements delivered pursuant to Section 5.1. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens. All Liens purported to be created in any Collateral pursuant to any Collateral Document in favor of Collateral Agent are First Priority Liens.

**4.13 No Indebtedness** . Company has no Indebtedness, other than Indebtedness incurred under (or contemplated by) the terms of this Agreement or otherwise permitted hereunder.

**4.14 No Defaults** . Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not reasonably be expected to result in a Material Adverse Effect.

**4.15 Material Contracts** . Company is not a party to any Material Contracts.

**4.16 Government Contracts** . Company is not a party to any contract or agreement with any Governmental Authority, and the Pledged Receivables are not subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

**4.17 Governmental Regulation** . Company is not subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 (without reliance on the exemptions provided under Sections 3(c)(1) or 3(c)(7) thereof) or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Company is not a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

**4.18 Margin Stock** . Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Revolving Loans made to Company will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

**4.19 Employee Benefit Plans** . No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Company does not maintain or contribute to any Employee Benefit Plan.

**4.20 Solvency; Fraudulent Conveyance** . Company is and, upon the incurrence of any Credit Extension by Company on any date on which this representation and warranty is made, will be, Solvent. Company is not transferring any Collateral with any intent to hinder, delay or defraud any of its creditors. Company shall not use the proceeds from the transactions contemplated by this Agreement to give preference to any class of creditors. Company has given fair consideration and reasonably equivalent value in exchange for the sale of the Receivables by Holdings under the Asset Purchase Agreement.

**4.21 Compliance with Statutes, etc.** Company is in compliance in all material respects with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, except as would not reasonably be expected to result in a Material Adverse Effect.

**4.22 Matters Pertaining to Related Agreements .**

(a) Delivery . Company has delivered, or caused to be delivered, to each Agent and each Lender complete and correct copies of (i) each Related Agreement and of all exhibits and schedules thereto as of the Closing Date, and (ii) copies of any material amendment, restatement, supplement or other modification to or waiver of each Related Agreement entered into after the date hereof.

(b) The Asset Purchase Agreement creates a valid transfer and assignment to Company of all right, title and interest of Holdings in and to all Pledged Receivables and all Related Security conveyed to Company thereunder and Company has a First Priority perfected security interest therein. Company has given reasonably equivalent value to Holdings in consideration for the transfer to Company by Holdings of the Pledged Receivables and Related Security pursuant to the Asset Purchase Agreement.

(c) Each Receivables Program Agreement creates a valid transfer and assignment to Holdings of all right, title and interest of the Receivables Account Bank in and to all Receivables and Related Security conveyed or purported to be conveyed to Holdings thereunder. Holdings has given reasonably equivalent value to the Receivables Account Bank in consideration for the transfer to Holdings by the Receivables Account Bank of the Receivables and Related Security pursuant to the applicable Receivables Program Agreement.

**4.23 Disclosure .** No documents, certificates, written statements or other written information furnished to Lenders by or on behalf of Holdings or Company for use in connection with the transactions contemplated hereby, taken as a whole, contains any untrue statement of a material fact, or taken as a whole, omits to state a material fact (known to Holdings or Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained therein not misleading in light of the circumstances in which the same were made, provided, that, projections and pro forma financial information contained in such materials were prepared based upon good faith estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

**4.24 Patriot Act .** To the extent applicable, Company and Holdings are in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “**Act**” ). No part of the proceeds of the Revolving Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended to the date hereof and from time to time hereafter, and any successor statute.

**4.25 Remittance of Collections.**

Company represents and warrants that each remittance of Collections by it hereunder to any Agent or any Lender hereunder will have been (a) in payment of a debt incurred by Company in the ordinary course of business or financial affairs of Company and (b) made in the ordinary course of business or financial affairs.

**4.26 Tax Status.**

(a) Company is, and shall at all relevant times continue to be, a “disregarded entity” within the meaning of U.S. Treasury Regulation § 301.7701-3.

(b) Company is not and will not at any relevant time become an association (or a publicly traded partnership) taxable as a corporation for U.S. federal income tax purposes.

## **SECTION 5. AFFIRMATIVE COVENANTS**

Company covenants and agrees that until the Termination Date, Company shall perform (or cause to be performed, as applicable) all covenants in this Section 5.

**5.1 Financial Statements and Other Reports** . Unless otherwise provided below, Company or its designee will deliver to each Agent and each Lender:

(a) Quarterly Financial Statements . Promptly after becoming available, and in any event within forty-five (45) days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter) of each Fiscal Year, the consolidated balance sheet of Holdings as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders’ equity and cash flows of Holdings for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(b) Annual Financial Statements . Promptly after becoming available, and in any event within ninety (90) days after the end of each Fiscal Year, (i) the consolidated balance sheets of Holdings as at the end of such Fiscal Year and the related consolidated statements of income, stockholders’ equity and cash flows of Holdings for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(c) Compliance Certificates . Together with each delivery of financial statements of Holdings pursuant to Sections 5.1(a) and 5.1(b), a duly executed and completed Compliance Certificate;

(d) Statements of Reconciliation after Change in Accounting Principles . If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of (i) Holdings and (ii) Company delivered pursuant to Section 5.1(a) or 5.1(b) will differ in any material respect from

the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to Administrative Agent;

(e) Public Reporting. The obligations in Sections 5.1(a) and (b) may be satisfied by furnishing, at the option of Holdings, the applicable financial statements as described above or an Annual Report on Form 10-K or Quarterly Report on Form 10-Q for Holdings for any Fiscal Year, as filed with the U.S. Securities and Exchange Commission.

(f) Collateral Reporting.

(i) On each Monthly Reporting Date, with each Funding Notice, and at such other times as any Agent or Lender shall request in its Permitted Discretion, a Borrowing Base Certificate (calculated as of the close of business of the previous Monthly Period or as of a date no later than three (3) Business Days prior to such request), together with a reconciliation to the most recently delivered Borrowing Base Certificate and Borrowing Base Report, in form and substance reasonably satisfactory to Administrative Agent and each Class B Revolving Lender. Each Borrowing Base Certificate delivered to Administrative Agent, Paying Agent and each Class B Revolving Lender shall bear a signed statement by an Authorized Officer certifying the accuracy and completeness in all material respects of all information included therein. The execution and delivery of a Borrowing Base Certificate shall in each instance constitute a representation and warranty by Company to Administrative Agent, Paying Agent and each Class B Revolving Lender that each Receivable included therein as an “Eligible Receivable” is, in fact, an Eligible Receivable. For avoidance of doubt, and without derogation of the Company’s obligations hereunder, in the event any request for a Revolving Loan, or a Borrowing Base Certificate or other information required by this Section 5.1(f) is delivered to Administrative Agent, Paying Agent and each Class B Revolving Lender by Company electronically or otherwise without signature, such request, or such Borrowing Base Certificate or other information shall, upon such delivery, be deemed to be signed and certified on behalf of Company by an Authorized Officer and constitute a representation to Administrative Agent, Paying Agent and each Class B Revolving Lender as to the authenticity thereof. The Administrative Agent shall have the right to review and adjust any such calculation of the Borrowing Base to reflect exclusions from Eligible Receivables or such other matters as are necessary to determine the Borrowing Base, but in each case only to the extent the Administrative Agent is expressly provided such discretion by this Agreement.

(ii) On each Monthly Reporting Date, the Master Record and the Monthly Servicing Report to Administrative Agent, Paying Agent and each Class B Revolving Lender on the terms and conditions set forth in the Servicing Agreement.

(g) Notice of Default. Promptly upon an Authorized Officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or Company with respect thereto; (ii) that any Person

has given any notice to Holdings or Company or taken any other action with respect to any event or condition set forth in Section 7.1(b); (iii) that a breach of any Portfolio Performance Covenant shall have occurred; or (iv) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, default, event or condition, and what action Holdings or Company, as applicable, has taken, is taking and proposes to take with respect thereto;

(h) Notice of Litigation. Promptly upon any Authorized Officer of Company obtaining knowledge of an Adverse Proceeding that is reasonably likely to have a Material Adverse Effect, written notice thereof together with such other information as may be reasonably available to Company or Holdings to enable Lenders and their counsel to evaluate such matters;

(i) ERISA. (i) Promptly upon any Authorized Officer of Company becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each affected Pension Plan; (2) all notices received by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any affected Employee Benefit Plan of Holdings or any of its Subsidiaries thereof, or, with respect to any affected Pension Plan or affected Multiemployer Plan, any of their respective ERISA Affiliates (with respect to an affected Multiemployer Plan, to the extent that Holdings or the Subsidiary or ERISA Affiliate, as applicable, has rights to access such documents, reports or filings), as any Agent or Lender shall reasonably request;

(j) Information Regarding Collateral. Prior written notice to Collateral Agent and Administrative Agent of any change (i) in Company's corporate name, (ii) in Company's identity, corporate structure or jurisdiction of organization, or (iii) in Company's Federal Taxpayer Identification Number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents;

(k) Other Information.

(i) not later than Friday of each week (or if such day is not a Business Day, the immediately preceding Business Day) in which a Borrowing Base Report has not otherwise been delivered hereunder, a Borrowing Base Report; and

(ii) such material information and data with respect to Holdings or any of its Subsidiaries as from time to time may be reasonably requested by any Agent or Lender, in each case, which relate to Company's or Holdings' financial or business condition or the Collateral.

**5.2 Existence** . Except as otherwise permitted under Section 6.8, Company will at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business.

**5.3 Payment of Taxes and Claims** . Company will pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. Company will not file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries). In addition, Company agrees to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by any Governmental Authority that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any Credit Document.

**5.4 Insurance** . Company shall cause Holdings to maintain or cause to be maintained, with financially sound and reputable insurers, (a) all insurance required to be maintained under the Servicing Agreement, (b) business interruption insurance reasonably satisfactory to Administrative Agent, and (c) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each Agent and Lender hereby agrees and acknowledges that the insurance maintained by Holdings on the Closing Date satisfies the requirements set forth in this Section 5.4 .

**5.5 Inspections; Compliance Audits** .

(a) At any time during the existence of an Event of Default, and otherwise not more than one time during the 2015 Fiscal Year nor more than two (2) times per other Fiscal Year, Company will, upon reasonable advance notice by the Administrative Agent, permit or cause to be permitted, as applicable, one or more authorized representatives designated by the

Administrative Agent to visit and inspect (a “Compliance Review”) during normal working hours any of the properties of Company or Holdings to (i) inspect, copy and take extracts from relevant financial and accounting records, and to discuss its affairs, finances and accounts with any Person, including, without limitation, employees of Company or Holdings and independent public accountants and (ii) verify the compliance by Company or Holdings with the Credit Agreement, the other Credit Documents and/or the Underwriting Policies, as applicable; provided, that Company shall not be obligated to pay more than \$100,000 in the aggregate during any Fiscal Year in connection with any Compliance Review and inspection pursuant to Section 2.4 of the Custodial Agreement; provided, further that such expense reimbursement limitation shall not apply to a Compliance Review conducted during the existence of an Event of Default. In connection with any such Compliance Review, Company will permit any authorized representatives designated by the Administrative Agent to review Company’s form of Receivable Agreements, Underwriting Policies, information processes and controls, and compliance practices and procedures (“ **Materials** ”). Such authorized representatives may make written recommendations regarding Company’s compliance with applicable Requirements of Law, and Company shall consult in good faith with the Administrative Agent regarding such recommendations. The Administrative Agent agrees to use a single independent certified public accountants or other third-party provider in connection with any Compliance Review pursuant to this Section 5.5.

(b) If the Administrative Agent engages any independent certified public accountants or other third-party provider to prepare any report in connection with the Compliance Review, the Administrative Agent shall make such report available to any Lender, upon request, provided, that delivery of any such report may be conditioned on prior receipt by such independent certified public accountants or other third party provider of the acknowledgements and agreements that such independent certified public accountants or third party provider customarily requires of recipients of reports of that kind.

(c) In connection with a Compliance Review, the Administrative Agent or its designee may contact a Receivables Obligor as reasonably necessary to perform such inspection or Compliance Review, as the case may be, provided, however, such contact shall be made in the name of, and in cooperation with, Holdings and Company.

**5.6 Compliance with Laws** . Company shall, and shall cause Holdings to, comply with the Requirements of Law, noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.7 Separateness** . The Company shall at all times comply with the separateness covenants set forth in the Company’s Limited Liability Company Agreement.

**5.8 Further Assurances** . At any time or from time to time upon the request of any Agent or Lender, Company will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as such Agent or Lender may reasonably request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information reasonably requested pursuant to Section 9.21 . In furtherance and not in limitation of the foregoing, Company shall take such actions as the Administrative Agent may reasonably request

from time to time to ensure that the Obligations are secured by substantially all of the assets of Company.

## **5.9 Communication with Accountants .**

(a) At any time during the existence of an Event of Default, Company authorizes Administrative Agent to communicate directly with Company's independent certified public accountants and authorizes and shall instruct such accountants to communicate directly with Administrative Agent and authorizes such accountants to (and, upon Administrative Agent's request therefor (at the request of any Agent), shall request that such accountants) communicate to Administrative Agent information relating to Company with respect to the business, results of operations and financial condition of Company (including the delivery of audit drafts and letters to management), provided that advance notice of such communication is given to Company, and Company is given a reasonable opportunity to cause an officer to be present during any such communication.

(b) If the independent certified public accountants report delivered in connection with Section 5.1(b) is qualified, then the Company authorizes the Administrative Agent to communicate directly with the Company's independent certified public accountants with respect to such qualification, provided that advance notice of such communication is given to the Company, and the Company is given a reasonable opportunity to cause an officer to be present during any such communication.

(c) The failure of the Company to be present during any communication permitted under Section 5.9(a) and/or Section 5.9(b) after the Company has been given a reasonable opportunity to cause an officer to be present shall in no way impair the rights of the Administrative Agent under Section 5.9(a) and/or Section 5.9(b).

**5.10 Acquisition of Receivables from Holdings .** With respect to each Pledged Receivable, Company shall (a) acquire such Receivable pursuant to and in accordance with the terms of the Asset Purchase Agreement, (b) take all actions necessary to perfect, protect and more fully evidence Company's ownership of such Receivable, including, without limitation, executing or causing to be executed (or filing or causing to be filed) such other instruments or notices as may be necessary or appropriate and (c) take all additional action that the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective interests of Company, the Agents and the Lenders.

**5.14 Class B Revolving Lender Information Rights .** Company shall provide to each Class B Revolving Lender (a) substantially contemporaneously with its provision to the Administrative Agent any written information required to be provided to the Administrative Agent under any Credit Document, and (b) prompt written notice of (i) any Event of Default under this Agreement and (ii) any written waiver or consent provided under, or any amendment of, any Credit Document.

## SECTION 6. NEGATIVE COVENANTS

Company covenants and agrees that, until the Termination Date, Company shall perform (or cause to be performed, as applicable) all covenants in this Section 6.

**6.1 Indebtedness** . Company shall not directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except the Obligations.

**6.2 Liens** . Company shall not directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document.

**6.3 Equitable Lien** . If Company shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Liens created under the Credit Documents, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

**6.4 No Further Negative Pledges** . Except pursuant to the Credit Documents Company shall not enter into any Contractual Obligation prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

**6.5 Restricted Junior Payments** . Company shall not through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that, Restricted Junior Payments may be made by Company from time to time with respect to any amounts distributed to Company (i) in accordance with Section 2.12(a)(xi) or (ii) from and after the occurrence and during the continuation of an Event of Default, in accordance with Section 2.12(b)(viii) only.

**6.6 Subsidiaries** . Company shall not form, create, organize, incorporate or otherwise have any Subsidiaries.

**6.7 Investments** . Company shall not, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except Investments in Cash, Permitted Investments and Receivables (and property received from time to time in connection with the workout or insolvency of any Receivables Obligor), and Permitted Investments in the Controlled Accounts.

**6.8 Fundamental Changes; Disposition of Assets; Acquisitions** . Company shall not enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired (other than, provided no Event of Default pursuant to Section 7.1(a), 7.1(g), 7.1(h) or 7.1(p) has occurred and is continuing, Permitted Asset Sales, provided, that Permitted Asset Sales under clause (d) of the definition thereof shall be permitted at all times subject to receipt of the consent required therein), or acquire by purchase or otherwise (other than acquisitions of Eligible Receivables, or Permitted Investments in a Controlled Account (and property received from time to time in connection with the workout or insolvency of any Receivables Obligor)) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person.

**6.9 Sales and Lease-Backs** . Company shall not, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which Company (a) has sold or transferred or is to sell or to transfer to any other Person, or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by Company to any Person in connection with such lease.

**6.10 Transactions with Shareholders and Affiliates** . Company shall not, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of ten percent (10%) or more of any class of Capital Stock of Holdings or any of its Subsidiaries or with any Affiliate of Holdings or of any such holder other than the transactions contemplated or permitted by the Credit Documents and the Related Agreements.

**6.11 Conduct of Business** . From and after the Closing Date, Company shall not engage in any business other than the businesses engaged in by Company on the Closing Date.

**6.12 Fiscal Year** . Company shall not change its Fiscal Year-end from December 31<sup>st</sup> .

**6.13 Servicer; Backup Servicer; Custodian** . Company shall use its commercially reasonable efforts to cause Servicer, the Backup Servicer and the Custodian respectively, to comply at all times with the applicable terms of the Servicing Agreement, the Backup Servicing Agreement and the Custodial Agreement respectively. The Company may not (i) terminate, remove, replace Servicer, Backup Servicer or the Custodian or (ii) subcontract out any portion of the servicing or permit third party servicing other than the Backup Servicer, except, in each case, as expressly set forth in the applicable Credit Document and subject to satisfaction of the related requirements therein. The Administrative Agent may not terminate, remove, replace Servicer, Backup Servicer or the Custodian except as expressly set forth in the applicable Credit Document and subject to satisfaction of the related requirements therein.

**6.14 Acquisitions of Receivables.** Company may not acquire Receivables from any Person other than Holdings pursuant to the Asset Purchase Agreement.

**6.15 Independent Manager.** Company shall not fail at any time to have at least one independent manager (an “Independent Manager”) who:

(a) is provided by a nationally recognized provider of independent directors;

(b) is not and has not been employed by Company or Holdings or any of their respective Subsidiaries or Affiliates as an officer, director, partner, manager, member (other than as a special member in the case of single member Delaware limited liability companies), employee, attorney or counsel of, Company or Holdings or any of their respective Affiliates within the five years immediately prior to such individual’s appointment as an Independent Manager, provided that this paragraph (b) shall not apply to any person who serves as an independent director or an independent manager for any Affiliate of any of Company or Holdings;

(c) is not, and has not been within the five years immediately prior to such individual’s appointment as an Independent Manager, a customer or creditor of, or supplier to, Company or Holdings or any of their respective Affiliates who derives any of its purchases or revenue from its activities with Company or Holdings or any of their respective Affiliates thereof (other than a *de minimis* amount);

(d) is not, and has not been within the five years immediately prior to such individual’s appointment as an Independent Manager, a person who controls or is under common control with any Person described by clause (b) or (c) above;

(e) does not have, and has not had within the five years immediately prior to such individual’s appointment as an Independent Manager, a personal services contract with Company or Holdings or any of their respective Subsidiaries or Affiliates, from which fees and other compensation received by the person pursuant to such personal services contract would exceed 5% of his or her gross revenues during the preceding calendar year;

(f) is not affiliated with a tax-exempt entity that receives, or has received within the five years prior to such appointment as an Independent Manager, contributions from Company or Holdings or any of their respective Subsidiaries or Affiliates, in excess of the lesser of (i) 3% of the consolidated gross revenues of Holdings and its Subsidiaries during such fiscal year and (ii) 5% of the contributions received by the tax-exempt entity during such fiscal year;

(g) is not and has not been a shareholder (or other equity owner) of any of Company or Holdings or any of their respective Affiliates within the five years immediately prior to such individual’s appointment as an Independent Manager;

(h) is not a member of the immediate family of any Person described by clause (b) through (g) above;

(i) is not, and was not within the five years prior to such appointment as an Independent Manager, a financial institution to which Company or Holdings or any of their respective Subsidiaries or Affiliates owes outstanding Indebtedness for borrowed money in a sum exceeding more than 5% of Holdings' total consolidated assets;

(j) has prior experience as an independent director or manager for a corporation or limited liability company whose charter documents required the unanimous consent of all independent directors thereof before such corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy; and

(k) has at least three (3) years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities.

Upon Company learning of the death or incapacity of an Independent Manager, Company shall have ten (10) Business Days following such death or incapacity to appoint a replacement Independent Manager. Any replacement of an Independent Manager will be permitted only upon (a) two (2) Business Days' prior written notice to each Agent and Lender, (b) Company's certification that any replacement manager will satisfy the criteria set forth in clauses (a)-(i) of this Section 6.15 and (c) the Administrative Agent' written consent to the appointment of such replacement manager. For the avoidance of doubt, other than in the event of the death or incapacity of an Independent Manager, Company shall at all times have an Independent Manager and may not terminate any Independent Manager without the prior written consent of the Administrative Agent, which consent the Administrative Agent may withhold in its sole discretion.

**6.16 Organizational Agreements** . Except as otherwise expressly permitted by other provisions of this Agreement or any other Credit Document, Company shall not (a) amend, restate, supplement or modify, or permit any amendment, restatement, supplement or modification to, its Organizational Documents, without obtaining the prior written consent of the Requisite Lenders to such amendment, restatement, supplement or modification, as the case may be; (b) agree to any termination, amendment, restatement, supplement or other modification to, or waiver of, or permit any termination, amendment, restatement, supplement or other modification to, or waivers of, any of the provisions of any Credit Document without the prior written consent of the Requisite Lenders; or (c) amend, restate, supplement or modify in any material respect, or permit any amendments, restatements, supplements or modifications in any material respect, to any Receivables Program Agreement in a manner that could reasonably be expected to be materially adverse to the Lenders.

**6.17 Changes in Underwriting or Other Policies** . Company shall provide the Administrative Agent and the Requisite Class B Revolving Lenders (collectively, the **"Notice Parties"** ) with prior written notice of any change or modification to the Underwriting Policies that would reasonably be expected to be adverse to the Lenders. Without the prior consent of the Administrative Agent and the Requisite Class B Revolving Lenders, such consent not to be unreasonably withheld, conditioned or delayed (with any such consent being deemed to be automatically granted by the Administrative Agent and the Requisite Class B Revolving Lenders

on the fifteenth (15th) calendar day after the Administrative Agent and the Requisite Class B Revolving Lenders confirms receipt of notice of the applicable change unless the Administrative Agent or the Requisite Class B Revolving Lenders shall have notified the Company in writing that the requested consent is not being provided and its rationale therefor), the Company shall not agree to, and shall cause Holdings not to, (a) make any change to (i) the forms of Business Loan and Security Agreement, Business Loan and Security Agreement Supplement and Loan Summary used to originate Receivables from the form provided to the Administrative Agent prior to the Closing Date, or (ii) the form of Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit) used in connection with the origination of Loans in substantially the form provided to the Administrative Agent on or prior to the Closing Date that, in any such case, would reasonably be expected to result in an Adverse Effect, or (b) make any change to the Underwriting Policies that would reasonably be expected to be materially adverse to the Lenders ( provided, that any change to the Underwriting Policies which (A) has the effect of modifying the Eligibility Criteria or (B) changes the calculation of the Class A Borrowing Base and the Class B Borrowing Base shall be deemed to be materially adverse to the Lenders for purposes of this Section 6.17).

**6.18 Receivable Program Agreements** . The Company shall (a) perform and comply with its obligations under the Receivables Program Agreements and (b) enforce the rights and remedies afforded to it against the Receivables Account Bank under the Receivables Program Agreements, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in an Adverse Effect.

## **SECTION 7. EVENTS OF DEFAULT**

**7.1 Events of Default** . If any one or more of the following conditions or events shall occur.

(a) Failure to Make Payments When Due . Other than with respect to a Borrowing Base Deficiency, failure by Company to pay (i) when due, the principal on any Revolving Loan whether at stated maturity, by acceleration or otherwise; (ii) within two (2) Business Days after its due date, any interest on any Revolving Loan or any fee due hereunder; (iii) within thirty (30) days after its due date, any other amount due hereunder; or (iv) the amounts required to be paid pursuant to Section 2.8 on or before the Revolving Commitment Termination Date; or

(b) Default in Other Agreements .

(i) Failure of Company to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 7.1(a) ), in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by Company with respect to any other material term of (1) one or more items of Indebtedness referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefore, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due

and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be;

(ii) (A) Failure of Holdings or any Subsidiary of Holdings (other than Company) to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness for borrowed money with a principal amount in excess of \$1,000,000, in each case beyond the grace period, if any, provided therefor; or (B) breach or default by Holdings or any Subsidiary of Holdings (other than Company) with respect to any other material term of (1) one or more items of Indebtedness for borrowed money with a principal amount in excess of \$1,000,000, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness for borrowed money, and, in each case described in this clause (B), such failure, breach or default, as the case may be, results in the acceleration of amounts owed thereunder, provided that any such failure, breach or default, as the case may be, and acceleration, if applicable, shall constitute an Event of Default hereunder only after the Administrative Agent shall have provided written notice to Company that such failure, breach or default constitutes an Event of Default hereunder; or

(c) Breach of Certain Covenants. Failure of Company to perform or comply with any term or condition contained in Section 2.3, Section 2.11, Section 5.1(g), Section 5.1(h), Section 5.1(j), Section 5.2, Section 5.7 or Section 6, or failure to distribute Collections in accordance with Section 2.12; or

(d) Breach of Representations, etc. Any representation or warranty, certification or other statement made or deemed made by Company or Holdings (or Holdings as Servicer) in any Credit Document or in any statement or certificate at any time given by Company or Holdings (or Holdings as Servicer) in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect, other than any representation, warranty, certification or other statement which is qualified by materiality or "Material Adverse Effect", in which case, such representation, warranty, certification or other statement shall be true and correct in all respects, in each case, as of the date made or deemed made and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of Company or Holdings becoming aware of such default, or (ii) receipt by Company of notice from any Agent or Lender of such default; or

(e) Other Defaults Under Credit Documents. Company or Holdings shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents other than any such term referred to in any other Section of this Section 7.1 and such default shall not have been remedied or waived within thirty (30) days (or, in the case of a default under (A) Section 5.1(f), five (5) Business Days or (B) Section 5.1(k)(i), two (2) Business Days) after the earlier of (i) an Authorized Officer of Company or Holdings becoming aware of such default, or (ii) receipt by Company or Holdings of notice from Administrative Agent or any Lender of such default; or

(f) Breach of Portfolio Performance Covenants. A breach of any Portfolio Performance Covenant shall have occurred and the Administrative Agent shall have provided

written notice to the Company that an Event of Default under this Section 7.1(f) has occurred and is continuing; or

(g) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or Holdings in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or Holdings under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or Holdings, or over all or a substantial part of its respective property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or Holdings for all or a substantial part of its respective property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or Holdings, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(h) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Company or Holdings shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its respective property; or Company or Holdings shall make any assignment for the benefit of creditors; or (ii) Company or Holdings shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Company or Holdings (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 7.1(g); or

(i) Judgments and Attachments.

(i) Any money judgment, writ or warrant of attachment or similar process (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Company or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(ii) Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$2,000,000 or (ii) in the aggregate at any time an amount in excess of \$5,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Holdings (or Holdings as

Servicer) or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(iii) Any tax lien or lien of the PBGC shall be entered or filed against Company or Holdings (involving, with respect to Holdings only, an amount in excess of \$1,000,000) or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of ten (10) days;

(j) Dissolution. Any order, judgment or decree shall be entered against Company or Holdings decreeing the dissolution or split up of Company or Holdings, as the case may be, and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(k) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in a Material Adverse Effect during the term hereof or result in a Lien being imposed on the Collateral; or (ii) Company shall establish or contribute to any Employee Benefit Plan; or

(l) Change of Control. A Change of Control shall occur; or

(m) Collateral Documents and other Credit Documents. Company or Holdings shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party; or

(n) Servicing Agreement. A Servicer Default shall have occurred and be continuing; or

(o) Backup Servicer Default. The Backup Servicing Agreement shall terminate for any reason and, provided that the Administrative Agent shall have used commercially reasonable efforts to timely engage a replacement Backup Servicer following such termination, within ninety (90) days of such termination no replacement agreement with an alternative backup servicer shall be effective; or

(p) Borrowing Base Deficiency; Repurchase Failure. (i) Failure by Company to cure any Borrowing Base Deficiency within two (2) Business Days after the due date thereof, or (ii) failure of Holdings to repurchase any Receivable as and when required under the Asset Purchase Agreement; or

(q) Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Collateral Document ceases to be in full force and effect (other than in accordance with its terms) or shall be declared null and void by a court of competent jurisdiction or the enforceability thereof shall be impaired in any material respect, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document (in each case, other than (A) by reason of a release of Collateral in accordance with the terms hereof or thereof or (B) the satisfaction in full of the Obligations and

any other amount due hereunder or any other Credit Document in accordance with the terms hereof); or (ii) any of the Credit Documents for any reason, other than the satisfaction in full of all Obligations and any other amount due hereunder or any other Credit Document (other than contingent indemnification obligations for which demand has not been made), shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void by a court of competent jurisdiction or a party thereto, as the case may be, or Holdings shall repudiate its obligations thereunder or shall contest the validity or enforceability of any Credit Document in writing; or

(r) Breach of Financial Covenants. A breach of any Financial Covenant shall have occurred; or

(s) Investment Company Act. Holdings or Company become subject to any federal or state statute or regulation which may render all or any portion of the Obligations unenforceable, or Company becomes a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940;

**THEN**, upon the occurrence of any Event of Default, the Administrative Agent may, and shall, at the written request of the Requisite Lenders, take any of the following actions: (w) upon notice to the Company, terminate the Revolving Commitments, if any, of each Lender having such Revolving Commitments, (x) upon notice to the Company, declare the unpaid principal amount of and accrued interest on the Revolving Loans and all other Obligations immediately due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company; (y) direct the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents and (z) take any and all other actions and exercise any and all other rights and remedies of the Administrative Agent under the Credit Documents; provided that upon the occurrence of any Event of Default described in Section 7.1(g) or 7.1(h), the unpaid principal amount of and accrued interest on the Revolving Loans and all other Obligations shall immediately become due and payable, and the Revolving Commitments shall automatically and immediately terminate, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company.

## **SECTION 8. AGENTS**

**8.1 Appointment of Agents**. Each Class A Revolving Lender hereby authorizes SunTrust Bank to act as Administrative Agent to the Class A Revolving Lenders hereunder and under the other Credit Documents and each Class A Revolving Lender hereby authorizes SunTrust Bank, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Lender hereby authorizes Wells Fargo Bank N.A., to act as the Collateral Agent on its behalf under the Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 8 are solely for the benefit of Agents and Lenders and neither Company or Holdings shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent (other than Administrative Agent) shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation

towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of the Class A Revolving Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Class B Revolving Lender, Holdings or any of its Subsidiaries. On or prior to the first date upon which any Class B Revolving Lender makes a Class B Revolving Loan to Company pursuant to Section 2.1(a)(ii), each Class B Lender hereby agrees to appoint an agent to act in accordance with the terms hereof and the other Credit Documents (the “ **Class B Agent** ”). In performing its functions and duties hereunder, the Class B Agent shall act solely as an agent of the Class B Revolving Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Class A Revolving Lender, Holdings or any of its Subsidiaries.

**8.2 Powers and Duties .** Each Lender irrevocably authorizes each Agent (other than Administrative Agent) to take such action on such Lender’s behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Class A Revolving Lender irrevocably authorizes Administrative Agent to take such action on such Class A Revolving Lender’s behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each such Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No such Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any such Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

### **8.3 General Immunity .**

(a) No Responsibility for Certain Matters . No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of Company or Holdings to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of Company or Holdings or any other Person liable for the payment of any Obligations or any other amount due hereunder or any other Credit Document, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Revolving Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, neither the Paying Agent nor the

Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Revolving Loans or the component amounts thereof.

(b) Exculpatory Provisions Relating to Agents . No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Each such Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from the Administrative Agent or the Requisite Lenders, as applicable (or such other Lenders as may be required to give such instructions under Section 9.5 ) and, upon receipt of such instructions from the Administrative Agent or Requisite Lenders, as applicable (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each such Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and Company), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any such Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.5 ).

**8.4 Agents Entitled to Act as Lender** . Any agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Revolving Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

#### **8.5 Lenders' Representations, Warranties and Acknowledgment .**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and Company in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and Company. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on

behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Revolving Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

**8.6 Right to Indemnity** . Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent (each, an **“Indemnatee Agent Party”** ), to the extent that such Indemnatee Agent Party shall not have been reimbursed by Company or Holdings, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnatee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnatee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY** ; provided , no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnatee Agent Party’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final non-appealable order. If any indemnity furnished to any Indemnatee Agent Party for any purpose shall, in the opinion of such Indemnatee Agent Party, be insufficient or become impaired, such Indemnatee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided , in no event shall this sentence require any Lender to indemnify any Indemnatee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender’s Pro Rata Share thereof; and provided further , this sentence shall not be deemed to require any Lender to indemnify any Indemnatee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

## **8.7 Successor Administrative Agent and Collateral Agent .**

(a) Administrative Agent .

(i) Administrative Agent may resign at any time by giving thirty (30) days’ prior written notice thereof to the Class A Revolving Lenders and Company. Upon any such notice of resignation, the Requisite Class A Revolving Lenders shall have the right, upon five (5) Business Days’ notice to Company, to appoint a successor Administrative Agent provided , that the appointment of a successor Administrative Agent shall require (so long as no Default or Event of Default has occurred and is continuing) Company’s approval,

which approval shall not be unreasonably withheld, delayed or conditioned. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the appointment of such successor Administrative Agent, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. If Administrative Agent is a Class A Revolving Lender or an Affiliate thereof on the date on which the Revolving Commitment Termination Date shall have occurred and all Class A Revolving Loans and all other Obligations owing to the Class A Revolving Lender Groups have been paid in full in cash, such Administrative Agent shall provide immediate notice of resignation to the Company, and the Requisite Class B Revolving Lenders shall have the right, upon five (5) Business Days' notice to the Company, to appoint a successor Administrative Agent; provided, that the appointment of any successor Administrative Agent that is not a Class B Revolving Lender or an Affiliate thereof shall require (so long as no Default or Event of Default has occurred and is continuing) Company's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(ii) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent hereunder to one of its Affiliates without the prior written consent of, or prior written notice to, Company or the Revolving Lenders; *provided* that Company and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Credit Documents.

(b) Collateral Agent.

(i) Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, the Requisite Lenders shall have the right, upon five (5) Business Days' notice to Company, to appoint a successor Collateral Agent *provided*, that the appointment of a successor Collateral Agent shall require (so long as no Default or Event of Default has occurred and is continuing) Company's approval, which approval shall not be unreasonably withheld, delayed or conditioned. If, however, a successor Collateral Agent is not appointed within sixty (60) days after the giving of notice of resignation, the Collateral Agent may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent. Upon

the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the retiring Collateral Agent shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the appointment of such successor Collateral Agent and the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent hereunder.

(ii) Notwithstanding anything herein to the contrary, Collateral Agent may assign its rights and duties as Collateral Agent hereunder to one of its Affiliates without the prior written consent of, or prior written notice to, Company or the Lenders; *provided* that Company and the Lenders may deem and treat such assigning Collateral Agent as Collateral Agent for all purposes hereof, unless and until such assigning Collateral Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Collateral Agent hereunder and under the other Credit Documents.

## **8.8 Collateral Documents .**

(a) Collateral Agent under Collateral Documents . Each Lender hereby further authorizes Collateral Agent, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Collateral and the Collateral Documents. Subject to Section 9.5, without further written consent or authorization from Lenders, Collateral Agent may execute any documents or instruments necessary to release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 9.5) have otherwise consented. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company, the Agents and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Collateral Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent acting at the written direction of the Administrative Agent (unless otherwise expressly set forth herein or in another Credit Document), and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite

Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations or any other amount due hereunder as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale. In the event of a private or public sale that results in both (i) total net cash proceeds less than the amount necessary to pay in full the Class B Revolving Loans then outstanding (after application of the proceeds thereof to the then outstanding Class A Revolving Loans) and (ii) the sale of Collateral for consideration that is less than the fair market value thereof (as determined by the Administrative Agent), then the Collateral Agent shall give the Class B Revolving Lenders one (1) Business Day prior written notice of such proposed disposition setting forth in detail satisfactory to the Class B Revolving Lenders the terms thereof (the “**Disposition Notice**”). The Class B Revolving Lenders shall have the right to bid on any such Collateral which is the subject of such Disposition Notice at any public, private, or judicial foreclosure upon such Collateral initiated by the Collateral Agent, or any sale of such Collateral during a proceeding under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; provided, that such bid may not include a “credit bid” in respect of any Class B Revolving Loans unless the proceeds of such bid are otherwise sufficient to pay the Class A Revolving Loans in full. Additionally, the Class B Revolving Lenders shall have a right of first refusal with respect to any proposed sale of Collateral which is the subject of a Disposition Notice for consideration that is in excess of the entire aggregate amount of outstandings on the Class A Revolving Loans and all accrued and unpaid interest thereon through the date of such sale.

## SECTION 9. MISCELLANEOUS

**9.1 Notices** . Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to Company, Collateral Agent or Administrative Agent shall be sent to such Person’s address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent, provided, ~~however~~, that Company may deliver, or cause to be delivered, the Borrowing Base Certificate, Borrowing Base Report and any financial statements or reports (including the Financial Plan and any collateral performance tests) by electronic mail pursuant to procedures approved by the Administrative Agent until any Agent or Lender notifies Company that it can no longer receive such documents using electronic mail. Any Borrowing Base Certificate, Borrowing Base Report or financial statements or reports sent to an electronic 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, if available, return electronic mail or other written acknowledgement), provided, that if such document is sent after 5:00 p.m. Eastern Standard time, such document shall be deemed to have been sent at the opening of business on the next Business Day.

**9.2 Expenses .** Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) (i) all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and expenses (including reasonable and customary fees and expenses of counsel to the Administrative Agent of negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and (ii) reasonable and customary fees and expenses of a single counsel to the Lenders in connection with any consents, amendments, waivers or other modifications to the Credit Documents; (b) all the actual, documented out-of-pocket costs and reasonable out-of-pocket expenses of creating, perfecting and enforcing Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented out-of-pocket fees, expenses and disbursements of a single counsel for all Lenders; (c) subject to the terms of this Agreement (including any limitations set forth in Section 5.5), all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and reasonable fees, expenses for, and disbursements of any of Administrative Agent's, auditors, accountants, consultants or appraisers incurred by Administrative Agent; (d) subject to the terms of this Agreement, all the actual, reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (e) subject in all cases to any express limitations set forth in any Credit Document, all other actual, reasonable and documented out-of-pocket costs and expenses incurred by each Agent in connection with the syndication of the Revolving Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (f) after the occurrence of a Default or an Event of Default, all documented, out-of-pocket costs and expenses, including reasonable attorneys' fees, and costs of settlement, incurred by any Agent or any Lender in enforcing any Obligations of or in collecting any payments due from Company or Holdings hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

### **9.3 Indemnity .**

(a) In addition to the payment of expenses pursuant to Section 9.2, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Affected Party and each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents (each, an **"Indemnatee"** ), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE** excluding any amounts not otherwise payable by Company under Section 2.16(b)(iii) ; provided , Company shall not have any obligation to any Indemnatee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence, bad faith or willful misconduct, as determined by a

court of competent jurisdiction in a final non-appealable order of that Indemnatee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 9.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no party hereto shall assert, and all parties hereto hereby waive, any claim against any other parties and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Revolving Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and all parties hereto hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

#### **9.4 Reserved .**

#### **9.5 Amendments and Waivers .**

(a) Requisite Lenders' Consent. Subject to Sections 9.5(b) and 9.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Holdings therefrom, shall in any event be effective without the written concurrence of Company, Administrative Agent and the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby (without giving effect to any distinctions between the Class A Lenders and the Class B Lenders), no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Revolving Loan or Revolving Loan Note;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iii) reduce the rate of interest on any Revolving Loan (other than any waiver of any increase in the interest rate applicable to any Revolving Loan pursuant to Section 2.8) or any fee payable hereunder;
- (iv) extend the time for payment of any such interest or fees;
- (v) reduce the principal amount of any Revolving Loan;

(vi) (x) amend the definition of “Class A Borrowing Base” or “Class B Borrowing Base” or (y) amend, modify, terminate or waive Section 2.12, Section 2.13 or Section 2.14 or any provision of this Section 9.5(b) or Section 9.5(c);

(vii) amend the definition of “**Requisite Lenders**,” “**Requisite Class A Revolving Lenders**,” “**Requisite Class B Revolving Lenders**,” “**Class A Revolving Exposure**,” “**Class B Revolving Exposure**,” “**Committed Lender Pro Rata Share**,” “**Pro Rata Share**,” “**Applicable Class A Advance Rate**,” “**Applicable Class B Advance Rate**,” “**Class A Revolving Availability**,” “**Class B Revolving Availability**” or any definition used therein ; provided, with the consent of Administrative Agent, Company and the Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of “**Requisite Lenders**” or “**Pro Rata Share**” on substantially the same basis as the Revolving Commitments and the Revolving Loans are included on the Closing Date;

(viii) release all or substantially all of the Collateral except as expressly provided in the Credit Documents;  
or

(ix) consent to the assignment or transfer by Company or Holdings of any of its respective rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Holdings therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Credit Extension of the Class A Revolving Lenders without the consent of the Class A Requisite Lenders; or amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Credit Extension of the Class B Revolving Lenders without the consent of the Requisite Class B Revolving Lenders;

(iii) amend the definitions of “**Eligibility Criteria**” or “**Eligible Receivables Obligor**” or amend any portion of Appendix C without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders;

(iv) amend or modify any provision of Sections 2.11, other than Sections 2.11(c)(vii) and 2.11(d), without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders; provided, however, that, notwithstanding the foregoing, any such amendment or modification during the continuance of any Hot Backup Servicer Event (as such term is defined in the Backup Servicer Agreement), Event of Default or Servicer Default shall only require the consent of the Requisite Lenders;

(v) amend or modify any provision of Section 7.1 without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders; provided, however, that, notwithstanding the foregoing, any waiver of the occurrence of a Default or an Event of Default shall only require the consent of the Requisite Lenders; or

(vi) amend, modify, terminate or waive any provision of Section 8 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent. In the event of any amendment or waiver of this Agreement without the consent of the Collateral Agent or Paying Agent, the Company shall promptly deliver a copy of such amendment or waiver to the Collateral Agent and the Paying Agent upon the execution thereof.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of the Class A Requisite Lenders or any Class A Revolving Lender, execute amendments, modifications, waivers or consents on behalf of the Requisite Class A Revolving Lenders or such Class A Revolving Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company or Holdings in any case shall entitle Company or Holdings to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company. Notwithstanding anything to the contrary contained in this Section 9.5, if the Administrative Agent and Company shall have jointly identified an obvious error or any error or omission of a technical nature, in each case that is immaterial (as determined by the Administrative Agent in its sole discretion), in any provision of the Credit Documents, then the Administrative Agent (as applicable, and in its respective capacity thereunder, the Administrative Agent or Collateral Agent) and Company shall be permitted to amend such provision and such amendment shall become effective without any further action or consent by the Requisite Lenders if the same is not objected to in writing by the Requisite Lenders within five (5) Business Days following receipt of notice thereof.

## **9.6 Successors and Assigns; Participations .**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by it without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 8.6, Indemnities under Section 9.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, the Paying Agent, Administrative Agent, Class B Agent and Lenders shall deem and treat the Persons listed as Lenders in the Registers as the holders and owners of the corresponding Commitments and Revolving Loans listed therein for all purposes

hereof, and no assignment or transfer of any such Revolving Commitment or Revolving Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Registers as provided in Section 9.6(e). Prior to such recordation, all amounts owed with respect to the applicable Revolving Commitment or Revolving Loan shall be owed to the Lender listed in the Registers as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Registers as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Revolving Commitments or Revolving Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Revolving Commitment or Revolving Loans owing to it or other Obligations ( provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Revolving Loan and any related Revolving Commitments) to any Person constituting an Eligible Assignee. Each such assignment pursuant to this Section 9.6(c) (other than an assignment to any Person meeting the criteria of clause (i) of the definition of the term of “Eligible Assignee”) shall be in an aggregate amount of not less than \$1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Revolving Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Commitments and Revolving Loans.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.16(d).

(e) Notice of Assignment. Upon the Administrative Agent’s or Class B Agent’s, as applicable, receipt and acceptance of a duly executed and completed Assignment Agreement and any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent or Class B Agent, as applicable, shall (i) record the information contained in such notice in the Class A Register or the Class B Register, as applicable, (ii) give prompt notice thereof to Company, and (iii) maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Revolving Commitments or Revolving Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Revolving Commitments or Revolving Loans for its own account in the ordinary course of its business and without a view to distribution of such Revolving Commitments or Revolving Loans within the meaning of the Securities Act or the Exchange Act or other federal

securities laws (it being understood that, subject to the provisions of this Section 9.6, the disposition of such Revolving Commitments or Revolving Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 9.6, as of the “Effective Date” specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 9.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising prior to the effective date of such assignment; (iii) the Revolving Commitments shall be modified to reflect the Revolving Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Revolving Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Revolving Loan Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Revolving Loan Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Revolving Loans of the assignee and/or the assigning Lender.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates or a Direct Competitor) in all or any part of its Revolving Commitments, Revolving Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Revolving Loan or Revolving Loan Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant’s participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Revolving Commitment shall not constitute a change in the terms of such participation, and that an increase in any Revolving Commitment or Revolving Loan shall be permitted without the consent of any participant if the participant’s participation is not increased as a result thereof), (ii) consent to the assignment or transfer by Company of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Revolving Loans hereunder in which such participant is participating.

Company agrees that each participant shall be entitled to the benefits of Sections 2.15 or 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Sections 2.15 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation, unless the sale of the participation to such participant is made with Company's prior written consent, and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless Company (through a Designated Officer) is notified of the participation at the time it is sold to such participant and such participant agrees, for the benefit of Company, to comply with Section 2.16 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 9.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender. Any Lender that sells such a participation shall, acting solely for this purpose as an agent of the Company, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in such participation and other obligations under this Agreement (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person other than Company (through a Designated Officer), including the identity of any Participant or any information relating to a Participant's interest or obligations under any Credit Document, except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Paying Agent (in its capacity as Paying Agent) shall have no responsibility for maintaining a Participant Register. The Participant Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice. Company shall not disclose the identity of any Participant of any Lender or any information relating to such Participant's interest or obligation to any Person, provided that Company may make (1) disclosures of such information to Affiliates of such Lender and to their agents and advisors provided that such Persons are informed of the confidential nature of the information and will be instructed to keep such information confidential, and (2) disclosures required or requested by any Governmental Authority or representative thereof or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, Company shall make reasonable efforts to notify the applicable Lender of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of Company by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 9.6 any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Revolving Loans, the other Obligations owed by or to such Lender, and its Revolving Loan Notes, if any, to secure obligations of such Lender including, without limitation,

any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

**9.7 Independence of Covenants** . All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**9.8 Survival of Representations, Warranties and Agreements** . All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of Company set forth in Sections 2.15, 2.16, 9.2, 9.3 and 9.10, the agreements of Lenders set forth in Sections 2.14 and 8.6 shall survive the payment of the Revolving Loans and the termination hereof.

**9.9 No Waiver; Remedies Cumulative** . No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**9.10 Marshalling; Payments Set Aside** . Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other Person or against or in payment of any or all of the Obligations or any other amount due hereunder. To the extent that Company makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

**9.11 Severability** . In case any provision in or obligation hereunder or any Revolving Loan Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**9.12 Obligations Several; Actions in Concert** t. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document 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 any Revolving Loan Note or otherwise with respect to the Obligations without first obtaining the prior written consent of the Administrative Agent, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Revolving Loan Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of the Administrative Agent.

**9.13 Headings** . Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**9.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

**9.15 CONSENT TO JURISDICTION** .

**(A) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST COMPANY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, COMPANY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.1 AND TO ANY PROCESS AGENT APPOINTED BY IT IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER COMPANY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (d) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST COMPANY IN THE COURTS OF ANY OTHER JURISDICTION.**

(B) COMPANY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 9.1 OR ON HOLDINGS, WHICH COMPANY HEREBY APPOINTS AS ITS AGENT FOR SERVICE OF PROCESS HEREUNDER. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST COMPANY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE. IN THE EVENT HOLDINGS SHALL NOT BE ABLE TO ACCEPT SERVICE OF PROCESS AS AFORESAID AND IF COMPANY SHALL NOT MAINTAIN AN OFFICE IN NEW YORK CITY, COMPANY SHALL PROMPTLY APPOINT AND MAINTAIN AN AGENT QUALIFIED TO ACT AS AN AGENT FOR SERVICE OF PROCESS WITH RESPECT TO THE COURTS SPECIFIED IN THIS SECTION 9.15 ABOVE, AND ACCEPTABLE TO THE ADMINISTRATIVE AGENT, AS COMPANY'S AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON COMPANY'S BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION, SUIT OR PROCEEDING.

**9.16 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE REVOLVING LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**9.17 Confidentiality** . Each Agent and Lender shall hold all non-public information regarding Holdings and its Affiliates and their businesses obtained by such Lender or Agent confidential and shall not disclose information of such nature, it being understood and agreed by Company that, in any event, a Lender or Agent may make (a) disclosures of such information to Affiliates of such Lender or Agent and to their agents, auditors, attorneys and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 9.17) provided that such Persons are informed of the confidential nature of the information and agree to keep, or with respect to the Collateral Agent and Paying Agent will be instructed to keep, such information confidential, provided, further that no disclosure shall be made to any Person that is a Direct Competitor or, with respect to the Collateral Agent and Paying Agent only, any Person that the Collateral Agent and/or Paying Agent has actual knowledge is a Direct Competitor, (b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Revolving Loans or any participations therein, provided that such Persons are informed of the confidential nature of the information and agree to keep such information confidential pursuant to a non-disclosure agreement, (c) disclosure to any rating agency when required by it provided that such Persons are informed of the confidential nature of the information and agree to keep, or with respect to the Collateral Agent and Paying Agent will be instructed to keep, such information confidential, (d) disclosures required by any applicable statute, law, rule or regulation or requested by any Governmental Authority or representative thereof or by any regulatory body or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, each Lender or Agent shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender or Agent by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information, and (e) any other disclosure authorized by the Company in writing in advance. Notwithstanding the foregoing, (i) the foregoing shall not be construed to prohibit the disclosure of any information that is or becomes publicly known or information obtained by a Lender or Agent from sources other than the Company other than as a result of a disclosure by an Agent or Lender in violation of this Section 9.17, and (ii) on or after the Closing Date, the Administrative Agent may, at its own expense issue news releases and publish “tombstone” advertisements and other announcements generally describing this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of Company or Holdings) (collectively, “**Trade Announcements**”). Company shall not issue, and shall cause Holdings not to issue, any Trade Announcement using the name of any Agent or Lender, or their respective Affiliates or referring to this Agreement or the other Credit Documents, or the transactions contemplated thereunder except (x) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (y) with the prior approval of Administrative Agent (such approval not to be unreasonably withheld).

**9.18 Usury Savings Clause** . Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence)

under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Revolving Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Revolving Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Revolving Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

**9.19 Counterparts** . This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

**9.20 Effectiveness** . This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

**9.21 Patriot Act** . Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Company that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Company, which information includes the name and address of Company and other information that will allow such Lender or Administrative Agent, as applicable, to identify Company in accordance with the Act.

[ Remainder of page intentionally left blank ]

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**RECEIVABLE ASSETS OF ONDECK, LLC** , as Company

By: /s/ Howard Katzenberg  
Name: Howard Katzenberg  
Title: Chief Financial Officer

**SUNTRUST BANK** ,  
as Administrative Agent

By: /s/ Michael Peden  
Name: Michael Peden  
Title: Vice President

**SUNTRUST BANK** ,  
as a Class A Revolving Lender

By: /s/ Michael Peden  
Name: Michael Peden  
Title: Vice President

**WELLS FARGO BANK, N.A.**,  
as Paying Agent and Collateral Agent

By: /s/ Chad Schafer  
Name: Chad Schafer  
Title: Vice President

**CREDIT AGREEMENT**

**dated as of June 12, 2015**

**among**

**PRIME ONDECK RECEIVABLE TRUST, LLC,**

**as Borrower**

**VARIOUS LENDERS,**

**and**

**BANK OF AMERICA, N.A.,**

**as Administrative Agent**

**and**

**WELLS FARGO BANK, N.A.,**

**as Paying Agent and Collateral Agent**

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**\$100,000,000 Credit Facility**

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	H	Form of Receivables Purchase Agreement

## CREDIT AGREEMENT

This **CREDIT AGREEMENT** , dated as of June 12, 2015, is entered into by and among **PRIME ONDECK RECEIVABLE TRUST, LLC** , a Delaware limited liability company ( "**Company**" ), the Lenders party hereto from time to time and **BANK OF AMERICA, N.A.** , as Administrative Agent for the Class A Revolving Lenders (in such capacity, "**Administrative Agent**" ) and **WELLS FARGO BANK, N.A.**, as Paying Agent (in such capacity, "**Paying Agent**" ) and as Collateral Agent for the Secured Parties (in such capacity, "**Collateral Agent**" ).

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

**WHEREAS** , the Class A Revolving Lenders have agreed to extend revolving credit facilities to Company consisting of up to \$100,000,000 aggregate principal amount of Class A Revolving Commitments, the proceeds of which will be used to (a) acquire Eligible Receivables, (b) purchase Subsidiary Receivables from Holdings, and (c) pay Transaction Costs related to the foregoing;

**WHEREAS** , after the Closing Date, subject to and in accordance with Section 2.24, Class B Revolving Lenders may also agree to extend revolving credit facilities to Company consisting of up to \$11,765,000.00 aggregate principal amount of Class B Revolving Commitments, the proceeds of which will be used to (a) acquire Eligible Receivables, (b) purchase Subsidiary Receivables from Holdings, and (c) pay Transaction Costs related to the foregoing;

**WHEREAS** , Company has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on all of its assets;

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS AND INTERPRETATION

**1.1 Definitions** . The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

**"10-15 Day Delinquent Receivable"** means, as of any date of determination, any Receivable with a Missed Payment Factor of (x) with respect to Daily Pay Receivables, more than ten (10) but less than sixteen (16) and a Payment has been received on such Receivable on at least one of the last seven (7) calendar days, and (y) with respect to Weekly Pay Receivables, more than two (2) but less than or equal to three (3), and a Payment has been received on such Receivable on at least one of the last seven (7) calendar days. Notwithstanding the foregoing, any Daily Pay Receivable regarding which a Payment has been received on each of the last five (5) consecutive Payment Dates, and any Weekly Pay Receivable regarding which a Payment has been received on each of the last three (3) consecutive Payment Dates, shall not be deemed a 10-15 Day Delinquent

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Receivable hereunder even if such Receivable would otherwise satisfy the requirements set forth in the immediately preceding sentence.

**“2015 Consolidated Net Income”** means the Consolidated Net Income of Holdings and its Subsidiaries for the Fiscal Year ending December 31, 2015.

**“2016 Consolidated Net Income”** means the Consolidated Net Income of Holdings and its Subsidiaries for the Fiscal Year ending December 31, 2016.

**“Accrued Interest Amount”** means, as of any day, the aggregate amount of all accrued and unpaid interest on the Revolving Loans payable hereunder.

**“ACH Agreement”** has the meaning set forth in the Servicing Agreement.

**“ACH Receivable”** means each Receivable with respect to which the underlying Receivables Obligor has entered into an ACH Agreement.

**“Act”** as defined in Section 4.25.

**“Adjusted EPOB”** means, as of any date of determination, the excess of (a) the Eligible Portfolio Outstanding Principal Balance as of such date over (b) the sum of, without duplication, (i) the aggregate Excess Concentration Amounts as of such date and (ii) the product of 70% and the aggregate Eligible Portfolio Outstanding Principal Balance of all 10-15 Day Delinquent Receivables as of such date.

**“Adjusted Interest Collections”** means, with respect to any Monthly Period, an amount equal to (a) the product of (i) the sum of (x) all Collections received during such Monthly Period that were not applied by the Servicer to reduce the Outstanding Principal Balances of the Pledged Receivables in accordance with Section 2(a)(i) of the Servicing Agreement and (y) all Collections received during such Monthly Period that were recoveries with respect to Charged-Off Receivables (net of amounts, if any, retained by any third party collection agent) and (ii) the quotient of 21 divided by the number of Business Days in such Monthly Period minus (b) the aggregate amount paid by Company on the related Interest Payment Date pursuant to clauses (a)(i), (a)(ii), (a)(iii), (a)(v) and (a)(vii) of Section 2.12.

**“Administrative Agent”** as defined in the preamble hereto.

**“Adverse Effect”** means, with respect to any action, that such action will (a) result in the occurrence of an Event of Default or (b) materially and adversely affect the amount or timing of payments to be made to the Lenders pursuant to this Agreement.

**“ Adverse Proceeding ”** means any non-frivolous action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or Holdings) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of Company or Holdings, threatened in writing against Company or Holdings, or any of their respective property (it being acknowledged that any action, suit, proceeding, governmental investigation or arbitration by a

Governmental Authority against Company and/or Holdings, as applicable, will not be considered frivolous for purposes of this definition).

**“Affected Party”** means any Lender, Bank of America, N.A., in its individual capacity and in its capacity as Administrative Agent, Paying Agent and, with respect to each of the foregoing, the parent company or holding company that controls such Person.

**“Affiliate”** means, with respect to any 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. For purposes of this definition, “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and “controlled” and “controlling” have meanings correlative to the foregoing.

**“Agent”** means each of the Administrative Agent, the Paying Agent and the Collateral Agent.

**“Aggregate Amounts Due”** as defined in Section 2.14.

**“Agreement”** means this Credit Agreement, dated as of June 12, 2015, as it may be amended, supplemented or otherwise modified from time to time.

**“Amortization Period”** means the period beginning on the Early Amortization Start Date and ending on the Revolving Commitment Termination Date.

**“Applicable Class A Advance Rate”** means 85%.

**“Applicable Class B Advance Rate”** means 95%.

**“Approved Fund”** means any Person that, in the ordinary course of its business, is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit that generally have an original par amount in excess of \$10,000,000 and that is administered or managed by an entity that is not included in the list of entities set forth in clause (b) of the definition of Direct Competitor or any Affiliate thereof.

**“ Approved State ”** shall mean each of the 50 United States of America and the District of Columbia.

**“Asset Purchase Agreement”** means that certain Asset Purchase Agreement dated as of the date hereof, by and between Company, as Purchaser, and the Seller, as amended, modified or supplemented from time to time, whereby the Seller has agreed to sell and Company has agreed to purchase Eligible Receivables from time to time.

**“Asset Sale”** means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of Holdings’

businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired.

**“Assignment Agreement”** means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

**“Augmenting Lender”** as defined in Section 2.24.

**“Authorized Officer”** means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, chief financial officer, general counsel, treasurer, corporate secretary or controller (or, in each case, the equivalent thereof).

**“Backup Servicer”** means Portfolio Financial Servicing Company or any replacement thereof appointed pursuant to the Backup Servicing Agreement.

**“Backup Servicing Agreement”** means one or more agreements entered into from time to time between Company, the Administrative Agent and Backup Servicer, as it may be amended, modified or supplemented from time to time.

**“Backup Servicing Fee”** shall have the meaning attributed to such term in the Backup Servicing Agreement.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “ **Bankruptcy** ,” as now and hereafter in effect, or any successor statute.

**“Blocked Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Borrowing Base Certificate”** means a certificate substantially in the form of Exhibit C-2, executed by an Authorized Officer of Company and delivered to Administrative Agent, Paying Agent, Collateral Agent and each Lender, which sets forth the calculation of the Class A Borrowing Base and the Class B Borrowing Base, including a calculation of each component thereof.

**“Borrowing Base Deficiency”** means either a Class A Borrowing Base Deficiency or a Class B Borrowing Base Deficiency, as applicable.

**“Borrowing Base Report”** means a report substantially in the form of Exhibit C-2, executed by an Authorized Officer of Company and delivered to Administrative Agent, Paying Agent, Collateral Agent and each Lender, which attaches a Borrowing Base Certificate.

**“Business Day”** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in New York are authorized or required by law or other governmental action to close.

**“Capital Lease”** means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a “synthetic lease” (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

**“Cash”** means money, currency or a credit balance in any demand, securities account or deposit account; *provided, however*, that notwithstanding anything to the contrary contained herein, “Cash” shall exclude any amounts that would not be considered “cash” under GAAP or “cash” as recorded on the books of Holdings and its Subsidiaries.

**“Cash Equivalents”** means, as of any day, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such day; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such day and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one year after such day and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000 and (iii) has the highest rating obtainable from either S&P or Moody’s.

**“Certificate Regarding Non-Bank Status”** means a certificate substantially in the form of Exhibit E.

**“Change of Control”** means, at any time: (a) any “person” or “group” of related persons (as such terms are given meaning in the Exchange Act and the rules of the SEC thereunder) is or becomes the owner, beneficially or of record, directly or indirectly, of more than 40% of the economic and voting interests (including the right to elect directors or similar representatives) in the Capital Stock of Holdings; (b) the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of Holdings and its Subsidiaries taken as a whole to any “person” (as such term is given meaning in the Exchange Act

and the rules of the SEC thereunder); (c) at any time during any consecutive two-year period after the Closing Date, individuals who at the beginning of such period constituted the board of directors of Holdings (together with any new directors whose election or appointment by the board of directors of Holdings or whose nomination for election by the shareholders of Holdings was approved by a vote of a majority of the directors of Holdings then still in office who were either directors at the beginning of such period or whose election, appointment or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors of Holdings then in office; or (d) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Company free and clear of any Lien (other than any Lien as to which the holder thereof (such holder, an “ **Equity Lienholder** ”) has provided the Administrative Agent, for the benefit of the Lenders, a Protective Undertakings Certification).

“**Charged-Off Receivable**” means a Receivable which, in each case, consistent with the Underwriting Policies, has or should have been written off Company’s books as uncollectable.

“**Chattel Paper**” means any “chattel paper”, as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired by the Company.

“**Class**” means a class of Revolving Loans hereunder, designated Class A Revolving Loans or Class B Revolving Loans.

“**Class A Applicable Margin**” means with respect to each Class A Revolving Lender, the “Class A Applicable Margin” described in the Fee Letter between Company and such Class A Revolving Lender.

“**Class A Borrowing Base**” means, as of any day, an amount equal to the lesser of:

(a) (i) the Applicable Class A Advance Rate multiplied by the Adjusted EPOB at such time, plus (ii) the aggregate amount of Collections in the Lockbox Account and the Collection Account to the extent such Collections and other funds have already been applied to reduce the Eligible Portfolio Outstanding Principal Balance minus (iii) 105% of the sum of the Accrued Interest Amount as of such day and the aggregate amount of all accrued and unpaid fees and expenses due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement; and

(b) the Class A Revolving Commitments on such day.

With respect to any calculation of the Class A Borrowing Base with respect to any Credit Date solely for the purpose of determining Class A Revolving Availability for a requested Class A Revolving Loan, the Class A Borrowing Base will be calculated on a pro forma basis giving effect to the Eligible Receivables to be purchased with the proceeds of such Loan. With respect to any calculation of the Class A Borrowing Base for any other purpose, the Class A Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered

to the Collateral Agent and the Administrative Agent, Paying Agent and each Lender with such adjustments as the Paying Agent identifies pursuant to Section 2.21.

**“Class A Borrowing Base Deficiency”** means, as of any day, the amount, if any, by which the Total Utilization of Class A Revolving Commitments exceeds the Class A Borrowing Base.

**“Class A Indemnitee”** means an Indemnitee who is a Class A Revolving Lender, an Affiliate of a Class A Revolving Lender or an officer, partner, director, trustee, employee or agent of a Class A Revolving Lender.

**“Class A Register”** as defined in Section 2.4(b)(i).

**“Class A Revolving Availability”** means, as of any date of determination, the amount, if any, by which the Class A Borrowing Base exceeds the Total Utilization of Class A Revolving Commitments.

**“Class A Revolving Commitment”** means the commitment of a Class A Revolving Lender to make or otherwise fund any Class A Revolving Loan and **“Class A Revolving Commitments”** means such commitments of all Class A Revolving Lenders in the aggregate. The amount of each Class A Revolving Lender’s Class A Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The Administrative Agent shall update Appendix A from time to time to reflect any changes in Class A Revolving Commitments. The aggregate amount of the Class A Revolving Commitments as of the Closing Date is \$100,000,000. The Class A Revolving Commitment of each Class A Revolving Lender will be equal to zero on the Revolving Commitment Termination Date.

**“Class A Revolving Exposure”** means, with respect to any Class A Revolving Lender as of any date of determination, (i) prior to the termination of the Class A Revolving Commitments, that Lender’s Class A Revolving Commitment; and (ii) after the termination of the Class A Revolving Commitments, the aggregate outstanding principal amount of the Class A Revolving Loans of that Lender.

**“Class A Revolving Lender”** means each financial institution listed on the signature pages hereto as a Class A Revolving Lender, and any other Person that becomes a party hereto as a Class A Revolving Lender pursuant to an Assignment Agreement.

**“Class A Revolving Loan”** means a Loan made by a Class A Revolving Lender to Company pursuant to Section 2.1.

**“Class A Revolving Loan Note”** means a promissory note in the form of Exhibit B-1 hereto, as it may be amended, supplemented or otherwise modified from time to time.

**“Class B Agent”** as defined in Section 8.1.

**“Class B Applicable Margin”** means with respect to each Class B Revolving Lender the “Class B Applicable Margin” described in any Fee Letter between Company and such Class B Revolving Lender.

**“Class B Borrowing Base”** means, as of any day, an amount equal to the lesser of:

- (a) (i) the Applicable Class B Advance Rate multiplied by the Adjusted EPOB at such time, plus (ii) the aggregate amount of Collections in the Lockbox Account and the Collection Account to the extent such Collections and other funds have already been applied to reduce the Eligible Portfolio Outstanding Principal Balance, minus (iii) 105% of the sum of the Accrued Interest Amount as of such day and the aggregate amount of all accrued and unpaid fees and expenses due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, minus (iv) the aggregate outstanding principal amount of the Class A Revolving Loans as of such date; and
- (b) the Class B Revolving Commitments on such day.

With respect to any calculation of the Class B Borrowing Base with respect to any Credit Date solely for the purpose of determining Class B Revolving Availability for a requested Class B Revolving Loan, the Class B Borrowing Base will be calculated on a pro forma basis giving effect to the Eligible Receivables to be purchased with the proceeds of such Loan. With respect to any calculation of the Class B Borrowing Base for any other purpose, the Class B Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Collateral Agent, the Administrative Agent, Paying Agent and each Lender, as adjusted to reflect any adjustments identified by the Paying Agent pursuant to Section 2.21.

**“Class B Borrowing Base Deficiency”** means, as of any day, the amount, if any, by which the Total Utilization of Class B Revolving Commitments exceeds the Class B Borrowing Base.

**“Class B Indemnitee”** means an Indemnitee who is a Class B Revolving Lender, an Affiliate of a Class B Revolving Lender or an officer, partner, director, trustee, employee or agent of a Class B Revolving Lender.

**“Class B Register”** as defined in Section 2.4(b)(ii).

**“Class B Revolving Availability”** means, as of any date of determination, the amount, if any, by which the Class B Borrowing Base exceeds the Total Utilization of Class B Revolving Commitments.

**“Class B Revolving Commitment”** means the commitment of a Class B Revolving Lender to make or otherwise fund any Class B Revolving Loan and **“Class B Revolving Commitments”** means such commitments of all Class B Revolving Lenders in the aggregate. The aggregate amount of the Class B Revolving Commitments as of the Closing Date is \$0. The amount of any Class B Revolving Lender’s Class B Revolving Commitment after the Closing Date will be set forth in a Joinder Agreement. The Administrative Agent shall update Appendix A from time to

time to reflect any changes in Class B Revolving Commitments. The Class B Revolving Commitment of each Class B Revolving Lender will be equal to zero on the Revolving Commitment Termination Date.

**“Class B Revolving Exposure”** means, with respect to any Class B Revolving Lender as of any date of determination, (i) prior to the termination of the Class B Revolving Commitments, that Lender’s Class B Revolving Commitment; and (ii) after the termination of the Class B Revolving Commitments, the aggregate outstanding principal amount of the Class B Revolving Loans of that Lender.

**“Class B Revolving Lender”** means each financial institution listed on the signature pages hereto as a Class B Revolving Lender, and any other Person that becomes a party hereto as a Class B Revolving Lender pursuant to an Assignment Agreement.

**“Class B Revolving Loan”** means a Loan made by a Class B Revolving Lender to Company pursuant to Section 2.1.

**“Class B Revolving Loan Note”** means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

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

**“Closing Date Certificate”** means a Closing Date Certificate substantially in the form of Exhibit F-1.

**“Collateral”** means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

**“Collateral Agent”** as defined in the preamble hereto, and any successors or assigns thereto.

**“Collateral Documents”** means the Security Agreement, the Control Agreements and all other instruments, documents and agreements delivered by, or on behalf or at the request of, Company or Holdings pursuant to this Agreement or any of the other Credit Documents, as the case may be, in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of Company as security for the Obligations or to protect or preserve the interests of Collateral Agent or the Secured Parties therein.

**“Collateral Receipt and Exception Report”** shall mean the “Trust Receipt” as defined in the Custodial Agreement.

**“Collection Account”** means a Securities Account with account number 84203400 at Wells Fargo Bank, N.A. in the name of Company.

**“Collections”** means, with respect to each Pledged Receivable, any and all cash collections and other cash proceeds of such Pledged Receivable (whether in the form of cash, checks,

wire transfers, electronic transfers or any other form of cash payment), including, without limitation, all prepayments, all overdue payments, all prepayment penalties and early termination penalties, all finance charges, if any, all amounts collected as interest, fees (including, without limitation, any servicing fees, any origination fees, any loan guaranty fees and, any platform fees), or charges for late payments with respect to such Pledged Receivable, all recoveries with respect to each Charged-Off Receivable (net of amounts, if any, retained by any third party collection agent), all investment proceeds and other investment earnings (net of losses and investment expenses) on Collections as a result of the investment thereof pursuant to Section 6.7, all proceeds of any sale, transfer or other disposition of any Pledged Receivable by Company and all deposits, payments or recoveries made in respect of any Pledged Receivable to any Controlled Account, or received by Company in respect of a Pledged Receivable, and all payments representing a disposition of any Pledged Receivable.

**“Company”** as defined in the preamble hereto.

**“Compliance Certificate”** means a Compliance Certificate substantially in the form of Exhibit C-1.

**“Compliance Review”** as defined in Section 5.5(b).

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

**“Consolidated Liquidity”** means, as of any day, an amount determined for Holdings and its Subsidiaries, on a consolidated basis, equal to the sum of (i) unrestricted Cash and Cash Equivalents of Holdings and its Subsidiaries (other than any special-purpose, bankruptcy-remote Subsidiary of Holdings formed for the sole purpose of owning and financing a portfolio of Receivables), as of such day, (ii) amounts (if any) in the Reserve Account as of such date, (iii) the sum of the Class A Revolving Availability and the Class B Revolving Availability as of such day and (iv) the aggregate amount of all unused and available credit commitments under any credit facilities of Holdings and its Subsidiaries, as of such day; *provided*, that, as of such day, all of the conditions to funding such amounts under clause (iii) and (iv), as the case may be, have been fully satisfied (other than delivery of prior notice of funding and pre-funding notices, opinions and certificates that are reasonably capable of delivery as of such day) and no lender under such credit facilities shall have refused to make a loan or other advance thereunder at any time after a request for a loan was made thereunder.

**“Consolidated Net Income”** means, for any period, the greater of (x) \$0, and (y) (i) the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) the sum of (a) the income (or loss) of any Person (other than a Subsidiary of Holdings) in which any other Person (other than Holdings or any of its Subsidiaries) has a joint interest, plus (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or is merged into or consolidated with Holdings or any of its Subsidiaries or that Person’s assets are acquired by Holdings or any of its Subsidiaries, plus (c) the income of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is

not at the time permitted by operation of the terms of its Organizational Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, plus (d) any gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, plus (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

**“Consolidated Total Debt”** means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Holdings and its Subsidiaries determined on a consolidated basis in accordance with GAAP, including all accrued and unpaid interest on the foregoing, provided, that accounts payable, accrued expenses, liabilities for leasehold improvements and deferred revenue of Holdings and its Subsidiaries shall not be included in any determination of Consolidated Total Debt.

**“Contractual Obligation”** means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**“Control Agreements”** means collectively, the Lockbox Account Control Agreement, the Securities Account Control Agreement and the Blocked Account Control Agreement.

**“Controlled Account”** means each of the Reserve Account, the Collection Account and the Lockbox Account, and the **“Controlled Accounts”** means all of such accounts.

**“Controlled Account Bank”** means Wells Fargo Bank, N.A.

**“Convertible Indebtedness”** means any Indebtedness of Holdings that (a) is convertible to equity, including convertible preferred stock, (b) requires no payment of principal thereof or interest thereon and (c) is fully subordinated to all indebtedness for borrowed money of Holdings, as to right and time of payment and as to any other rights and remedies thereunder, including, an agreement on the part of the holders of such Indebtedness that the maturity of such Indebtedness cannot be accelerated prior to the maturity date of such indebtedness for borrowed money.

**“Credit Date”** means the date of a Credit Extension.

**“Credit Document”** means any of this Agreement, the Revolving Loan Notes, if any, the Collateral Documents, the Asset Purchase Agreement, any Receivables Purchase Agreement, the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and all other documents, instruments or agreements executed and delivered by Company or Holdings for the benefit of any Agent or any Lender in connection herewith.

**“Credit Extension”** means the making of a Revolving Loan.

**“Custodial Agreement”** mean the Custodial Services Agreement to be executed by Company, Servicer, Custodian, Collateral Agent and Administrative Agent, as it may be amended, supplemented or otherwise modified from time to time.

**“Custodian”** means Wells Fargo Bank, N.A., in its capacity as the provider of services under the Custodial Agreement, or any successor thereto in such capacity appointed in accordance with the Custodial Agreement.

**“Daily Pay Receivable”** means any Receivable for which a Payment is generally due on every Business Day.

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

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Default Excess”** means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of Revolving Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Revolving Loans of such Defaulting Lender.

**“Default Interest Rate”** as defined in Section 2.6.

**“Default Period”** means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default, and ending on the earliest of the following dates: (i) the date on which all Revolving Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any payments of the Revolving Loans in accordance with the terms of this Agreement), and (b) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Revolving Commitments, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

**“Defaulted Loan”** as defined in Section 2.18.

**“Defaulted Receivable”** means, with respect to any date of determination, a Receivable which (i) is a Charged-Off Receivable or (ii) has a Missed Payment Factor of (x) with respect to Daily Pay Receivables, sixty (60) or higher or (y) with respect to Weekly Pay Receivables, twelve (12) or higher.

**“Defaulting Lender”** as defined in Section 2.18.

**“Delinquent Receivable”** means, as of any date of determination, any Receivable with a Missed Payment Factor of one (1) or higher as of such date.

**“ Delinquency Ratio ”** means, as of any Determination Date, the percentage equivalent of a fraction (a) the numerator of which is the aggregate Outstanding Principal Balance of all Pledged Receivables (that are not Defaulted Receivables) that had a Missed Payment Factor of (x) with respect to Daily Pay Receivables, fifteen (15) or higher, or (y) with respect to Weekly Pay Receivables, three (3) or higher, in each case, as of such Determination Date, and (b) the denominator of which is the aggregate Outstanding Principal Balance of all Pledged Receivables (that are not Defaulted Receivables) as of such Determination Date.

**“Deposit Account”** means a “deposit account” (as defined in the UCC), including a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**“Designated Officer”** means, with respect to Company, any Person with the title of Chief Executive Officer, Chief Financial Officer or General Counsel.

**“Determination Date”** means the last day of each Monthly Period.

**“Direct Competitor”** means (a) any Person engaged in the same or similar line of business as Holdings, (b) any Person that is a direct competitor of Holdings or any Subsidiary of Holdings and is identified as such by the Company to the Administrative Agent prior to the Closing Date (as such list is updated by the Company from time to time, and acknowledged in writing by the Administrative Agent (such acknowledgment not to be unreasonably withheld)) or (c) any Affiliate of any such Person; provided that, any Person (other than any Person listed in clause (b) and their Affiliates) that either (i) both (A) has a market capitalization equal to or greater than \$5 billion and (B) that is in the business of investing in commercial loans that generally have an original par amount in excess of \$10,000,000 or (ii) that is an Approved Fund, shall in either case not be deemed a “Direct Competitor” hereunder.

**“Document Checklist”** shall have the meaning attributed to such term in the Custodial Agreement.

**“Dollars”** and the sign “\$” mean the lawful money of the United States.

**“E-Sign Receivable”** means any Receivable for which the signature or record of agreement of the Receivables Obligor is obtained through the use and capture of electronic signatures, click-through consents or other electronically recorded assents.

**“Early Amortization Start Date”** means the first date upon which one or more of the following occurs:

(a) as of any Interest Payment Date beginning with September 2015, the Managed Pool Three-Month Average Delinquency Ratio shall be greater than 12%;

(b) by the eighteenth (18th) month anniversary of the Closing Date, a term securitization transaction involving (a) the issuance of securities, and (b) a Permitted Asset Sale hereunder that results in a prepayment of at least 75% of the then outstanding principal amount of the Class A Revolving Loans shall not have occurred; or

(c) Company has failed to satisfy its obligations under Section 4 of the Undertakings Agreement.

**“Eligible Assignee”** means (i) any Lender or any Lender Affiliate (other than a natural person), and (ii) any other Person (other than a natural Person) approved by Company, so long as no Default or Event of Default has occurred and is continuing, and Administrative Agent (each such approval not to be unreasonably withheld); provided, that (y) neither Holdings nor any Affiliate of Holdings shall, in any event, be an Eligible Assignee, and (z) no Direct Competitor shall be an Eligible Assignee so long as no Specified Event of Default has occurred and is continuing.

**“Eligible Portfolio Outstanding Principal Balance”** means, as of any date of determination, the sum of the Outstanding Principal Balance for all Eligible Receivables as of such date.

**“Eligible Product”** means the following Receivable product type: On Deck Core Loans.

**“Eligible Receivable”** means a Receivable with respect to which the Eligibility Criteria are satisfied as of the applicable date of determination.

**“Eligible Receivables Obligor”** means a Receivables Obligor that satisfies the criteria specified in Appendix C hereto under the definition of “Eligible Receivables Obligor”, subject to any changes agreed to by the Requisite Class A Revolving Lenders, the Requisite Class B Revolving Lenders and Company from time to time after the Closing Date.

**“Eligibility Criteria”** means the criteria specified in Appendix C hereto under the definition of “Eligibility Criteria”, subject to any changes agreed to by the Requisite Class A Revolving Lenders, the Requisite Class B Revolving Lenders and Company from time to time after the Closing Date.

**“Employee Benefit Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates.

**“Equity Lienholder”** has the meaning set forth in the definition of “Change of Control”.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“ERISA Affiliate”** means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal

Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Person shall continue to be considered an ERISA Affiliate of such Person within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person and with respect to liabilities arising after such period, but only to the extent that such Person could be liable under the Internal Revenue Code or ERISA as a result of its relationship with such former ERISA Affiliate.

**“ERISA Event”** means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty (30) day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan of Holdings, any of its Subsidiaries, or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates, or the assets thereof, or against Holdings, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from

the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

**“Event of Default”** means each of the events set forth in Section 7.1.

**“Excess Concentration Amounts”** means the amounts set forth on Appendix D hereto.

**“Excess Spread”** means, with respect to any Determination Date for any Monthly Period, the product of (a) 12 times (b) the percentage equivalent of a fraction (i) the numerator of which is the excess, if any, of (x) the Adjusted Interest Collections for such Monthly Period over (y) the aggregate Outstanding Principal Balance of all Pledged Receivables that became Defaulted Receivables during such Monthly Period and (ii) the denominator of which is the average daily Outstanding Principal Balance of Pledged Receivables for such Monthly Period.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Revolving Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Revolving Loan or Revolving Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16(b), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.16(d)(i) or Section 2.16(d)(ii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“FAP Certification Program ”** means the procedures maintained by Holdings that are designed to monitor third-party originating brokers that are part of Holding's “Funding Advisor Program channel” based upon qualification parameters set by Holdings.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, as of the date of this agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), and any current or future regulations promulgated thereunder or official interpretations thereof.

**“Fee Letters”** means (a) each letter agreement dated as of the Closing Date between the Company and each Secured Party party thereto (as such Fee Letters are amended, modified or supplemented from time to time), and (b) each letter agreement entered into thereafter between the Company and any Class B Revolving Lender (or agent thereof) a party thereto (as such Fee Letters are amended, modified or supplemented from time to time).

**“Financial Covenants ”** means the financial covenants set forth on Schedule 1.1 hereto.

**“Financial Officer Certification”** means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer (or the equivalent thereof) of Holdings that such financial statements fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“First Priority”** means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is perfected and is the only Lien to which such Collateral is subject.

**“Fiscal Quarter”** means a fiscal quarter of any Fiscal Year.

**“Fiscal Year”** means the fiscal year of Holdings and its Subsidiaries ending on December 31 of each calendar year.

**“Funding Default”** as defined in Section 2.18.

**“Funding Account”** has the meaning set forth in Section 2.11(a).

**“Funding Notice”** means a notice substantially in the form of Exhibit A-1.

**“GAAP”** means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

**“Governmental Authorization”** means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

**“Highest Concentration Industry Code”** means, on any date of determination, the Industry Code shared by Receivables Obligor of Eligible Receivables having the highest aggregate Outstanding Principal Balance.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Financial Statements”** means as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries, for the Fiscal Year ended 2014, consisting of balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year, and (ii) for the interim period from January 1, 2015 to the Closing Date, internally prepared, unaudited financial statements of Holdings and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders’ equity and cash flows for each quarterly period completed prior to forty-six (46) days before the Closing Date, in the case of clauses (i) and (ii), certified by the chief financial officer (or the equivalent thereof) of Holdings that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

**“Holdings”** means On Deck Capital, Inc., a Delaware corporation.

**“Increased-Cost Lenders”** as defined in Section 2.19.

**“Increasing Lender”** as defined in Section 2.24.

**“Indebtedness”** as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding trade payables incurred in the ordinary course of business that are unsecured and not overdue by more than six (6) months unless being contested in good faith and any such obligations incurred under ERISA); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect

thereof; (ix) any liability of such Person for an obligation of another through any Contractual Obligation (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements of any kind or nature whatsoever (excluding any amounts not otherwise payable by Company under Section 2.16(b)(iii) but including the reasonable and documented fees and disbursements of one (1) counsel for Class A Indemnitees, one counsel for Class B Indemnitees and one (1) counsel for the Collateral Agent and Paying Agent in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable and documented fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Credit Documents, any Related Agreement, or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral)).

**“Indemnified Taxes ”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Company under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** as defined in Section 9.3.

**“Indemnitee Agent Party”** as defined in Section 8.6.

**“Independent Manager”** as defined in Section 6.15.

**“Industry Code”** means, with respect to any Receivables Obligor of an Eligible Receivable, the NAIC industry code under which the business of such Receivables Obligor has been classified by Holdings.

**“Intangible Assets”** means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

**“Interest Payment Date”** means the fifteenth calendar day after the end of each Monthly Period, and if such date is not a Business Day, the next succeeding Business Day.

**“Interest Period”** means an interest period (i) initially, commencing on and including the Closing Date and ending on and including the last day of the calendar month in which the Closing Date occurs; and (ii) thereafter, commencing on and including the first day of each calendar month and ending on and excluding the first day of the immediately succeeding calendar month; provided, that no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is four (4) Business Days prior to the next Interest Payment Date occurring after the end of such Interest Period.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“Investment”** means (i) any direct or indirect purchase or other acquisition by Company of, or of a beneficial interest in, any of the Securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Company to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

**“Joinder Agreement”** as defined in Section 2.24.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

**“Lender”** means each Class A Revolving Lender and each Class B Revolving Lender.

**“Lender Affiliate”** means, as applied to any Lender or Agent, any Related Fund and any Person directly or indirectly controlling (including any member of senior management of such Person), controlled by, or under common control with, such Lender or Agent. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the

management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

**“Leverage Ratio”** means the ratio as of any day of (a) Consolidated Total Debt, excluding Subordinated Indebtedness and Convertible Indebtedness, as of such day, to (b) the sum of (i) Holdings’ total stockholders’ equity as of such day, (ii) Warranty Liability as of such day and (iii) the sum of Subordinated Indebtedness and Convertible Indebtedness as of such day.

**“LIBO Rate”** means, for any Revolving Loan (or portion thereof) for any day, the rate per annum determined by, with respect to the (i) Class A Revolving Loans, the Administrative Agent, and (ii) Class B Revolving Loans, the Paying Agent, in each case at approximately 11:00 a.m., London time, on such day by reference to the 30-day ICE Benchmark Administration Limited London interbank offered rate per annum for deposits in Dollars for a period equal to one month (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent or the Paying Agent, as applicable, in its sole discretion); provided, that if such rate is not available at such time for any reason, then the “LIBO Rate” shall be the rate per annum (rounded upward to the nearest 1/16th of 1%) listed in The Wall Street Journal, “Money Rates” table at or about 10:00 a.m., New York City time, on such day (or, if no such rate is listed on such day, the rate listed on the Business Day on which such rate was last listed).

**“Lien”** means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

**“Limited Liability Company Agreement”** means the Amended and Restated Limited Liability Company Agreement of the Company, dated as of June 12, 2015.

**“Lockbox Account”** means a Deposit Account with account number 1830043281 at MB Financial Bank, N.A. in the name of Company.

**“Lockbox Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Lockbox System”** as defined in Section 2.11(d).

**“Managed Pool Receivables”** means, at any time, Receivables then owned by Holdings or its Subsidiaries that were originated under the laws of Virginia or another State of the United States.

**“Managed Pool Three-Month Average Delinquency Ratio”** means the Three-Month Average Delinquency Ratio, but excluding for purposes of such calculation (and for purposes of calculating “Delinquency Ratio” in connection therewith) all Receivables other than Managed Pool Receivables.

**“Margin Stock”** as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

**“Master Record”** as defined in the Custodial Agreement.

**“Material Adverse Effect”** means, with respect to any event or circumstance and any Person, a material adverse effect on: (i) the business, assets, financial condition or results of operations of such Person and its consolidated Subsidiaries, if any, taken as a whole; (ii) the ability of such Person to perform its material obligations under the Credit Documents; (iii) the validity or enforceability of any Credit Document to which such Person is a party; or (iv) the existence, perfection, priority or enforceability of any security interest in a material amount of the Pledged Receivables taken as a whole or in any material part.

**“Material Contract”** means any contract or other arrangement to which Company is a party (other than the Credit Documents or the Related Agreements) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

**“Material Modification”** means, with respect to any Receivable, a reduction in the interest rate, an extension of the term, a reduction in, or change in frequency of, any required Payment or extension of a Payment Date (other than a temporary modification made in accordance with the Underwriting Policies) or a reduction in the Outstanding Principal Balance.

**“Materials”** as defined in Section 5.5(b).

**“Maximum Class B Interest Rate”** means a rate per annum equal to the LIBO Rate plus 6.00%, as the same may be increased from time to time with the consent of the Administrative Agent in writing.

**“Maximum Upfront Fee”** means, with respect to each Receivable, the greater of (a) \$695 and (b) 3.5% of the original aggregate unpaid principal balance of such Receivable.

**“Missed Payment Factor”** means, in respect of any Receivable, an amount equal to the sum of (a) the amount equal to (i) the total past due amount of Payments in respect of such Receivable, divided by (ii) the required periodic Payment in respect of such Receivable as set forth in the related Receivables Agreement and (b) the number of Payment Dates, if any, past the Receivable maturity date on which a Payment was due but not received.

**“Monthly Period”** means the period from and including the first day of a calendar month to and including the last day of such calendar month, provided, however, that the initial Monthly Period will commence on the date hereof and end on the last day of the calendar month in which the Closing Date occurred.

**“Monthly Reporting Date”** means the third Business Day prior to each Interest Payment Date.

**“Monthly Servicing Report”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Moody’s”** means Moody’s Investor Services, Inc.

**“Multiemployer Plan”** means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

**“NAIC”** means The National Association of Insurance Commissioners, and any successor thereto.

**“Net Asset Sale Proceeds”** means, with respect to any Permitted Asset Sale, an amount equal to: (i) Cash payments received by, or on behalf of, Company from such Permitted Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Permitted Asset Sale to the extent paid or payable to non-Affiliates, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Permitted Asset Sale during the tax period the sale occurs and (b) a reasonable reserve for any recourse for a breach of the representations and warranties made by Company to the purchaser in connection with such Permitted Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

**“Net Cash Proceeds”** shall mean with respect to any equity issuance, the cash proceeds thereof, net of all taxes and reasonable investment banker’s fees, underwriting discounts or commissions, reasonable legal fees and other reasonable costs and other expenses incurred in connection therewith.

**“Non-Consenting Lender”** as defined in Section 2.19.

**“Non-Creditworthy Lender”** as defined in Section 2.19.

**“Non-US Lender”** as defined in Section 2.16(d)(i).

**“Obligations”** means all obligations of every nature of Company from time to time owed to the Agents (including former Agents), the Lenders or any of them, in each case under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Company, would have accrued on any Obligation, whether or not a claim is allowed against Company for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

**“On Deck Core Loans”** means Receivables designated as such in the Underwriting Policies.

**“On Deck Receivable Grade”** means, with respect to any Receivable, the grade, ranging from “A” to “F”, assigned to such Receivable at origination by Holdings pursuant to the grading system developed and maintained by Holdings.

**“On Deck Score”** means that numerical value that represents Holdings’ evaluation of the creditworthiness of a business and its likelihood of default on a commercial loan or other similar credit arrangement generated by “version 5” of the proprietary methodology developed and maintained by Holdings, as such methodology is applied in accordance with the other aspects of the Underwriting Policies, as such methodology may be revised and updated from time to time in accordance with Section 6.17.

**“Organizational Documents”** means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization or certificate of formation, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

**“Original Borrowing Base Certificate”** as defined in Section 2.1(c)(ii).

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

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

**“Outstanding Principal Balance”** means, as of any date with respect to any Receivable, the unpaid principal balance of such Receivable as set forth on the Servicer’s books and records as of the close of business on the immediately preceding Business Day; *provided, however*, that the Outstanding Principal Balance of any Pledged Receivable that has become a Charged-Off Loan will be zero.

**“Participant Register”** as defined in Section 9.6(h).

**“Paying Agent”** as defined in the preamble hereto, and any of its successors and assigns.

“ **Payment** ” means, with respect to any Receivable, the required scheduled loan payment in respect of such Receivable, as set forth in the applicable Receivable Agreement.

“ **Payment Dates** ” means, with respect to any Receivable, the date a payment is due in accordance with the Receivable Agreement with respect to such Receivable as in effect as of the date of determination.

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

“**Pension Plan**” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“**Permitted Asset Sale**” means so long as all Net Asset Sale Proceeds are contemporaneously remitted to the Collection Account, (a) the sale by Company of Receivables to Holdings pursuant to any repurchase obligations of Holdings under the Asset Purchase Agreement, (b) the sale by the Servicer on behalf of Company of Charged-Off Receivables to any third party in accordance with the Servicing Standard, provided, that such sales are made without representation, warranty or recourse of any kind by Company (other than customary representations regarding title and absence of liens on the Charged-Off Receivables, and the status of Company, due authorization, enforceability, no conflict and no required consents in respect of such sale), (c) the sale by Company of Receivables to Holdings who immediately thereafter sells such Receivables to a special-purpose Subsidiary of Holdings, so long as, (i) the amount received by Company therefore and deposited into the Collection Account is no less than the aggregate Outstanding Principal Balances of such Receivables, (ii) such sale is made without representation, warranty or recourse of any kind by Company (other than customary representations regarding title, absence of liens on the Receivables, status of Company, due authorization, enforceability, no conflict and no required consents in respect of such sale), (iii) the manner in which such Receivables were selected by Company does not adversely affect the Lenders and (iv) the agreement pursuant to which such Receivables were sold to Holdings or such special-purpose Subsidiary, as the case may be, contains an obligation on the part of Holdings or such special-purpose Subsidiary to not file or join in filing any involuntary bankruptcy petition against Company prior to the end of the period that is one year and one day after the payment in full of all Obligations of Company under this Agreement and not to cooperate with or encourage others to file involuntary bankruptcy petitions against Company during the same period, and (d) the sale by Company of Receivables with the written consent of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders.

“**Permitted Discretion**” means, with respect to any Person, a determination or judgment made by such Person in good faith in the exercise of reasonable (from the perspective of a secured lender) credit or business judgment.

“**Permitted Investments**” means the following, subject to qualifications hereinafter set forth: (i) obligations of, or obligations guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America; (ii) federal funds, unsecured certificates of deposit and time deposits of any bank, the short-term debt obligations of which are rated A-1+ (or the equivalent) by each of the rating agencies and, if it has a term in excess of three months, the long-

term debt obligations of which are rated AAA (or the equivalent) by each of the Moody's and S&P; (iii) deposits that are fully insured by the Federal Deposit Insurance Corp. (FDIC); (iv) only to the extent permitted by Rule 3a-7 under the Investment Company Act of 1940, investments in money market funds which invest substantially all their assets in securities of the types described in clauses (i) through (iii) above that are rated in the highest rating category by Moody's or S&P; and (v) such other investments as to which the Administrative Agent consent in its sole discretion. Each of the Permitted Investments may be purchased by the Paying Agent or Collateral Agent through an affiliate of the Paying Agent or Collateral Agent.

Notwithstanding the foregoing, “**Permitted Investments**” (i) shall exclude any security with the S&P's “r” symbol (or any other rating agency's corresponding symbol) attached to the rating (indicating high volatility or dramatic fluctuations in their expected returns because of market risk), as well as any mortgage-backed securities and any security of the type commonly known as “strips”; (ii) shall not have maturities in excess of one year; (iii) shall be limited to those instruments that have a predetermined fixed dollar of principal due at maturity that cannot vary or change; and (iv) shall exclude any investment where the right to receive principal and interest derived from the underlying investment provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment. Interest may either be fixed or variable, and any variable interest must be tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with that index. No investment shall be made which requires a payment above par for an obligation if the obligation may be prepaid at the option of the issuer thereof prior to its maturity. All investments shall mature or be redeemable upon the option of the holder thereof on or prior to the earlier of (x) three months from the date of their purchase or (y) the Business Day preceding the day before the date such amounts are required to be applied hereunder.

“**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

“**Pledged Receivables**” shall have the meaning attributed to such term in the Servicing Agreement.

“**Portfolio**” means the Receivables purchased by Company from Holdings pursuant to the Asset Purchase Agreement.

“**Portfolio Performance Covenant**” means the portfolio performance covenants specified in Appendix E.

“**Portfolio Weighted Average Receivable Yield**” means as of any date of determination, the quotient, expressed as a percentage, obtained by dividing (a) the sum, for all Eligible Receivables, of the product of (i) the Receivable Yield for each such Receivable multiplied by (ii) the Outstanding Principal Balance of such Receivable as of such date, by (b) the Eligible Portfolio Outstanding Principal Balance as of such date.

**“Prime Rate”** means, as of any day, the rate of interest per annum equal to the prime rate publicly announced by the majority of the eleven largest commercial banks chartered under United States Federal or State banking law as its prime rate (or similar base rate) in effect at its principal office. The determination of such eleven largest commercial banks shall be based upon deposits as of the prior year-end, as reported in the American Banker or such other source as may be reasonably selected by the Paying Agent.

**“Principal Office”** means, for Administrative Agent, Administrative Agent’s “Principal Office” as set forth on Appendix B, or such other office as Administrative Agent may from time to time designate in writing to Company and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be as set forth on Appendix B (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Company and each Lender).

**“Pro Rata Share”** means with respect to (i) any Class A Revolving Lender, the percentage obtained by dividing (a) the Class A Revolving Exposure of that Lender by (b) the aggregate Class A Revolving Exposure of all Lenders, and (ii) any Class B Revolving Lender, the percentage obtained by dividing (a) the Class B Revolving Exposure of that Lender by (b) the aggregate Class B Revolving Exposure of all Lenders.

**“Protective Undertaking Certification”** means a certification provided by an Equity Lienholder to the Administrative Agent, for the benefit of the Lenders, in form and substance reasonably satisfactory to the Administrative Agent, whereby such Equity Lienholder certifies that such Equity Lienholder will not (a) cause the Company to commence a voluntary or involuntary proceeding under any Debtor Relief Law, (b) in connection with any such proceeding, challenge the “true sale” characterization of any sale of Receivables by Holdings to the Company, or (c) in connection with any such proceeding, attempt to cause the Company to be “substantively consolidated” with Holdings or any other Person.

**“Re-Aged”** means returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

**“Receivable”** means any loan or similar contract with a Receivables Obligor pursuant to which Holdings or the Receivables Account Bank extends credit to such Receivables Obligor including all rights under any and all security documents or supporting obligations related thereto, including the applicable Receivable Agreements.

**“Receivable Agreements”** means, collectively, with respect to any Receivable, a Business Loan and Security Agreement, a Business Loan and Security Agreement Supplement or Loan Summary, the Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit), in each case, in substantially the form provided to the Administrative Agent on or prior to the Closing Date and as may be amended, supplemented or modified from time to time in accordance with the terms of this Agreement and the other documents related thereto to which the Receivables Obligor is a party.

**“Receivable File”** means, with respect to any Receivable, (i) copies of each applicable document listed in the definition of “Receivable Agreements,” (ii) the UCC financing statement, if any, filed against the Receivables Obligor in connection with the origination of such Receivable and (iii) copies of each of the documents required by, and listed in, the Document Checklist attached to the Custodial Agreement, each of which may be in electronic form.

**“Receivable Yield”** means, with respect to any Receivable, the imputed interest rate that is calculated on the basis of the expected aggregate annualized rate of return (calculated inclusive of all interest and fees (other than any Upfront Fees)) of such Receivable over the life of such Receivable.

Such calculation shall assume:

- (a) 52 Payment Dates per annum, for Weekly Pay Receivables; and
- (b) 252 Payment Dates per annum, for Daily Pay Receivables.

**“Receivables Account Bank”** means, with respect to any Receivable, (i) BofI Federal Bank, a federal savings institution, or (ii) upon notice to the Administrative Agent, any other institution organized under the laws of the United States of America or any State thereof and subject to supervision and examination by federal or state banking authorities that originates and owns Loans for the Seller pursuant to a Receivables Program Agreement.

**“Receivables Guarantor”** means with respect to any Receivables Obligor, (a) each holder of the Capital Stock (or equivalent ownership or beneficial interest) of such Receivables Obligor in the case of a Receivables Obligor which is a corporation, partnership, limited liability company, trust or equivalent entity, who has agreed to unconditionally guarantee all of the obligations of the related Receivables Obligor under the related Receivable Agreements or (b) the natural person operating as the Receivables Obligor, if the Receivables Obligor is a sole proprietor.

**“Receivables Obligor”** means with respect to any Receivable, the Person or Persons obligated to make payments with respect to such Receivable, excluding any Receivables Guarantor referred to in clause (a) of the definition of “Receivables Guarantor.”

**“Receivables Program Agreement”** means the (i) Master Business Loan Marketing Agreement, dated as of July 19, 2012, between Holdings and BofI Federal Bank, a federal savings institution (as amended, modified or supplemented from time to time) and (ii) any other agreement between Holdings and a Receivables Account Bank pursuant to which Holdings may refer applicants for small business loans conforming to the Underwriting Policies to such Receivables Account Bank and such Receivables Account Bank has the discretion to fund or not fund a loan to such applicant based on its own evaluation of such applicant and containing those provisions as are reasonably necessary to ensure that the transfer of small business loans by such Receivables Account Bank to Holdings thereunder are treated as absolute sales.

**“Receivables Purchase Agreement”** means a Bill of Sale and Assignment of Assets, by and between Holdings and any Subsidiary of Holdings, in substantially the form of Exhibit H hereto.

**“Register”** means a Class A Register or Class B Register, as applicable.

**“Regulation D”** means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

**“Related Agreements”** means, collectively the Organizational Documents of Company and each Receivables Program Agreement.

**“Related Fund”** means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Related Security”** shall have the meaning attributed to such term in the Asset Purchase Agreement.

**“Replacement Borrowing Base Certificate”** as defined in Section 2.1(c)(ii).

**“Replacement Lender”** as defined in Section 2.19.

**“Requirements of Law”** means as to any Person, any law (statutory or common), treaty, rule, ordinance, order, judgment, Governmental Authorization, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

**“Requisite Class A Revolving Lenders”** means one or more Class A Revolving Lenders having or holding Class A Revolving Exposure and representing more than 50% of the sum of the aggregate Class A Revolving Exposure of all Class A Revolving Lenders.

**“Requisite Class B Revolving Lenders”** means one or more Class B Revolving Lenders having or holding Class B Revolving Exposure and representing more than 50% of the sum of the aggregate Class B Revolving Exposure of all Class B Revolving Lenders.

**“Requisite Lenders”** means (a) until the Revolving Commitment Termination Date shall have occurred and all Class A Revolving Loans and all other Obligations owing to the Class A Revolving Lender Groups have been paid in full in cash, the Requisite Class A Revolving Lenders and (b) thereafter, the Requisite Class B Revolving Lenders.

**“Reserve Account”** means a Deposit Account with account number 84203401 at Wells Fargo Bank N.A. in the name of Company.

**“Reserve Account Funding Amount”** means, on any day during a Reserve Account Funding Period, the excess, if any, of (a) the product of (i) 1.00% and (ii) the aggregate principal balance of the Class A Revolving Loans, over (b) the amount then on deposit in the Reserve Account.

**“Reserve Account Funding Event”** means, as of any date of determination with respect to the three Monthly Periods most recently ended, that the Three-Month Average Excess Spread was less than 6.00%. Notwithstanding the foregoing, a Reserve Account Funding Event shall be deemed to no longer exist from and after any date upon which a Reserve Account Funding Event Cure has occurred.

**“Reserve Account Funding Event Cure”** means, as of any date of determination with respect to the three Monthly Periods most recently ended, that the Three-Month Average Excess Spread was greater than 6.0%.

**“Reserve Account Funding Period”** means the period commencing on the first day after the Closing Date on which a Reserve Account Funding Event shall occur and ending on the first day thereafter on which the Reserve Account Funding Event Cure shall occur, and the period commencing on the first day thereafter on which another Reserve Account Funding Event shall occur and ending on the Termination Date.

**“Responsible Officer”** means, when used with respect to any Person, any officer of such Person, including any president, vice president, executive vice president, assistant vice president, treasurer, secretary, assistant secretary or any other officer thereof customarily performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any matter is referred because of such officer’s knowledge of or familiarity with the particular subject and having direct responsibility for the administration of this Agreement and the other Credit Documents to which such Person is a party.

**“Restricted Junior Payment”** means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Company now or hereafter outstanding, except a dividend payable solely in shares of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Company now or hereafter outstanding; and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Company now or hereafter outstanding.

**“Revolving Availability”** means Class A Revolving Availability or Class B Revolving Availability, as applicable.

**“Revolving Commitment”** means a Class A Revolving Commitment or Class B Revolving Commitment, as applicable.

**“Revolving Commitment Period”** means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

**“Revolving Commitment Termination Date”** means the earliest to occur of (i) the date that is the second anniversary of the Closing Date; (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.9(a); and (iii) the date of the termination of the Revolving Commitments pursuant to Section 7.1.

**“Revolving Exposure”** means, (a) with respect to any Class A Revolving Lender as of any date of determination, such Class A Revolving Lender’s Class A Revolving Exposure and (b) with respect to any Class B Revolving Lender as of any date of determination, such Class B Revolving Lender's Class B Revolving Exposure.

**“Revolving Loan”** means a Class A Revolving Loan or a Class B Revolving Loan, as applicable.

**“Revolving Loan Note”** means Class A Revolving Loan Note or a Class B Revolving Loan Note, as applicable.

**“S&P”** means Standard & Poor’s Ratings Services, a Standard & Poor's Financial Services LLC business, and its permitted successors and assigns.

**“Secured Parties”** shall have the meaning attributed to such term in the Security Agreement.

**“Securities”** means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**“Securities Account”** means a “securities account” (as defined in the UCC).

**“Securities Account Control Agreement”** shall have the meaning attributed to such term in the Security Agreement.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, and any successor statute.

**“Security Agreement”** means that certain Security Agreement dated as of the date hereof between Company and the Collateral Agent, as it may be amended, restated or otherwise modified from time to time.

**“Seller”** has the meaning set forth in the Asset Purchase Agreement.

**“Servicer”** means Holdings, in its capacity as the “Servicer” under the Servicing Agreement, and, after any removal or resignation of Holdings as the “Servicer” in accordance with the Servicing Agreement, any Successor Servicer.

**“Servicer Default”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Servicing Agreement”** means that certain Servicing Agreement dated as of the date hereof between Company, Holdings and the Administrative Agent, as it may be amended, restated or otherwise modified from time to time, and, after the appointment of any Successor Servicer, the Successor Servicing Agreement to which such Successor Servicer is a party, as it may be amended, restated or otherwise modified from time to time.

**“Servicing Fees”** shall have the meaning attributed to such term in the Servicing Agreement; provided, however that, after the appointment of any Successor Servicer, the Servicing Fees shall mean the Successor Servicer Fees payable to such Successor Servicer.

**“Servicing Reports”** means the Servicing Reports delivered pursuant to the Servicing Agreement, including the Monthly Servicing Report.

**“Servicing Standard”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Servicing Transition Expenses”** means all reasonable, out-of-pocket costs and expenses actually incurred by the Successor Servicer in connection with the assumption of servicing of the Pledged Receivables by a Successor Servicer after the delivery of a Termination Notice to the Servicer.

**“Servicing Transition Period”** means the period commencing on the giving of a Termination Notice and ending such number of days thereafter as shall be determined by the Administrative Agent in its Permitted Discretion.

**“Solvency Certificate”** means a Solvency Certificate of the chief financial officer (or the equivalent thereof) of each of Holdings and Company substantially in the form of Exhibit F-2.

**“Solvent”** means, with respect to Company or Holdings, that as of the date of determination, both (i) (a) the sum of such entity’s debt (including contingent liabilities) does not exceed the present fair saleable value of such entity’s present assets; (b) such entity’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date; and (c) such entity has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such entity is “solvent” within the meaning given that term and similar terms under laws applicable to it relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

**“Specified Event of Default”** means any Event of Default occurring under Sections 7.1(a), (g) or (h).

**“Subordinated Indebtedness”** means any Indebtedness of Holdings that is fully subordinated to all senior indebtedness for borrowed money of Holdings, as to right and time of payment and as to any other rights and remedies thereunder, including, an agreement on the part of the holders of such Indebtedness that the maturity of such Indebtedness cannot be accelerated prior to the maturity date of such senior indebtedness for borrowed money.

**“Subsidiary”** means, with respect to any Person, any corporation, partnership, limited liability company, association, or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

**“Subsidiary Receivables”** means certain Receivables (i) owned by any Subsidiary of Holdings, and (ii) sold by such Subsidiary of Holdings to Holdings pursuant to a Receivables Purchase Agreement, and immediately thereafter sold by Holdings to Company, in each case, on one or more Transfer Dates.

**“Successor Servicer”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Successor Servicing Agreement”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Successor Servicer Fees”** means the servicing fees payable to a Successor Servicer pursuant to a Successor Servicing Agreement.

**“Tangible Net Worth”** means, as of any day, the total of (a) Holdings’ total stockholders’ equity, minus (b) all Intangible Assets of Holdings, minus (c) all amounts due to Holdings from its Affiliates, plus (d) any Convertible Indebtedness, plus (e) any Warranty Liability.

**“Tax”** means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including any interest, additions to tax or penalties applicable thereto.

**“Terminated Lender”** as defined in Section 2.19.

**“Termination Date”** means the date on, and as of, which (a) all Revolving Loans have been repaid in full in cash, (b) all other Obligations (other than contingent indemnification obligations for which demand has not been made) under this Agreement and the other Credit

Documents have been paid in full in cash or otherwise completely discharged, and (c) the Revolving Commitment Termination Date shall have occurred.

**“Termination Notice”** shall have the meaning attributed to such term in the Servicing Agreement.

**“Three-Month Average Delinquency Ratio”** means, on any Interest Payment Date, the average of the Delinquency Ratios as of the three Determination Dates immediately preceding such Interest Payment Date.

**“Three-Month Average Excess Spread”** means, on any Interest Payment Date, the average of the Excess Spreads as of the three Determination Dates immediately preceding such Interest Payment Date.

**“Three-Month Weighted Average Receivable Yield”** means, on any Interest Payment Date, the average of the Portfolio Weighted Average Receivable Yields as of the three Determination Dates immediately preceding such Interest Payment Date.

**“Total Utilization of Class A Revolving Commitments”** means, as at any date of determination, the aggregate principal amount of all outstanding Class A Revolving Loans.

**“Total Utilization of Class B Revolving Commitments”** means, as at any date of determination, the aggregate principal amount of all outstanding Class B Revolving Loans.

**“Transaction Costs”** means the fees, costs and expenses payable by Holdings or Company on or within ninety (90) days after the Closing Date in connection with the transactions contemplated by the Credit Documents.

**“Transfer Date”** has the meaning assigned to such term in the Asset Purchase Agreement.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

**“UCC Agent”** means Corporation Service Company, a Delaware corporation, in its capacity as agent for Holdings or other entity providing secured party representation services for Holdings from time to time.

**“Undertakings Agreement”** means that certain agreement, dated as of the date hereof, by and among Holdings, the Company, the lenders party thereto, the Paying Agent and the Administrative Agent.

**“Underwriting Policies”** means the credit policies and procedures of Holdings, including the underwriting guidelines and OnDeck Score methodology, and the collection policies and procedures of Holdings, in each case in effect as of the Closing Date and in substantially the form provided to the Administrative Agent on or prior to the Closing Date, as such policies,

procedures, guidelines and methodologies may be amended from time to time in accordance with Section 6.17.

**“Upfront Fees”** means, with respect to any Receivable, the sum of any fees charged by Holdings or the Receivables Account Bank, as the case may be, to a Receivables Obligor in connection with the disbursement of a loan, as set forth in the Receivables Agreement related to such Receivable, which are deducted from the initial amount disbursed to such Receivables Obligor, including the “Origination Fee” set forth on the applicable Receivable Agreement.

**“Volcker Rule”** means the common rule entitled “Proprietary Trading and Certain Interests and Relationships with Covered Funds” published at 79 Fed. Reg. 5779 et seq.

**“Warranty Liability”** means, as of any day, the aggregate stated balance sheet fair value of all outstanding warrants exercisable for redeemable convertible preferred shares of Holdings determined in accordance with GAAP.

**“Weekly Pay Receivable”** means any Receivable for which a Payment is generally due once per week.

**1.2 Accounting Terms** . Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to Section 5.1(a) and Section 5.1(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(d), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either Company, the Requisite Lenders or the Administrative Agent shall so request, the Administrative Agent, the Lenders and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP and accounting principles and policies in conformity with those used to prepare the Historical Financial Statements and (b) Company shall provide to the Administrative Agent and each Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. If Administrative Agent, Company and the Administrative Agent cannot agree upon the required amendments within thirty (30) days following the date of implementation of any applicable change in GAAP, then all financial statements delivered and all calculations of financial covenants and other standards and terms in accordance with this Agreement and the other Credit Documents shall be prepared, delivered and made without regard to the underlying change in GAAP.

**1.3 Interpretation, etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not

be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

## **SECTION 2. LOANS**

### **2.1 Revolving Loans .**

#### **(a) Revolving Commitments.**

(i) During the Revolving Commitment Period and provided the Amortization Period is not then occurring, subject to the terms and conditions hereof, including, without limitation delivery of an updated Borrowing Base Certificate and Borrowing Base Report pursuant to Section 3.2(a)(i), each Class A Revolving Lender severally agrees to make Class A Revolving Loans to Company in an aggregate amount up to but not exceeding such Class A Revolving Lender’s Revolving Commitment; provided that no Class A Revolving Lender shall make any such Class A Revolving Loan or portion thereof to the extent that, after giving effect to such Class A Revolving Loan:

(a) the Total Utilization of Class A Revolving Commitments exceeds the Class A Borrowing Base; or

(b) the aggregate outstanding principal amount of the Class A Revolving Loans funded by such Class A Revolving Lender hereunder shall exceed its Class A Revolving Commitment.

(ii) During the Revolving Commitment Period, subject to the terms and conditions hereof, including, without limitation delivery of an updated Borrowing Base Certificate and Borrowing Base Report pursuant to Section 3.2(a)(i), each Class B Revolving Lender severally agrees to make Class B Revolving Loans to Company in an aggregate amount up to but not exceeding such Lender’s Class B Revolving Commitment; provided that no Class B Revolving Lender shall make any such Class B Revolving Loan or portion thereof to the extent that, after giving effect to such Class B Revolving Loan:

(a) the Total Utilization of Class B Revolving Commitments exceeds the Class B Borrowing Base; or

(b) the aggregate outstanding principal amount of the Class B Revolving Loans funded by such Class B Revolving Lender hereunder shall exceed its Class B Revolving Commitment.

(b) Amounts borrowed pursuant to Section 2.1(a) may be repaid and reborrowed during the Revolving Commitment Period, and any repayment of the Revolving Loans (other than (i) pursuant to Section 2.10 (which circumstance shall be governed by Section 2.10), (ii) on any

Interest Payment Date upon which no Event of Default has occurred and is continuing (which circumstance shall be governed by Section 2.12(a)) or (iii) on a date during the Amortization Period or upon which an Event of Default has occurred and is continuing (which circumstances shall be governed by Section 2.12(b))) shall be applied as directed by Company, provided that the Company (A) may not repay the Revolving Loans more than three (3) times per week, (B) must deliver to the Administrative Agent, the Paying Agent and each Class B Revolving Lender a Controlled Account Voluntary Payment Notice pursuant to Section 2.11(c)(vii) in connection with such repayment and (C) each repayment of the Class A Revolving Loans or Class B Revolving Loans shall be in a minimum amount of \$250,000. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date. For the avoidance of doubt, the Company may also at any time or from time to time during the Amortization Period voluntarily prepay the Revolving Loans in whole or in part.

(c) Borrowing Mechanics for Revolving Loans.

(i) Class A Revolving Loans shall be made in an aggregate minimum amount of \$50,000, and Class B Revolving Loans shall be made in an aggregate minimum amount of \$50,000.

(ii) Whenever Company desires that Lenders make Revolving Loans, Company shall deliver to Administrative Agent, each Class B Revolving Lender, the Paying Agent and the Custodian a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least two (2) Business Days in advance of the proposed Credit Date; *provided*, that (x) the Company shall review such Funding Notice on the Business Day immediately preceding the proposed Credit Date and (y) if following such review it has determined that a Receivable would not qualify as an Eligible Receivable by virtue of clause (h) of the Eligibility Criteria not being satisfied then (1) such Receivable shall be deemed to be excluded from the Borrowing Base Certificate included in such Funding Notice (each, an “Original Borrowing Base Certificate”) (and any certification related thereto contained therein or in the Credit Documents) and (2) the Company shall deliver to Administrative Agent, each Class B Revolving Lender, the Custodian and the Paying Agent a revised Funding Notice no later than 1:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed Credit Date and such revised Funding Notice (and the corresponding Borrowing Base Certificate) (each, a “Replacement Borrowing Base Certificate”) shall be modified solely to make adjustments necessary to exclude any such Receivable that would not qualify as an Eligible Receivable by virtue of clause (h) of the Eligibility Criteria including any reductions due to any resulting Excess Concentration Amounts, if any. Each such Funding Notice shall be delivered with a Borrowing Base Certificate reflecting sufficient Class A Revolving Availability and Class B Revolving Availability, as applicable, for the requested Revolving Loans and a Borrowing Base Report.

(iii) Each Lender shall make the amount of its Revolving Loan available to the Paying Agent not later than 1:00 p.m. (New York City time) on the applicable Credit

Date by wire transfer of same day funds in Dollars to the Funding Account, and the Paying Agent shall remit such funds to the Company not later than 3:00 p.m. (New York City time) by wire transfer of same day funds in Dollars from the Funding Account to another account of Company designated in the related Funding Notice.

(iv) Company may borrow Class A Revolving Loans pursuant to this Section 2.1, purchase Eligible Receivables pursuant to Section 2.11(c)(vii)(C) and/or repay Class A Revolving Loans pursuant to Section 2.11(c)(vii)(B) no more than three (3) times per week. Company may borrow Class B Revolving Loans pursuant to this Section 2.1 no more than three (3) times a week.

(d) Deemed Requests for Revolving Loans to Pay Required Payments. All payments of principal, interest, fees and other amounts payable to Lenders of any Class under this Agreement or any Credit Document, and amounts required to be funded into the Reserve Account to maintain the then applicable Reserve Account Funding Amount, may be paid from the proceeds of Revolving Loans of such Class, made pursuant to a Funding Notice from Company pursuant to Section 2.1(c).

**2.2 Pro Rata Shares** . All Revolving Loans of each Class shall be made by Class A Revolving Lenders or Class B Revolving Lenders, as applicable, simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Revolving Loan requested hereunder nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Revolving Loan requested hereunder.

**2.3 Use of Proceeds** . The proceeds of Revolving Loans, if any, made on the Closing Date shall be applied by Company to (a) acquire Eligible Receivables from Holdings pursuant to the Asset Purchase Agreement and (b) pay Transaction Costs. The proceeds of the Revolving Loans made after the Closing Date shall be applied by Company to (a) finance the acquisition of Eligible Receivables from Holdings pursuant to the Asset Purchase Agreement, (b) pay Transaction Costs and ongoing fees and expenses of Company hereunder, (c) make other payments in accordance with Section 2.12. and (d) in the case of Revolving Loans made pursuant to Section 2.1(d), to make payments of principal, interest, fees and other amounts owing to the Lenders under the Credit Documents or to fund the Reserve Account. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

**2.4 Evidence of Debt; Register; Lenders' Books and Records; Notes** .

(a) Lenders' Evidence of Debt . Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Revolving Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any

Lender's Revolving Commitments or Company's Obligations in respect of any applicable Revolving Loans; and provided further, in the event of any inconsistency between the Registers and any Lender's records, the recordations in the Registers shall govern absent manifest error.

(b) Registers.

(i) Class A Register. The Administrative Agent, acting for this purpose as an agent of the Company, shall maintain at its Principal Office a register for the recordation of the names and addresses of the Class A Revolving Lenders and the Class A Revolving Commitments and Class A Revolving Loans of each Class A Revolving Lender from time to time (the "**Class A Register**"). The Class A Register shall be available for inspection by Company or any Class A Revolving Lender at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall record in the Class A Register the Class A Revolving Commitments and the Class A Revolving Loans, and each repayment or prepayment in respect of the principal amount of the Class A Revolving Loans, and any such recordation shall be conclusive and binding on Company and each Class A Revolving Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Class A Lender's Class A Revolving Commitments or Company's Obligations in respect of any Class A Revolving Loan. Company hereby designates the entity serving as the Administrative Agent to serve as Company's agent solely for purposes of maintaining the Class A Register as provided in this Section 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as the Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "**Indemnitees**."

(ii) Class B Register. The Class B Agent, acting for this purpose as an agent of the Company, shall maintain at its Principal Office a register for the recordation of the names and addresses of the Class B Revolving Lenders and the Class B Revolving Commitments and Class B Revolving Loans of each Class B Revolving Lender from time to time (the "**Class B Register**"). The Class B Register shall be available for inspection by Company or any Class B Revolving Lender at any reasonable time and from time to time upon reasonable prior notice. The Class B Agent shall record in the Class B Register the Class B Revolving Commitments and the Class B Revolving Loans, and each repayment or prepayment in respect of the principal amount of the Class B Revolving Loans, and any such recordation shall be conclusive and binding on Company and each Class B Revolving Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Class B Lender's Class B Revolving Commitments or Company's Obligations in respect of any Class B Revolving Loan. Company hereby designates the entity serving as the Class B Agent to serve as Company's agent solely for purposes of maintaining the Class B Register as provided in this Section 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as the Class B Agent and its officers, directors, employees, agents and affiliates shall constitute "**Indemnitees**."

(c) Revolving Loan Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 9.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company's receipt of such notice) a Class A Revolving Loan Note or Class B Revolving Loan Note, as applicable, to evidence such Lender's Revolving Loans.

## **2.5 Interest on Loans .**

(a) Except as otherwise set forth herein, (i) the Class A Revolving Loans shall accrue interest daily in an amount equal to the product of (A) the unpaid principal amount thereof as of such day and (B) the LIBO Rate for such day plus the Applicable Margin, and (ii) the Class B Revolving Loans shall accrue interest daily in an amount equal to the lesser of (i) the rate set forth in any Fee Letter between the Company and any Class B Revolving Lender and (ii) the Maximum Class B Interest Rate.

(b) In computing interest on any Revolving Loan, the date of the making of such Revolving Loan or the first day of an Interest Period applicable to such Revolving Loan shall be included, and the date of payment of such Revolving Loan or the expiration date of an Interest Period applicable to such Revolving Loan shall be excluded; provided, if a Revolving Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Revolving Loan. Each Lender shall provide an invoice of the interest accrued and to accrue to each Interest Payment Date on its Revolving Loans not later than 3:00 p.m. (New York city time) on the Interest Rate Determination Date immediately preceding such Interest Payment Date.

(c) Except as otherwise set forth herein, interest on each Revolving Loan shall be payable in arrears (i) on and to each Interest Payment Date; (ii) upon the request of the Administrative Agent, upon any prepayment of that Revolving Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity.

**2.6 Default Interest .** Subject to Section 9.18, upon the occurrence and during the continuance of an Event of Default, the principal amount of all Revolving Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Revolving Loans not paid on the Interest Payment Date for the Interest Period in which such interest accrued or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable in accordance with Section 2.12(b) at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Revolving Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder) (the “**Default Interest Rate**”). Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

## **2.7 Fees.**

(a) Company agrees to pay to each Person entitled to payment thereunder, in the amounts and at the times set forth in the Fee Letters.

(b) All fees (other than any fees payable on the Closing Date) referred to in Section 2.7(a) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on (i) each Interest Payment Date during the Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and (ii) on the Revolving Commitment Termination Date.

**2.8 Repayment on or Before Revolving Commitment Termination Date .** Company shall repay (i) the Revolving Loans and (ii) all other Obligations (other than contingent indemnification obligations for which demand has not been made) under this Agreement and the other Credit Documents, in each case, in full in cash on or before the Revolving Commitment Termination Date.

**2.9 Voluntary Commitment Reductions .**

(a) Company may, upon not less than three (3) Business Days' prior written notice to Administrative Agent and each Class B Revolving Lender, at any time and from time to time terminate in whole or permanently reduce in part the Revolving Commitments in an amount up to the amount by which the Class A Revolving Commitments exceed the Total Utilization of Class A Revolving Commitments or the Class B Revolving Commitments exceed the Total Utilization of Class B Revolving Commitments, as applicable, in each case at the time of such proposed termination or reduction; provided, any such partial reduction of the Class A Revolving Commitments shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount and any such partial reduction of the Class B Revolving Commitments shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$100,000 in excess of that amount.

(b) Company's notice shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Company's notice and shall reduce the Revolving Commitment of each applicable Class A Revolving Lender and/or Class B Revolving Lender proportionately to its applicable Pro Rata Share thereof.

**2.10 Borrowing Base Deficiency .** Company shall prepay the Revolving Loans within two (2) Business Day of the earlier of (i) an Authorized Officer or the Chief Financial Officer (or in each case, the equivalent thereof) of Company becoming aware that a Borrowing Base Deficiency exists and (ii) receipt by Company of notice from any Agent or any Lender that a Borrowing Base Deficiency exists, in each case in an amount equal to such Borrowing Base Deficiency, which shall be applied first, to prepay the Class A Revolving Loans as necessary to cure any Class A Borrowing Base Deficiency, and, second, to prepay the Class B Revolving Loans as necessary to cure any Class B Borrowing Base Deficiency.

**2.11 Controlled Accounts .**

(a) Company shall establish and maintain cash management systems reasonably acceptable to the Administrative Agent, including, without limitation, with respect to blocked account arrangements. Other than a segregated trust account (the “**Funding Account**”) maintained at the Paying Agent into which proceeds of Revolving Loans may be funded at the direction of Company, Company shall not establish or maintain a Deposit Account or Securities Account other than a Controlled Account and Company shall not, and shall cause Servicer not to deposit Collections or proceeds thereof in a Securities Account or Deposit Account which is not a Controlled Account ( provided, that, inadvertent and non-reoccurring errors by Servicer in applying such Collections or proceeds that are promptly, and in any event within two (2) Business Days after Servicer or Company has (or should have had in the exercise of reasonable diligence) knowledge thereof, cured shall not be considered a breach of this covenant). All Collections and proceeds of Collateral shall be subject to an express trust for the benefit of Collateral Agent on behalf of the Secured Parties and shall be delivered to Lenders for application to the Obligations or any other amount due under any other Credit Document as set forth in this Agreement.

(b) On or prior to the date hereof, Company shall cause to be established and maintained, (i) a trust account (or sub-accounts) in the name of Company and under the sole dominion and control of, the Collateral Agent designated as the “**Collection Account**” in each case bearing a designation clearly indicating that the funds and other property credited thereto are held for Collateral Agent for the benefit of the Lenders and subject to the applicable Securities Account Control Agreement and (ii) a Deposit Account into which the proceeds of all Pledged Receivables, including by automatic debit from Receivables Obligor’s operating accounts, shall be deposited in the name of Company designated as the “**Lockbox Account**” as to which the Collateral Agent has sole dominion and control over such account for the benefit of the Secured Parties within the meaning of Section 9-104(a)(2) of the UCC pursuant to the Lockbox Account Control Agreement. The Lockbox Account Control Agreement will provide that all funds in the Lockbox Account will be swept daily into the Collection Account.

(c) Lockbox System.

(i) Company has established pursuant to the Lockbox Account Control Agreement and the other Control Agreements for the benefit of the Collateral Agent, on behalf of the Secured Parties, a system of lockboxes and related accounts or deposit accounts as described in Sections 2.11(a) and (b) (the “**Lockbox System**”) into which (subject to the proviso in Section 2.11(a)) all Collections shall be deposited.

(ii) Company shall have identified a method reasonably satisfactory to Administrative Agent to grant Backup Servicer (and its delegates) access to the Lockbox Account when the Backup Servicer has become the Successor Servicer in accordance with the Credit Documents, for purposes of initiating ACH transfers from Receivables Obligor’s operating accounts after the date hereof.

(iii) Company shall not establish any lockbox or lockbox arrangement without the consent of the Administrative Agent in its sole discretion, and prior to establishing any such lockbox or lockbox arrangement, Company shall cause each bank or financial institution with which it seeks to establish such a lockbox or lockbox arrangement, to enter

into a control agreement with respect thereto in form and substance satisfactory to the Administrative Agent in its sole discretion.

(iv) Without the prior written consent of the Administrative Agent, Company shall not (A) change the general instructions given to the Servicer in respect of payments on account of Pledged Receivables to be deposited in the Lockbox System or (B) change any instructions given to any bank or financial institution which in any manner redirects any Collections or proceeds thereof in the Lockbox System to any account which is not a Controlled Account.

(v) Company acknowledges and agrees that (A) the funds on deposit in the Lockbox System shall continue to be collateral security for the Obligations secured thereby, and (B) upon the occurrence and during the continuance of an Event of Default, at the election of the Requisite Lenders, the funds on deposit in the Lockbox System may be applied as provided in Section 2.12(b).

(vi) Company has directed, and will at all times hereafter direct, the Servicer to direct payment from each of the Receivables Obligor on account of Pledged Receivables directly to the Lockbox System. Company agrees (A) to instruct the Servicer to instruct each Receivables Obligor to make all payments with respect to Pledged Receivables directly to the Lockbox System and (B) promptly (and, except as set forth in the proviso to this Section 2.11(c)(vi), in no event later than two (2) Business Days following receipt) to deposit all payments received by it on account of Pledged Receivables, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, in the Lockbox System in precisely the form in which they are received (but with any endorsements of Company necessary for deposit or collection), and until they are so deposited to hold such payments in trust for and as the property of the Collateral Agent; provided, however, that with respect to any payment received that does not contain sufficient identification of the account number to which such payment relates or cannot be processed due to an act beyond the control of the Servicer, such deposit shall be made no later than the second Business Day following the date on which such account number is identified or such payment can be processed, as applicable.

(vii) So long as no Event of Default has occurred and shall be continuing, Company or its designee shall be permitted to direct the investment of the funds from time to time held in the Collection Account (A) in Permitted Investments and to sell or liquidate such Permitted Investments and reinvest proceeds from such sale or liquidation in other Permitted Investments (but none of the Collateral Agent, the Administrative Agent or the Lenders shall have liability whatsoever in respect of any failure by the Controlled Account Bank to do so), with all such proceeds and reinvestments to be held in the Collection Account; provided, however, that the maturity of the Permitted Investments on deposit in the Collection Account shall be no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn therefrom pursuant to this Agreement, (B) to repay the Revolving Loans in accordance with Section 2.1(b), provided, however, that (w) in order to effect any such repayment from a Controlled Account, Company shall

deliver to the Administrative Agent, the Paying Agent and each Class B Revolving Lender a Controlled Account Voluntary Payment Notice in substantially the form of Exhibit G hereto no later than 12:00 p.m. (New York City time) on the Business Day prior to the date of any such repayment specifying the date of prepayment, the amount to be repaid per Class and the Controlled Account from which such repayment shall be made, (x) no more than three (3) repayments of Class A Revolving Loans pursuant to Section 2.1 may be made in any calendar week, (y) the minimum amount of any such repayment on the Revolving Loans shall be \$50,000, and (z) after giving effect to each such repayment, an amount equal to not less than the sum of (i) during any Reserve Account Funding Period, any Reserve Account Funding Amount and (ii) the aggregate of 105% of the aggregate pro forma amount of interest, fees and expenses projected to be due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, if any, for the remainder of the applicable Interest Period, based on the Accrued Interest Amount on such date and a projection of the interest to accrue on the Revolving Loans during the remainder of the applicable Interest Period using the same assumptions as are contained in the calculation of the Accrued Interest Amount, and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments on such date (after giving effect to such repayments), shall remain in the Controlled Accounts, or (C) to purchase additional Eligible Receivables pursuant to the terms and conditions of the Asset Purchase Agreement, provided, that a Borrowing Base Certificate (evidencing sufficient Revolving Availability after giving effect to the release of Collections and the making of any Revolving Loan being made on such date and that after giving effect to the release of Collections, no event has occurred and is continuing that constitutes, or would result from such release that would constitute, a Borrowing Base Deficiency, Default or Event of Default) and a Borrowing Base Report shall be delivered to the Administrative Agent, the Paying Agent, the Custodian and each Class B Revolving Lender no later than 11:00 a.m. (New York City time) at least two (2) Business Days in advance of any such proposed purchase or release, (x) if such purchase of Eligible Receivables were being funded with Revolving Loans, the conditions for making such Revolving Loans on such date contained in Section 3.2(a)(iii) and Section 3.2(a)(vi) would be satisfied as of such date, and provided further, that if such withdrawal from the Collection Account does not occur simultaneously with the making of a Revolving Loan by the Lenders hereunder pursuant to the delivery of a Funding Notice, such withdrawal shall be considered a "Revolving Loan" solely for purposes of Section 2.1(c)(iv), (y) no more than three (3) borrowings of each of Class A Revolving Loans and Class B Revolving Loans pursuant to Section 2.1 may be made in any calendar week and (z) after giving effect to such release, an amount equal to not less than the sum of (i) during any Reserve Account Funding Period, any Reserve Account Funding Amount and (ii) the aggregate of 105% of the aggregate pro forma amount of interest, fees and expenses projected to be due hereunder and under the Servicing Agreement, the Backup Servicing Agreement, the Custodial Agreement and the Successor Servicing Agreement, if any, for the remainder of the applicable Interest Period, based on the Accrued Interest Amount on such date and a projection of the interest to accrue on the Revolving Loans during the remainder of the applicable Interest Period using the same assumptions as are contained in the calculation of the Accrued Interest Amount, and

the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments on such date shall remain in the Controlled Accounts.

(viii) All income and gains from the investment of funds in the Collection Account shall be retained in the Collection Account, until each Interest Payment Date, at which time such income and gains shall be applied in accordance with Section 2.12(a) or (b) (or, if sooner, until utilized for a repayment pursuant to Section 2.11(c)(vii)(B) or a purchase of additional Eligible Receivables pursuant to Section 2.11(c)(vii)(C)), as the case may be. As between Company and Collateral Agent, Company shall treat all income, gains and losses from the investment of amounts in the Collection Account as its income or loss for federal, state and local income tax purposes.

(d) Reserve Account. On or prior to the date hereof, Company shall cause to be established and maintained a Deposit Account in the name of Company designated as the “Reserve Account” as to which the Collateral Agent has control over such account for the benefit of the Lenders within the meaning of Section 9-104(a)(2) of the UCC pursuant to the Blocked Account Control Agreement. The Reserve Account will be funded during a Reserve Account Funding Period with (i) funds available therefor pursuant to Section 2.12(a), and (ii) at the written direction of Company, proceeds of Revolving Loans as described in Section 2.1(d). At any time after the giving of a Termination Notice by the Administrative Agent, the Paying Agent shall at the written direction of the Administrative Agent withdraw an amount from the Reserve Account required to pay Servicing Transition Expenses during the Servicing Transition Period (provided, for the avoidance of doubt, only one such withdrawal may be made from the Reserve Account to pay Servicing Transition Expenses). On the first Interest Payment Date after the occurrence and during the continuance of an Event of Default, the Paying Agent shall at the written direction of the Administrative Agent transfer into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(b) the amount by which the amount in the Reserve Account exceeds the excess, if any, of \$100,000 over the aggregate amount previously withdrawn from the Reserve Account to pay Servicing Transition Expenses. If the first Interest Payment Date after the end of a Servicing Transition Period is during the continuance of an Event of Default, the Paying Agent shall at the written direction of the Administrative Agent transfer into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(b) all amounts in the Reserve Account. If, after the first Reserve Account Funding Event to occur hereunder, a Reserve Account Funding Event Cure occurs, on the next Interest Payment Date after the occurrence of such Reserve Account Funding Event Cure the Paying Agent shall, at the direction of Company, transfer all amounts in the Reserve Account into the Collection Account for application on such Interest Payment Date in accordance with Section 2.12(a).

## **2.12 Application of Proceeds.**

(a) Application of Amounts in the Collection Account. So long as no Event of Default has occurred and is continuing (after giving effect to the application of funds in accordance herewith on the relevant date), the Revolving Commitment Termination Date has not yet occurred and the Amortization Period is not then occurring, on each Interest Payment Date, all amounts in

the Collection Account shall be applied by the Paying Agent based on the Monthly Servicing Report as follows:

- (i) *first*, to Company, on a *pari passu* basis, (A) amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$1,000 in any Fiscal Year, and only to the extent not previously distributed to Company during such Fiscal Year pursuant to clause (ix) below, and (B) to pay any accrued and unpaid Servicing Fees;
- (ii) *second*, on a *pari passu* basis, (A) to the Backup Servicer to pay any accrued and unpaid Backup Servicing Fees; (B) to the Custodian to pay any costs, fees and indemnities then due and owing to the Custodian; and (C) to the Controlled Account Bank to pay any costs, fees and indemnities then due and owing to the Controlled Account Bank (in respect of the Controlled Accounts), (D) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; (E) to Collateral Agent to pay any costs, fees or indemnities then due and owing to Collateral Agent under the Credit Documents; and (F) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents; *provided, however*, that the aggregate amount of costs, fees or indemnities payable to the Backup Servicer, Administrative Agent, the Custodian, the Collateral Agent, the Controlled Account Bank (in respect of the Controlled Accounts) and the Paying Agent pursuant to this clause (ii) shall not exceed \$450,000 in any Fiscal Year;
- (iii) *third*, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders to pay costs, fees, and accrued interest for the Interest Period most recently ended (calculated in accordance with Section 2.5(a)) on the Class A Revolving Loans and expenses payable pursuant to the Credit Documents;
- (iv) *fourth*, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Lenders in an amount necessary to reduce any Class A Borrowing Base Deficiency to zero;
- (v) *fifth*, on a *pro rata* basis, to the Class B Agent for further distribution to the Class B Revolving Lenders to pay costs, fees, and accrued interest for the Interest Period most recently ended (calculated in accordance with Section 2.5(a)) on the Class B Revolving Loans and expenses payable pursuant to the Credit Documents;
- (vi) *sixth*, on a *pro rata* basis, to the Class B Agent for further distribution to the Class B Revolving Lenders in an amount necessary to reduce any Class B Borrowing Base Deficiency to zero;
- (vii) *seventh*, to pay to Administrative Agent, Custodian, Paying Agent, Collateral Agent and the Controlled Account Bank any costs, fees or indemnities not paid in accordance with clause (ii) above;

(viii) *eighth* , during a Reserve Account Funding Period, to the Reserve Account an amount equal to any Reserve Account Funding Amount;

(ix) *ninth* , to pay all other Obligations or any other amount then due and payable hereunder;

(x) *tenth* , at the election of Company, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders and the Class B Revolving Lenders, as applicable, to repay the principal of the Revolving Loans; and

(xi) *eleventh* , provided that no Borrowing Base Deficiency would occur after giving effect to such distribution, any remainder to Company or as Company shall direct consistent with Section 6.5.

(b) Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default or during the Amortization Period, on each Interest Payment Date, all amounts in the Controlled Accounts shall be applied by the Paying Agent based on the Monthly Servicing Report as follows:

(i) *first*, to Company, on a *pari passu* basis, (A) amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$1,000 in any Fiscal Year, and only to the extent not previously distributed to Company during such Fiscal Year pursuant to Section 2.12(a)(i) or 2.12(a)(xi) above, and (B) to pay any accrued and unpaid Servicing Fees;

(ii) *second*, on a *pari passu* basis, (A) to the Backup Servicer to pay any accrued and unpaid Backup Servicing Fees; (B) to the Custodian to pay any costs, fees and indemnities then due and owing to the Custodian; and (C) to the Controlled Account Bank to pay any costs, fees and indemnities then due and owing to the Controlled Account Bank (in respect of the Controlled Accounts), (D) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; (E) to Collateral Agent to pay any costs, fees or indemnities then due and owing to Collateral Agent under the Credit Documents; and (F) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents;

(iii) *third*, on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders to pay costs, fees, and accrued interest (calculated in accordance with Section 2.5(a) ) on the Class A Revolving Loans and expenses payable pursuant to the Credit Documents;

(iv) *fourth* , on a *pro rata* basis, to the Administrative Agent for further distribution to the Class A Revolving Lenders until the Class A Revolving Loans are paid in full;

(v) *fifth*, on a *pro rata* basis, to the Class B Agent for further distribution to the Class B Revolving Lenders to pay costs, fees, and accrued interest (calculated in

accordance with Section 2.5(a) ) on the Class B Revolving Loans and expenses payable pursuant to the Credit Documents;

(iv) *sixth* , on a *pro rata* basis, to the Class B Agent for further distribution to the Class B Revolving Lenders until the Class B Revolving Loans are paid in full;

(vii) *seventh*, to pay all other Obligations or any other amount then due and payable hereunder; and

(viii) *eighth*, any remainder to Company.

### **2.13 General Provisions Regarding Payments .**

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and paid not later than 12:00 p.m. (New York City time) on the date due via wire transfer of immediately available funds. Funds received after that time on such due date shall be deemed to have been paid by Company on the next Business Day (provided, that any repayment made pursuant to Section 2.11(c)(vii)(B) or any application of funds by Paying Agent pursuant to Section 2.12 on any Interest Payment Date shall be deemed for all purposes to have been made in accordance with the deadlines and payment requirements described in this Section 2.13 ).

(b) All payments in respect of the principal amount of any Revolving Loan (other than, unless requested by the Administrative Agent, voluntary prepayments of Revolving Loans or payments pursuant to Section 2.10 ) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Paying Agent shall promptly distribute to each Class A Revolving Lender and each Class B Revolving Lender, at such address as such Lender shall indicate in writing, the applicable Pro Rata Share of each such Lender of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Paying Agent.

(d) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Except as set forth in the proviso to Section 2.13(a), Paying Agent shall deem any payment by or on behalf of Company hereunder to them that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Paying Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Paying Agent shall give prompt notice via electronic mail to Company and Administrative Agent if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of

Default in accordance with the terms of Section 7.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate otherwise applicable to such paid amount from the date such amount was due and payable until the date such amount is paid in full.

**2.14 Ratable Sharing** . Lenders hereby agree among themselves that, except as otherwise provided herein or in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Revolving Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents, or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the **"Aggregate Amounts Due"** to such Lender) which is greater than such Lender would be entitled pursuant to this Agreement (after giving effect to the priority of payments determining application of payments to the Class A Lenders and the Class B Lenders, respectively), then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent, Paying Agent and each Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that the recovery of such Aggregate Amounts Due shall be shared by the applicable Lenders in proportion to the Aggregate Amounts Due to them pursuant to this Agreement; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

**2.15 Increased Costs; Capital Adequacy.**

(a) Compensation for Increased Costs and Taxes . Subject to the provisions of Section 2.16 (which shall be controlling with respect to the matters covered thereby), in the event that any Affected Party shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Affected Party with any guideline, request or directive issued or made after the date hereof (or with respect to any Lender which becomes a Lender after the date hereof, effective after such date) by any central bank or other Governmental

Authority or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Affected Party (or its applicable lending office) to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Affected Party (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC or other insurance or charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Affected Party; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Affected Party (or its applicable lending office) or its obligations hereunder; and the result of any of the foregoing is to increase the cost to such Affected Party of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Affected Party (or its applicable lending office) with respect thereto; then, in any such case, if such Affected Party deems such change to be material, Company shall promptly pay to such Affected Party, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Affected Party in its sole discretion shall determine) as may be necessary to compensate such Affected Party for any such increased cost or reduction in amounts received or receivable hereunder and any reasonable expenses related thereto. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Affected Party shall have determined in its sole discretion (which determination shall, absent manifest effort, be final and conclusive and binding upon all parties hereto) that (i) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (ii) compliance by any Affected Party (or its applicable lending office) or any company controlling such Affected Party with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Affected Party or any company controlling such Affected Party as a consequence of, or with reference to, such Affected Party's Loans or Revolving Commitments, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Affected Party or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Affected Party or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Company from such Affected Party of the statement referred to in the next sentence, Company shall pay to such Affected Party such additional amount or amounts as will compensate such Affected Party or such

controlling company on an after-tax basis for such reduction. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (i) and (ii) of this Section 2.15 shall apply, without limitation, to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any Governmental Authority (x) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended to the date hereof and from time to time hereafter, and any successor statute and (y) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

(c) Delay in Requests. Failure or delay on the part of any Affected Party to demand compensation pursuant to the foregoing provisions of this Section 2.15 shall not constitute a waiver of such Affected Party's right to demand such compensation, provided that Company shall not be required to compensate an Affected Party pursuant to the foregoing provisions of this Section 2.15 for any increased costs incurred or reductions suffered more than ninety (90) days prior to the date that such Affected Party notifies Company of the matters giving rise to such increased costs or reductions and of such Affected Party's intention to claim compensation therefor.

Notwithstanding anything to the contrary in this Section 2.15, with respect to any Affected Party, the Company shall not be required to pay any increased costs under this Section 2.15 if the payment of such increased cost would cause the Company's all-in cost of borrowing hereunder, for the applicable period to be in excess of the LIBO Rate plus 10%.

## **2.16 Taxes; Withholding, etc.**

(a) Payments to Be Free and Clear. Subject to Section 2.16(b), all sums payable by Company hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States or any political subdivision in or of the United States or any other jurisdiction from or to which a payment is made by or on behalf of Company or by any federation or organization of which the United States or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If Company or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Company to an Affected Party under any of the Credit Documents: (i) Company shall notify Paying Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company or the Paying Agent shall make such deduction or withholding and pay any such Tax to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Company) for its own account or (if that liability is imposed on Paying Agent or such Affected Party, as the case may be) on behalf of and in the name of Paying Agent or such Affected Party; (iii) if such Tax is an Indemnified Tax, the sum payable by Company in respect of which the relevant deduction,

withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (and any withholdings imposed on additional amounts payable under this paragraph), such Affected Party receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Company shall deliver to Paying Agent evidence satisfactory to the other Affected Parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Indemnification by Company. Company shall indemnify each Affected Party, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by such Affected Party or required to be withheld or deducted from a payment to such Affected Party and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Company by an Affected Party (with a copy to the Paying Agent), or by the Paying Agent on its own behalf or on behalf of an Affected Party, shall be conclusive absent manifest error.

(d) Evidence of Exemption or Reduced Rate From U.S. Withholding Tax.

(i) Each Lender and the Administrative Agent that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a “**Non-US Lender**”) shall, to the extent it is legally entitled to do so, deliver to Paying Agent and the Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Paying Agent (each in the reasonable exercise of its discretion), (A) two original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY, as applicable (with appropriate attachments) (or any successor forms), properly completed and duly executed by such the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or the Paying Agent to establish that the Administrative Agent or such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to any payments to Administrative Agent or such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (B) if such the Administrative Agent or such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver Internal Revenue Service Form W-8IMY or W-8ECI pursuant to clause (A) above and is relying on the so called “portfolio interest exception”, a Certificate Regarding Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor form), properly completed and duly executed by the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or the Paying Agent to

establish that the Administrative Agent or such Lender is not subject, or is eligible for a reduction in the rate of, to deduction or withholding of United States federal income tax with respect to any payments to the Administrative Agent or such Lender of interest payable under any of the Credit Documents. The Administrative Agent and each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.16(d)(i) or Section 2.16(d)(ii) hereby agrees, from time to time after the initial delivery by the Administrative Agent or such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that the Administrative Agent or such Lender shall promptly deliver to Company and the Paying Agent two new original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8IMY, or W-8ECI, or, if relying on the “portfolio interest exception”, a Certificate Regarding Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor form), as the case may be, properly completed and duly executed by the Administrative Agent or such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company or Paying Agent to confirm or establish that the Administrative Agent or such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to payments to the Administrative Agent or such Lender under the Credit Documents, or notify Paying Agent and Company of its inability to deliver any such forms, certificates or other evidence.

(ii) Any Lender and the Administrative Agent that is a U.S. Person shall deliver to Company and the Paying Agent on or prior to the date on which such Lender becomes a Lender under this Agreement on the Closing Date or pursuant to an Assignment Agreement (and from time to time thereafter upon the reasonable request of Company or the Paying Agent), executed originals of IRS Form W-9 certifying that such Lender is a U.S. Person and exempt from U.S. federal backup withholding tax.

(iii) If a payment made to the Administrative Agent or a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Administrative Agent or such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Administrative Agent or such Lender shall deliver to Company and the Paying Agent at the time or times reasonably requested by Company or the Paying Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Company or the Paying Agent as may be necessary for Company and the Paying Agent to comply with their obligations under FATCA and to determine that the Administrative Agent or such Lender has complied with the Administrative Agent’s or such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(d)(iii), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iv) To the extent that a Class B Agent is appointed hereunder, the Class B Agent shall deliver to the Paying Agent and the Company such information as is required to be delivered by the Administrative Agent pursuant to this Section 2.16.

(e) Payment of Other Taxes by the Company. The Company shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

**2.17 Obligation to Mitigate** . Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Revolving Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.15 and/or Section 2.16, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to 2.15 and/or 2.16 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Commitments or Revolving Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Commitments or Revolving Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.17 unless Company agrees to pay all reasonable and incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.17 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

**2.18 Defaulting Lenders** . Anything contained herein to the contrary notwithstanding, in the event that other than at the direction or request of any regulatory agency or authority, any Lender defaults (in each case, a **“Defaulting Lender”** ) in its obligation to fund (a **“Funding Default”** ) any Revolving Loan (in each case, a **“Defaulted Loan”** ), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a “Lender” for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) to the extent permitted by applicable law, until such time as the Default Excess, if any, with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Revolving Loans shall be applied to the Revolving Loans of other Lenders of the applicable Class as if such Defaulting Lender had no Revolving Loans outstanding and the Revolving Exposure of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Revolving Loans of the applicable Class shall be applied to the Revolving Loans of other Lenders (but not to the Revolving Loans of such Defaulting Lender) of such Class as if such Defaulting Lender had funded all Defaulted Loans of such Class of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Revolving Loans of the applicable Class that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause

(b); and (c) the Total Utilization of Class A Revolving Commitments or the Total Utilization of Class B Revolving Commitments, as applicable, as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender. No Revolving Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.18, performance by Company of its obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.18. The rights and remedies against a Defaulting Lender under this Section 2.18 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default or violation of Section 8.5(c).

**2.19 Removal or Replacement of a Lender** . Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **“Increased-Cost Lender”** ) shall give notice to Company that such Lender is entitled to receive payments under Section 2.15 and/or Section 2.16, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after Company’s request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after Company’s request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.5(b), the consent of Administrative Agent and Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **“Non-Consenting Lender”** ) whose consent is required shall not have been obtained; or (d) (i) any Lender fails to be a creditworthy entity (in terms of its remaining funding obligations under this Agreement) (a **“Non-Creditworthy Lender”** ) and (ii) no Default or Event of Default shall then exist; then, with respect to each such Increased-Cost Lender, Defaulting Lender, Non-Consenting Lender or Non-Creditworthy Lender (the **“Terminated Lender”** ), Company may, by giving written notice to any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender and, if applicable, each other such Lender hereby irrevocably agrees) to assign its outstanding Revolving Loans and its Revolving Commitments, if any, in full to one or more Eligible Assignees identified by Company (each a **“Replacement Lender”** ) in accordance with the provisions of Section 9.6 ; provided, (1) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender and, if applicable, such other Lenders, an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Revolving Loans of the Terminated Lender and, if applicable, such other Lenders, and (B) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender and, if applicable, such other Lenders, pursuant to Section 2.7 ; (2) on the date of such assignment, Company shall pay any amounts payable to such Terminated Lender and, if applicable, such other Lenders pursuant to Section 2.15 and/or Section 2.16 and any other amounts due to such Terminated Lender and, if applicable, such other Lenders; and (3) in the event such Terminated Lender is an Increased-Cost Lender, such assignment will result in a reduction in any claims for payments under Section 2.15 and/or Section 2.16, as applicable, and (4) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the

time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and, if applicable, such other Lenders and the termination of such Terminated Lender's Revolving Commitments and, if applicable, the Revolving Commitments of such other Lenders, such Terminated Lender and, if applicable, such other Lenders shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender and, if applicable, such other Lenders to indemnification hereunder shall survive as to such Terminated Lender and such other Lenders.

## **2.20 The Paying Agent.**

(a) The Lenders hereby appoint Wells Fargo Bank, N.A. as the initial Paying Agent. All payments of amounts due and payable in respect of the Obligations that are to be made from amounts withdrawn from the Collection Account pursuant to Section 2.12 shall be made by the Paying Agent based on the Monthly Servicing Report (upon which the Paying Agent shall be entitled to conclusively rely).

(b) The Paying Agent hereby agrees that, subject to the provisions of this Section, it shall:

(i) hold any sums held by it for the payment of amounts due with respect to the Obligations in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) give the Administrative Agent and each Class B Revolving Lender notice of any default by the Company in the making of any payment required to be made with respect to the Obligations of which it has actual knowledge;

(iii) comply with all requirements of the Internal Revenue Code and any applicable State law with respect to the withholding from any payments made by it in respect of any Obligations of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith; and

(iv) provide to the Agents such information as is required to be delivered under the Internal Revenue Code or any State law applicable to the particular Paying Agent, relating to payments made by the Paying Agent under this Agreement.

(c) Each Paying Agent (other than the initial Paying Agent) shall be appointed by the Lenders with the prior written consent of the Company.

(d) The Company shall indemnify the Paying Agent and its officers, directors, employees and agents for, and hold them harmless against any loss, liability or expense incurred, other than in connection with the willful misconduct, fraud, gross negligence or bad faith on the part of the Paying Agent, arising out of or in connection with the performance of its obligations under and in accordance with this Agreement, including the costs and expenses of defending itself

against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement. All such amounts shall be payable in accordance with Section 2.12 and such indemnity shall survive the termination of this Agreement and the resignation or removal of the Paying Agent.

(e) The Paying Agent undertakes to perform such duties, and only such duties, as are expressly set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against the Paying Agent. The Paying Agent may conclusively rely on the truth of the statements and the correctness of the opinions expressed in any certificates or opinions furnished to the Paying Agent pursuant to and conforming to the requirements of this Agreement.

(f) The Paying Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the direction or request of Requisite Lenders or the Administrative Agent, or (ii) in the absence of its own fraud, gross negligence or willful misconduct as determined by a court of competent jurisdiction, no longer subject to appeal or review.

(g) The Paying Agent shall not be charged with knowledge of any Default or Event of Default unless a Responsible Officer of the Paying Agent obtains actual knowledge of such event or the Paying Agent receives written notice of such event from the Company, the Servicer, any Secured Party or any other Agent, as the case may be. The receipt and/or delivery of reports and other information under this Agreement by the Paying Agent shall not constitute notice or actual or constructive knowledge of any Default or Event of Default contained therein.

(h) The Paying Agent shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability shall not be reasonably assured to it, and none of the provisions contained in this Agreement shall in any event require the Paying Agent to perform, or be responsible for the manner of performance of, any of the obligations of the Company under this Agreement.

(i) The Paying Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate of an Authorized Officer, any Monthly Servicing Report, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(j) The Paying Agent may consult with counsel of its choice with regard to legal questions arising out of or in connection with this Agreement and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by the Paying Agent in good faith and in accordance therewith.

(k) The Paying Agent shall be under no obligation to exercise any of the rights, powers or remedies vested in it by this Agreement or to institute, conduct or defend any litigation under this Agreement or in relation to this Agreement, at the request, order or direction of the Administrative Agent, any Lender or any Agent pursuant to the provisions of this Agreement,

unless the Administrative Agent, on behalf of the Secured Parties, such Lender or such Agent shall have offered to the Paying Agent security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby.

(l) Except as otherwise expressly set forth in Section 2.21, the Paying Agent shall not be bound to make any investigation into the facts of matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing so to do by a Lender or the Administrative Agent; provided, that if the payment within a reasonable time to the Paying Agent of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation shall be, in the opinion of the Paying Agent, not reasonably assured by the Company, the Paying Agent may require reasonable indemnity against such cost, expense or liability as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Paying Agent, shall be reimbursed by the Company to the extent of funds available therefor pursuant to Section 2.12.

(m) The Paying Agent shall not be responsible for the acts or omissions of the Administrative Agent, the Company, the Servicer, any Agent, any Lender or any other Person.

(n) Any Person into which the Paying Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Paying Agent shall be a party, or any Person succeeding to the business of the Paying Agent, shall be the successor of the Paying Agent under this Agreement, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(o) The Paying Agent does not assume and shall have no responsibility for, and makes no representation as to, monitoring the value of any Collateral.

(p) If the Paying Agent shall at any time receive conflicting instructions from the Administrative Agent and the Company or the Servicer or any other party to this Agreement and the conflict between such instructions cannot be resolved by reference to the terms of this Agreement, the Paying Agent shall be entitled to rely on the instructions of the Administrative Agent. The Paying Agent may rely upon the validity of documents delivered to it, without investigation as to their authenticity or legal effectiveness, and the parties to this Agreement will hold the Paying Agent harmless from any claims that may arise or be asserted against the Paying Agent because of the invalidity of any such documents or their failure to fulfill their intended purpose.

(q) The Paying Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by any other party hereto or by any other person, firm or corporation, except only such notices or instructions as are herein provided for and orders or process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting

such property or any part hereof, then and in any of such events the Paying Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree, and if it complies with any such order, writ, judgment or decree it shall not be liable to any other party hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree maybe subsequently reversed, modified, annulled, set aside or vacated.

(r) The Paying Agent may: (i) terminate its obligations as Paying Agent under this Agreement (subject to the terms set forth herein) upon at least 30 days' prior written notice to the Company, the Servicer and the Administrative Agent; provided, however, that, without the consent of the Administrative Agent, such resignation shall not be effective until a successor Paying Agent reasonably acceptable to the Administrative Agent and Company shall have accepted appointment by the Lenders as Paying Agent, pursuant hereto and shall have agreed to be bound by the terms of this Agreement; or (ii) be removed at any time by written demand, of the Requisite Lenders, delivered to the Paying Agent, the Company and the Servicer. In the event of such termination or removal, the Lenders with the consent of the Company shall appoint a successor paying. If, however, a successor paying agent is not appointed by the Lenders within sixty (60) days after the giving of notice of resignation, the Paying Agent may petition a court of competent jurisdiction for the appointment of a successor Paying Agent.

(s) Any successor Paying Agent appointed pursuant hereto shall (i) execute, acknowledge, and deliver to the Company, the Servicer, the Administrative Agent, and to the predecessor Paying Agent an instrument accepting such appointment under this Agreement. Thereupon, the resignation or removal of the predecessor Paying Agent shall become effective and such successor Paying Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties, and obligations of its predecessor as Paying Agent under this Agreement, with like effect as if originally named as Paying Agent. The predecessor Paying Agent shall upon payment of its fees and expenses deliver to the successor Paying Agent all documents and statements and monies held by it under this Agreement; and the Company and the predecessor Paying Agent shall execute and deliver such instruments and do such other things as may reasonably be requested for fully and certainly vesting and confirming in the successor Paying Agent all such rights, powers, duties, and obligations.

(t) The Company shall reimburse the Paying Agent for the reasonable out-of-pocket expenses of the Paying Agent actually incurred in connection with the succession of any successor Paying Agent including in transferring any funds in its possession to the successor Paying Agent.

(u) The Paying Agent shall have no obligation to invest and reinvest any cash held in the Controlled Accounts or any other moneys held by the Paying Agent pursuant to this Agreement in the absence of timely and specific written investment direction from Company. In no event shall the Paying Agent be liable for the selection of investments or for investment losses incurred thereon. The Paying Agent shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Company to provide timely written investment direction.

(v) If the Paying Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions from any of the parties hereto pursuant to this Agreement which, in the reasonable opinion of the Paying Agent, are in conflict with any of the provisions of this Agreement, the Paying Agent shall be entitled (without incurring any liability therefor to the Company or any other Person) to (i) consult with counsel of its choosing and act or refrain from acting based on the advice of such counsel and (ii) refrain from taking any action until it shall be directed otherwise in writing by all of the parties hereto or by final order of a court of competent jurisdiction.

(w) The Paying Agent shall incur no liability nor be responsible to Company or any other Person for delays or failures in performance resulting from acts beyond its control that significantly and adversely affect the Paying Agent's ability to perform with respect to this Agreement. Such acts shall include, but not be limited to, acts of God, strikes, work stoppages, acts of terrorism, civil or military disturbances, nuclear or natural catastrophes, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(x) The Paying Agent may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent shall not be responsible for any misconduct or negligence on the part of or for the supervision of any agent or attorney appointed with due care by it hereunder.

(y) The Lenders hereby authorize and direct the Paying Agent to execute and deliver the Undertakings Agreement.

## **2.21 Duties of Paying Agent .**

(a) Borrowing Base Reports. Upon receipt of any Borrowing Base Report and the related Borrowing Base Certificate delivered pursuant to Section 2.1(c)(ii), Section 2.11(c)(vii)(B) or Section 2.11(c)(vii)(C), Paying Agent shall, on the Business Day following receipt of such Borrowing Base Report, to the extent that Paying Agent has access to all information necessary to perform the duties set forth herein:

(i) compare the ending Eligible Portfolio Outstanding Principal Balance set forth in such Borrowing Base Report with the aggregate Outstanding Principal Balance of the Eligible Receivables listed in the Master Record and identify any discrepancy;

(ii) compare the number of Pledged Receivables listed in the Master Record with the number of Pledged Receivables provided to the Paying Agent by the Servicer pursuant to Section 4.3 of the Custodial Agreement as the number of Pledged Receivables for which the Custodian holds a Receivables File pursuant to the Custodial Agreement and identify any discrepancy;

(iii) confirm that each Pledged Receivable listed in the Master Record has a unique loan identification number;

(iv) compare the amount set forth in such Borrowing Base Report as the amount on deposit in the Collection Account with the amount shown on deposit in the

Collection Account as of the date of such Borrowing Base Report and identify any discrepancy;

(v) in the case of a Borrowing Base Report delivered pursuant to Section 2.11(c)(vii)(B) or Section 2.11(c)(vii)(C), recalculate the amount set forth in such Borrowing Base Report as the amount that will be on deposit in the Collection Account after giving effect to the related repayment of Loans or the related purchase of Eligible Receivables set forth therein and identify any discrepancy;

(vi) confirm that the Accrued Interest Amount and an estimate of accrued fees as of the date of repayment or the Transfer Date, as the case may be, multiplied by 105%, is the amount set forth in such Borrowing Base Request as 105% of the estimated amount of accrued interest and fees and identify any discrepancy;

(vii) recalculate the Class A Revolving Availability and the Class B Revolving Availability, based on the Class A Borrowing Base and the Class B Borrowing Base set forth in such Borrowing Base Report and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments set forth in the Paying Agent's records and identify any discrepancies;

(viii) in the case of a Borrowing Base Report delivered pursuant to Section 3.2(a)(i), (A) confirm that the Class A Revolving Loans requested in the related Funding Request are not greater than the Class A Revolving Availability and the amount of Class B Revolving Loans requested in the related Funding Request are not greater than the Class B Revolving Availability and (B) confirm that, after giving effect to such Revolving Loans, the Total Utilization of Class A Revolving Loans will not exceed the Class A Revolving Commitments and the Total Utilization of Class B Revolving Loans will not exceed the Class B Revolving Commitments; and

(ix) notify the Lenders of the results of such review.

(b) Monthly Servicing Reports. Upon receipt of any Monthly Servicing Report delivered pursuant to Section 5.1(f), Paying Agent shall, to the extent that Paying Agent has access to all information necessary to perform the duties set forth herein:

(i) compare the Eligible Portfolio Outstanding Principal Balance set forth therein with the aggregate Outstanding Principal Balance of the Eligible Receivables listed in the Master Record and identify any discrepancy;

(ii) confirm the aggregate repayments of Revolving Loans during the period covered by the Monthly Servicing Report set forth therein with the Borrowing Base Reports delivered to Paying Agent pursuant to Section 2.11(c)(vii)(B) during such period and identify any discrepancies;

(iii) compare the amount set forth therein as the amount on deposit in the Collection Account with the amount shown on deposit in the Collection Account as of the date of such Monthly Servicing Report and identify any discrepancy;

(iv) compare the amount of accrued and unpaid interest and unused fees payable to the Class A Revolving Lenders and the amount of accrued and unpaid interest and unused fees payable to the Class B Revolving Lenders, respectively, set forth therein to the amounts set forth in the related invoices received by Paying Agent and identify any discrepancies;

(v) compare the amount of Servicing Fees payable to the Servicer set forth therein to the amount set forth in the related invoice received by Paying Agent and identify any discrepancy;

(vi) compare the amount of Backup Servicing Fees and expenses payable to the Backup Servicer set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(vii) compare the amount of fees and expenses payable to the Custodian set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(viii) compare the amount of fees and expenses payable to the Collateral Agent set forth therein to the amounts set forth in the related invoice received by Paying Agent and identify any discrepancy;

(ix) compare the amount of fees and expenses payable to the Paying Agent set forth therein to the amounts set forth in the related invoice submitted by Paying Agent and identify any discrepancy;

(x) recalculate the Class A Revolving Availability and the Class B Revolving Availability based on the Class A Borrowing Base and the Class B Borrowing Base set forth therein and the Total Utilization of Class A Revolving Commitments and the Total Utilization of Class B Revolving Commitments set forth in the Paying Agent's records and identify any discrepancies; and

(xi) notify the Lenders of the results of such review.

(c) For the avoidance of doubt, Paying Agent's sole responsibility with respect to the obligations set forth in Section 2.21 is to compare or confirm information in the Borrowing Base Report or Monthly Servicing Report, as applicable, in accordance with Section 2.21 based on the information indicated therein received by Paying Agent from Company, the Servicer or the Custodian, as the case may be.

## **2.22 Collateral Agent.**

(a) The Collateral Agent shall be entitled to the same rights, protections, indemnities and immunities as the Paying Agent hereunder.

(b) In addition to Section 2.22(a), the Collateral Agent shall be entitled to the following additional protections:

(i) The Collateral Agent shall have no duty (A) to see to any recording, filing, or depositing of this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, re-filing or re-depositing of any thereof, (B) to see to any insurance, or (C) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral;

(ii) The Collateral Agent shall be authorized to, but shall not be responsible for, filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting any security interest in the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for (A) monitoring the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral, (B) taking any necessary steps to preserve rights against any Person with respect to any Collateral, or (C) taking any action to protect against any diminution in value of the Collateral;

(iii) The Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement and any other Credit Document (A) if such action would, in the reasonable opinion of the Collateral Agent, in good faith (which may be based on the advice or opinion of counsel), be contrary to applicable law, this Agreement or any other Credit Document, (B) if such action is not provided for in this Agreement or any other Credit Document, (C) if, in connection with the taking of any such action hereunder, under any other Credit Document that would constitute an exercise of remedies, it shall not first be indemnified to its satisfaction by the Administrative Agent and/or the Lenders against any and all risk of nonpayment, liability and expense that may be incurred by it, its agents or its counsel by reason of taking or continuing to take any such action, or (D) if the Collateral Agent would be required to make payments on behalf of the Lenders pursuant to its obligations as Collateral Agent hereunder, it does not first receive from the Lenders sufficient funds for such payment;

(iv) The Collateral Agent shall not be required to take any action under this or any other Credit Document if taking such action (A) would subject the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax, or (B) would require the Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified;

(v) Neither the Collateral Agent nor its respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Administrative Agent or the Lenders, or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Administrative Agent or the Lenders for any act or failure to act hereunder, except for its own fraud, gross negligence or willful misconduct.

### **2.23 Intention of Parties .**

It is the intention of the parties that the Revolving Loans be characterized as indebtedness for federal income tax purposes. The terms of the Revolving Loans shall be interpreted to further this intention and neither the Lenders nor Company will take an inconsistent position on any federal, state or local tax return.

### **2.24 Increase Option.**

As set forth in the definition of "Class B Revolving Commitment", the aggregate amount of the Class B Revolving Commitments as of the Closing Date is \$0. The Company may from time to time elect to increase the Class B Revolving Commitment, so long as, after giving effect thereto, the aggregate amount of all such increases does not exceed \$11,765,000. Each existing Class B Revolving Lender (if any) shall have the right to provide its Pro Rata Share of such increase within ten (10) Business Days of the Company's increase election pursuant to this Section 2.24 (each such consenting Lender, an "**Increasing Lender**"). If one or more of the Class B Revolving Lenders fail to consent or collectively fail to commit to fund the full amount of such increase, the Company may arrange for any such increase to be provided by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "**Augmenting Lender**"); provided that each Augmenting Lender shall be subject to the reasonable approval of the Administrative Agent. No consent of any Lender (other than any Class B Revolving Lender participating in the increase) shall be required for any increase in Class B Revolving Commitments pursuant to this Section. Increased and new Class B Revolving Commitments pursuant to this Section 2.24 shall become effective on the date agreed by the Company, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, as applicable, pursuant to a joinder agreement (each, a "**Joinder Agreement**") in form and substance reasonably satisfactory to Company, Administrative Agent and such Increasing Lender or Augmenting Lender, as applicable, whereby each such Increasing Lender or Augmenting Lender, as applicable, assumes the rights and obligations of a Class B Revolving Lender hereunder. Each Joinder Agreement shall also set forth any other applicable terms of the Class B Revolving Commitments being provided thereby, including without limitation the Applicable Class B Advance Rate (which shall be identical among all Class B Revolving Lenders), other than pricing terms described in a separate Fee Letter.

The Administrative Agent shall notify each Class A Revolving Lender, and the Company shall notify each Class B Revolving Lender, of each increase in Class B Revolving Commitments made pursuant to this Section 2.24. Notwithstanding the foregoing, no increase in the Revolving Commitment, (or in the Class B Revolving Commitment of any Lender) shall become effective under this paragraph if on the proposed date of the effectiveness of such increase, an Event of Default has occurred and is continuing. On the effective date of any increase in the Revolving Commitment, each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent determines, for the benefit of the other Class B Revolving Lenders, as being required to cause, after giving effect to such increase and paying such amounts to such other Class B Revolving Lenders, each Class B Revolving Lender's portion of the outstanding Class B Revolving Loans of all the Class B Revolving Lenders to equal its Pro Rata Share of such outstanding Class B Revolving Loans. For so long as Class B Revolving Commitments are \$0, all provisions in this Agreement (other than this Section 2.24) relating to Class B Revolving Commitments, Class B Revolving Loans, Class B Revolving Lenders and related matters shall be without effect.

### **SECTION 3. CONDITIONS PRECEDENT**

**3.1 Closing Date** . The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 9.5, of the following conditions on or before the Closing Date:

(a) Credit Documents and Related Agreements . The Administrative Agent shall have received copies of each Credit Document, originally executed and delivered by each applicable Person and copies of each Related Agreement.

(b) Formation of Company . The Administrative Agent shall have received evidence satisfactory to it in its reasonable discretion that Company was formed as a bankruptcy remote, special purpose entity in the state of Delaware as a limited liability company.

(c) Organizational Documents; Incumbency . The Administrative Agent shall have received (i) copies of each Organizational Document executed and delivered by Company and Holdings, as applicable, and, to the extent applicable, (x) certified as of the Closing Date or a recent date prior thereto by the appropriate governmental official and (y) certified by its secretary or an assistant secretary as of the Closing Date, in each case as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each of Company and Holdings approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each of Company and Holdings' jurisdiction of incorporation, organization or formation and, with respect to Company, in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as the Administrative Agent may reasonably request.

(d) Organizational and Capital Structure. The organizational structure and capital structure of Company shall be as described in Section 4.2.

(e) Transaction Costs. On or prior to the Closing Date, Company shall have delivered to Administrative Agent, Company's reasonable best estimate of the Transaction Costs (other than fees payable to any Agent).

(f) Governmental Authorizations and Consents. Company and Holdings shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable to be obtained by them, in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(g) Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the Collateral, Company shall deliver:

(i) evidence satisfactory to the Administrative Agent of the compliance by Company of its obligations under the Security Agreement and the other Collateral Documents (including, without limitation, its obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of Company in the jurisdictions specified by Administrative Agent, together with copies of all such filings disclosed by such search, and UCC termination statements (or similar documents) duly authorized by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search;

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which Company or any personal property Collateral is located as the Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Administrative Agent;

(iv) opinions of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) with respect to the creation and perfection of the security interest in favor of Purchaser in the Pledged Receivables and Related Security under the Asset Purchase Agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent; and

(v) evidence that Company and Holdings shall have each taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Administrative Agent or the Collateral Agent.

(h) Financial Statements. The Administrative Agent shall have received from Company the Historical Financial Statements.

(i) Evidence of Insurance. Collateral Agent shall have received a certificate from Holdings' insurance broker, or other evidence satisfactory to the Administrative Agent that all insurance required to be maintained under the Servicing Agreement and Section 5.4 is in full force and effect.

(j) Opinions of Counsel to Company and Holdings. The Administrative Agent and counsel to Administrative Agent shall have received originally executed copies of the favorable written opinions of DLA Piper LLP, counsel for Company and Holdings, as to such matters (including the true sale of Pledged Receivables, bankruptcy remote nature of Company and covered fund matters under the Volcker Rule) as the Administrative Agent may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to the Administrative Agent (and Company hereby instructs, and Holdings shall instruct, such counsel to deliver such opinions to Agents and Lenders). The Administrative Agent and counsel to the Administrative Agent shall have received an originally executed copy of a favorable written opinion of counsel to Holdings acceptable to the Administrative Agent to the effect that the Receivables Agreements governed by the law of Virginia are valid and enforceable obligations under the laws of Virginia in form and substance reasonably satisfactory to the Administrative Agent (and Company hereby instructs, and Holdings shall instruct, such counsel to deliver such opinions to the Administrative Agent and Lenders).

(k) Solvency Certificate. On the Closing Date, Administrative Agent, the Administrative Agent shall have received a Solvency Certificate from Holdings and Company dated as of the Closing Date and addressed to the Administrative Agent, and in form, scope and substance satisfactory to the Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the Credit Extensions to be made on the Closing Date, Holdings and Company are and will be Solvent.

(l) Closing Date Certificate. Holdings and Company shall have delivered to the Administrative Agent an originally executed Closing Date Certificate, together with all attachments thereto.

(m) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable discretion of the Administrative Agent, singly or in the aggregate, materially impairs any of the transactions contemplated by the Credit Documents or that would reasonably be expected to result in a Material Adverse Effect.

(n) No Material Adverse Change. Since December 31, 2014, no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(o) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto shall be satisfactory in form and substance to the Administrative Agent and counsel to Administrative Agent, and the Administrative Agent, and counsel to Administrative Agent shall have received all such counterpart originals or certified copies of such documents as they may reasonably request.

(p) Independent Manager. On the Closing Date, the Administrative Agent shall have received evidence satisfactory to it that Company has appointed an Independent Manager who is acceptable to it in its sole discretion.

(q) Payment of Fees. On the Closing Date, the Administrative Agent shall have received all fees and expenses due and payable by the Company and Holdings on or prior to the Closing Date under the Credit Documents; provided that such fees and expenses shall have been invoiced to the Company or Holdings, as applicable not less than one Business Day prior to the Closing Date.

The Administrative Agent and each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by the Administrative Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

### **3.2 Conditions to Each Credit Extension .**

(a) Conditions Precedent. The obligation of each Lender to make any Revolving Loan on any Credit Date, including if applicable the Closing Date, is subject to the satisfaction, or waiver in accordance with Section 9.5, of the following conditions precedent:

(i) Administrative Agent, the Paying Agent, Custodian and each Class B Revolving Lender shall have received a fully executed and delivered Funding Notice together with a Borrowing Base Certificate, evidencing sufficient Revolving Availability with respect to the requested Revolving Loans, and a Borrowing Base Report;

(ii) both before and after making any Revolving Loans requested on such Credit Date, the Total Utilization of Class A Revolving Commitments shall not exceed the

Class A Borrowing Base and the Total Utilization of Class B Revolving Commitments shall not exceed the Class B Borrowing Base;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, other than those representations and warranties which are qualified by materiality, in which case, such representation and warranty shall be true and correct in all respects on and as of that Credit Date, except, in each case, to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects, or true and correct in all respects, as the case may be on and as of such earlier date, *provided*, that the representations and warranties in any Original Borrowing Base Certificate shall be excluded from the certification in this Section 3.2(a)(iii) to the extent a Replacement Borrowing Base Certificate has been delivered in substitute thereof in accordance with Section 2.1(c)(ii);

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(v) the Administrative Agent, the Paying Agent and each Class B Revolving Lender shall have received the Borrowing Base Report for the Business Day prior to the Credit Date which shall be delivered on a pro forma basis for the first Credit Date hereunder;

(vi) in accordance with the terms of the Custodial Agreement, Company has delivered, or caused to be delivered to the Custodian, the Receivable File related to each Receivable that is, on such Credit Date, being transferred and delivered to Company pursuant to the Asset Purchase Agreement, and the Administrative Agent has received a Collateral Receipt and Exception Report from the Custodian, which Collateral Receipt and Exception Report is acceptable to the Administrative Agent in its Permitted Discretion; and

Notwithstanding anything contained herein to the contrary, neither the Paying Agent nor the Collateral Agent shall be responsible or liable for determining whether any conditions precedent to making a Loan have been satisfied.

(b) Notices. Any Funding Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent, the Paying Agent and each Class B Revolving Lender.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, Company represents and warrants to each Agent and Lender, on the Closing Date, on each Credit Date and on each Transfer Date, that the following statements are true and correct:

**4.1 Organization; Requisite Power and Authority; Qualification; Other Names** . Company (a) is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not reasonably be expected to result in a Material Adverse Effect. Company does not operate or do business under any assumed, trade or fictitious name. Company has no Subsidiaries.

**4.2 Capital Stock and Ownership** . The Capital Stock of Company has been duly authorized and validly issued and is fully paid and non-assessable. As of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Company is a party requiring, and there is no membership interest or other Capital Stock of Company outstanding which upon conversion or exchange would require, the issuance by Company of any additional membership interests or other Capital Stock of Company or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Company. All membership interests in the Company as of the Closing Date are owned by Holdings.

**4.3 Due Authorization** . The execution, delivery and performance of the Credit Documents to which Company is a party have been duly authorized by all necessary action of Company.

**4.4 No Conflict** . The execution, delivery and performance by Company of the Credit Documents to which it is party and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate in any material respect any provision of any law or any governmental rule or regulation applicable to Company, any of the Organizational Documents of Company, or any order, judgment or decree of any court or other Governmental Authority binding on Company; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Company, except as would not reasonably be expected to result in a Material Adverse Effect.

**4.5 Governmental Consents** . The execution, delivery and performance by Company of the Credit Documents to which Company is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date other than (a) those that have already

been obtained and are in full force and effect, or (b) any consents or approvals the failure of which to obtain will not have a Material Adverse Effect.

**4.6 Binding Obligation** . Each Credit Document to which Company is a party has been duly executed and delivered by Company and is the legally valid and binding obligation of Company, enforceable against Company in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**4.7 Eligible Receivables** . Each Receivable that is identified by Company as an Eligible Receivable in a Borrowing Base Certificate satisfies all of the criteria set forth in the definition of Eligibility Criteria (other than any Receivable identified as an Eligible Receivable in any Original Borrowing Base Certificate to the extent a Replacement Borrowing Base Certificate has been delivered in substitute thereof in accordance with Section 2.1(c)(ii)).

**4.8 Historical Financial Statements** . The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

**4.9 No Material Adverse Effect** . Since December 31, 2014, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

**4.10 Adverse Proceedings, etc.** There are no Adverse Proceedings (other than counter claims relating to ordinary course collection actions by or on behalf of Company) pending against Company that challenges Company's right or power to enter into or perform any of its obligations under the Credit Documents to which it is a party or that would reasonably be expected to result in a Material Adverse Effect. Company is not (a) in violation of any applicable laws in any material respect, or (b) subject to or in default with respect to any judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other Governmental Authority, except as would not reasonably be expected to result in a Material Adverse Effect.

**4.11 Payment of Taxes** . Except as otherwise permitted under Section 5.3, all material tax returns and reports of Company required to be filed by it have been timely filed, and all material taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company and upon its properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. Company knows of no proposed tax assessment against Company which is not being actively contested by Company in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

**4.12 Title to Assets** . Company has no fee, leasehold or other property interests in any real property assets. Company has good and valid title to all of its assets reflected in the most recent financial statements delivered pursuant to Section 5.1. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens. All Liens purported to be created in any Collateral pursuant to any Collateral Document in favor of Collateral Agent are First Priority Liens.

**4.13 No Indebtedness** . Company has no Indebtedness, other than Indebtedness incurred under (or contemplated by) the terms of this Agreement or otherwise permitted hereunder.

**4.14 No Defaults** . Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not reasonably be expected to result in a Material Adverse Effect.

**4.15 Material Contracts** . Company is not a party to any Material Contracts.

**4.16 Government Contracts** . Company is not a party to any contract or agreement with any Governmental Authority, and the Pledged Receivables are not subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

**4.17 Governmental Regulation** . Company is not subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 (without reliance on the exemptions provided under Sections 3(c)(1) or 3(c)(7) thereof) or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Company is not a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940. The Revolving Loans do not constitute an “ownership interest” as such term is defined under the Volcker Rule.

**4.18 Margin Stock** . Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Revolving Loans made to Company will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

**4.19 Employee Benefit Plans** . No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Company does not maintain or contribute to any Employee Benefit Plan.

**4.20 Solvency; Fraudulent Conveyance** . Company is and, upon the incurrence of any Credit Extension by Company on any date on which this representation and warranty is made, will be, Solvent. Company is not transferring any Collateral with any intent to hinder, delay or defraud

any of its creditors. Company shall not use the proceeds from the transactions contemplated by this Agreement to give preference to any class of creditors. Company has given fair consideration and reasonably equivalent value in exchange for the sale of the Receivables by Holdings under the Asset Purchase Agreement.

**4.21 Compliance with Statutes, etc.** Company is in compliance in all material respects with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, except as would not reasonably be expected to result in a Material Adverse Effect.

#### **4.22 Matters Pertaining to Related Agreements .**

(a) Delivery. Company has delivered, or caused to be delivered, to each Agent and each Lender complete and correct copies of (i) each Related Agreement and of all exhibits and schedules thereto as of the Closing Date, and (ii) copies of any material amendment, restatement, supplement or other modification to or waiver of each Related Agreement entered into after the date hereof.

(b) The Asset Purchase Agreement creates a valid transfer and assignment to Company of all right, title and interest of Holdings in and to all Pledged Receivables and all Related Security conveyed to Company thereunder and Company has a First Priority perfected security interest therein. Company has given reasonably equivalent value to Holdings in consideration for the transfer to Company by Holdings of the Pledged Receivables and Related Security pursuant to the Asset Purchase Agreement.

(c) Each Receivables Program Agreement creates a valid transfer and assignment to Holdings of all right, title and interest of the Receivables Account Bank in and to all Receivables and Related Security conveyed or purported to be conveyed to Holdings thereunder. Holdings has given reasonably equivalent value to the Receivables Account Bank in consideration for the transfer to Holdings by the Receivables Account Bank of the Receivables and Related Security pursuant to the applicable Receivables Program Agreement.

**4.23 Disclosure .** No documents, certificates, written statements or other written information furnished to Lenders by or on behalf of Holdings or Company for use in connection with the transactions contemplated hereby, taken as a whole, contains any untrue statement of a material fact, or taken as a whole, omits to state a material fact (known to Holdings or Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained therein not misleading in light of the circumstances in which the same were made, provided, that, projections and pro forma financial information contained in such materials were prepared based upon good faith estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

**4.24 Patriot Act .** To the extent applicable, Company and Holdings are in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the

foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “**Act**”). No part of the proceeds of the Revolving Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended to the date hereof and from time to time hereafter, and any successor statute.

#### **4.25 Remittance of Collections.**

Company represents and warrants that each remittance of Collections by it hereunder to any Agent or any Lender hereunder will have been (a) in payment of a debt incurred by Company in the ordinary course of business or financial affairs of Company and (b) made in the ordinary course of business or financial affairs.

#### **4.26 Tax Status.**

(a) Company is, and shall at all relevant times continue to be, a “disregarded entity” within the meaning of U.S. Treasury Regulation § 301.7701-3.

(b) Company is not and will not at any relevant time become an association (or a publicly traded partnership) taxable as a corporation for U.S. federal income tax purposes.

#### **4.27 LCR.**

In connection with this Agreement, the Borrower represents, warrants and agrees that it has not, does not and will not during the term of the Agreement (x) issue any obligations that (a) constitute asset-backed commercial paper, or (b) are securities required to be registered under the Securities Act of 1933 or that may be offered for sale under Rule 144A of the Securities and Exchange Commission thereunder, or (y) issue any other debt obligations or equity interests other than (i) Class A Loans, Class B Loans or other debt obligations substantially similar to the obligations of the Borrower under this Agreement that are (A) issued to other banks or asset-backed commercial paper conduits in privately negotiated transactions, and (B) subject to transfer restrictions substantially similar to the transfer restrictions set forth in Section 9.6 of this Agreement, and (ii) equity interests issued to Holdings under the terms of the Borrower’s Organizational Documents. The assets and liabilities of the Borrower are consolidated with the assets and liabilities of Holdings under GAAP.

### **SECTION 5. AFFIRMATIVE COVENANTS**

Company covenants and agrees that until the Termination Date, Company shall perform (or cause to be performed, as applicable) all covenants in this Section 5.

**5.1 Financial Statements and Other Reports** . Unless otherwise provided below, Company or its designee will deliver to each Agent and each Lender:

(a) Quarterly Financial Statements . Promptly after becoming available, and in any event within forty-five (45) days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter) of each Fiscal Year, the consolidated balance sheet of Holdings as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Holdings for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(b) Annual Financial Statements . Promptly after becoming available, and in any event within ninety (90) days after the end of each Fiscal Year, (i) the consolidated balance sheets of Holdings as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Holdings for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) and (iii) the balance sheets of Company as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Company for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Compliance Certificates . Together with each delivery of financial statements of Holdings pursuant to Sections 5.1(a) and 5.1(b), a duly executed and completed Compliance Certificate;

(d) Statements of Reconciliation after Change in Accounting Principles . If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of (i) Holdings and (ii) Company delivered pursuant to Section 5.1(a) or 5.1(b) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to Administrative Agent;

(e) Public Reporting. The obligations in Sections 5.1(a) and (b) may be satisfied by furnishing, at the option of Holdings, the applicable financial statements as described above or an Annual Report on Form 10-K or Quarterly Report on Form 10-Q for Holdings for any Fiscal Year, as filed with the U.S. Securities and Exchange Commission.

(f) Collateral Reporting.

(i) On each Monthly Reporting Date, with each Funding Notice, and at such other times as any Agent or Lender shall request in its Permitted Discretion, a Borrowing Base Certificate (calculated as of the close of business of the previous Monthly Period or as of a date no later than three (3) Business Days prior to such request), together with a reconciliation to the most recently delivered Borrowing Base Certificate and Borrowing Base Report, in form and substance reasonably satisfactory to Administrative Agent and each Class B Revolving Lender. Each Borrowing Base Certificate delivered to Administrative Agent, Paying Agent and each Class B Revolving Lender shall bear a signed statement by an Authorized Officer certifying the accuracy and completeness in all material respects of all information included therein. The execution and delivery of a Borrowing Base Certificate (other than any Original Borrowing Base Certificate to the extent a Replacement Borrowing Base Certificate has been delivered in substitute thereof in accordance with Section 2.1(c)(ii)) shall in each instance constitute a representation and warranty by Company to Administrative Agent, Paying Agent and each Class B Revolving Lender that each Receivable included therein as an “Eligible Receivable” is, in fact, an Eligible Receivable. For avoidance of doubt, and without derogation of the Company’s obligations hereunder, in the event any request for a Revolving Loan, or a Borrowing Base Certificate or other information required by this Section 5.1(f) is delivered to Administrative Agent, Paying Agent and each Class B Revolving Lender by Company electronically or otherwise without signature, such request, or such Borrowing Base Certificate or other information shall, upon such delivery, be deemed to be signed and certified on behalf of Company by an Authorized Officer and constitute a representation to Administrative Agent, Paying Agent and each Class B Revolving Lender as to the authenticity thereof. The Administrative Agent shall have the right to review and adjust any such calculation of the Borrowing Base to reflect exclusions from Eligible Receivables or such other matters as are necessary to determine the Borrowing Base, but in each case only to the extent the Administrative Agent is expressly provided such discretion by this Agreement.

(ii) On each Monthly Reporting Date, the Master Record and the Monthly Servicing Report to Administrative Agent, Paying Agent and each Class B Revolving Lender on the terms and conditions set forth in the Servicing Agreement.

(g) Notice of Default. Promptly upon an Authorized Officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or Company with respect thereto; (ii) that any Person has given any notice to Holdings or Company or taken any other action with respect to any event or condition set forth in Section 7.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate

of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, default, event or condition, and what action Holdings or Company, as applicable, has taken, is taking and proposes to take with respect thereto;

(h) Notice of Litigation. Promptly upon any Authorized Officer of Company obtaining knowledge of an Adverse Proceeding that is reasonably likely to have a Material Adverse Effect, written notice thereof together with such other information as may be reasonably available to Company or Holdings to enable Lenders and their counsel to evaluate such matters;

(i) ERISA. (i) Promptly upon any Authorized Officer of Company becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each affected Pension Plan; (2) all notices received by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any affected Employee Benefit Plan of Holdings or any of its Subsidiaries thereof, or, with respect to any affected Pension Plan or affected Multiemployer Plan, any of their respective ERISA Affiliates (with respect to an affected Multiemployer Plan, to the extent that Holdings or the Subsidiary or ERISA Affiliate, as applicable, has rights to access such documents, reports or filings), as any Agent or Lender shall reasonably request;

(j) Information Regarding Collateral. Prior written notice to Collateral Agent and Administrative Agent of any change (i) in Company's corporate name, (ii) in Company's identity, corporate structure or jurisdiction of organization, or (iii) in Company's Federal Taxpayer Identification Number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents;

(k) Other Information.

(i) not later than Friday of each week (or if such day is not a Business Day, the immediately preceding Business Day) in which a Borrowing Base Report has not otherwise been delivered hereunder, a Borrowing Base Report; and

(ii) such material information and data with respect to Holdings or any of its Subsidiaries as from time to time may be reasonably requested by any Agent or Lender,

in each case, which relate to Company's or Holdings' financial or business condition or the Collateral.

**5.2 Existence** . Except as otherwise permitted under Section 6.8, Company will at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business.

**5.3 Payment of Taxes and Claims** . Company will pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. Company will not file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries). In addition, Company agrees to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by any Governmental Authority that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any Credit Document.

**5.4 Insurance** . Company shall cause Holdings to maintain or cause to be maintained, with financially sound and reputable insurers, (a) all insurance required to be maintained under the Servicing Agreement, (b) business interruption insurance reasonably satisfactory to Administrative Agent, and (c) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each Agent and Lender hereby agrees and acknowledges that the insurance maintained by Holdings on the Closing Date satisfies the requirements set forth in this Section 5.4 .

**5.5 Inspections; Compliance Audits** .

(a) At any time during the existence of an Event of Default and otherwise not more than one time during any Fiscal Year, Company will, upon reasonable advance notice by the Administrative Agent, permit or cause to be permitted, as applicable, one or more authorized representatives designated by the Administrative Agent to visit and inspect (a **"Compliance Review"** ) during normal working hours any of the properties of Company or Holdings to (i) inspect, copy and take extracts from relevant financial and accounting records, and to discuss its affairs,

finances and accounts with any Person, including, without limitation, employees of Company or Holdings and independent public accountants and (ii) verify the compliance by Company or Holdings with the Credit Agreement, the other Credit Documents and/or the Underwriting Policies, as applicable, provided that, other than during the existence of an Event of Default, Company shall not be obligated to pay more than \$100,000 in the aggregate during any Fiscal Year in connection with any Compliance Review, inspection pursuant to Section 2.4 of the Custodial Agreement or other inspection required by the Credit Documents. In connection with any such Compliance Review or other inspection, Company will permit any authorized representatives designated by the Administrative Agent to review Company's form of Receivable Agreements, Underwriting Policies, information processes and controls, and compliance practices and procedures ( "**Materials**" ). Such authorized representatives may make written recommendations regarding Company's compliance with applicable Requirements of Law, and Company shall consult in good faith with the Administrative Agent regarding such recommendations. The Administrative Agent agrees to use a single independent certified public accountants or other third-party provider in connection with any Compliance Review pursuant to this Section 5.5.

(b) If the Administrative Agent engages any independent certified public accountants or other third-party provider to prepare any report in connection with the Compliance Review, the Administrative Agent shall make such report available to any Lender, upon request, provided, that delivery of any such report may be conditioned on prior receipt by such independent certified public accountants or other third party provider of the acknowledgements and agreements that such independent certified public accountants or third party provider customarily requires of recipients of reports of that kind.

(c) In connection with a Compliance Review, the Administrative Agent or its designee may contact a Receivables Obligor as reasonably necessary to perform such inspection or Compliance Review, as the case may be, provided, however, such contact shall be made in the name of, and in cooperation with, Holdings and Company.

**5.6 Compliance with Laws** . Company shall, and shall cause Holdings to, comply with the Requirements of Law, noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.7 Separateness** . The Company shall at all times comply with the separateness covenants set forth in the Company's Limited Liability Company Agreement.

**5.8 Further Assurances** . At any time or from time to time upon the request of any Agent or Lender, Company will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as such Agent or Lender may reasonably request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information reasonably requested pursuant to Section 9.21 . In furtherance and not in limitation of the foregoing, Company shall take such actions as the Administrative Agent may reasonably request from time to time to ensure that the Obligations are secured by substantially all of the assets of Company.

**5.9 Communication with Accountants** .

(a) At any time during the existence of an Event of Default, Company authorizes Administrative Agent to communicate directly with Company's independent certified public accountants and authorizes and shall instruct such accountants to communicate directly with Administrative Agent and authorizes such accountants to (and, upon Administrative Agent's request therefor (at the request of any Agent), shall request that such accountants) communicate to Administrative Agent information relating to Company with respect to the business, results of operations and financial condition of Company (including the delivery of audit drafts and letters to management), provided that advance notice of such communication is given to Company, and Company is given a reasonable opportunity to cause an officer to be present during any such communication.

(b) If the independent certified public accountants report delivered in connection with Section 5.1(b) is qualified, then the Company authorizes the Administrative Agent to communicate directly with the Company's independent certified public accountants with respect to such qualification, provided that advance notice of such communication is given to the Company, and the Company is given a reasonable opportunity to cause an officer to be present during any such communication.

(c) The failure of the Company to be present during any communication permitted under Section 5.9(a) and/or Section 5.9(b) after the Company has been given a reasonable opportunity to cause an officer to be present shall in no way impair the rights of the Administrative Agent under Section 5.9(a) and/or Section 5.9(b).

**5.10 Acquisition of Receivables from Holdings .** With respect to each Pledged Receivable, Company shall (a) acquire such Receivable pursuant to and in accordance with the terms of the Asset Purchase Agreement, (b) take all actions necessary to perfect, protect and more fully evidence Company's ownership of such Receivable, including, without limitation, executing or causing to be executed (or filing or causing to be filed) such other instruments or notices as may be necessary or appropriate and (c) take all additional action that the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective interests of Company, the Agents and the Lenders.

**5.14 Class B Revolving Lender Information Rights .** Company shall provide to each Class B Revolving Lender (a) substantially contemporaneously with its provision to the Administrative Agent any written information required to be provided to the Administrative Agent under any Credit Document, and (b) prompt written notice of (i) any Event of Default under this Agreement and (ii) any written waiver or consent provided under, or any amendment of, any Credit Document.

## **SECTION 6. NEGATIVE COVENANTS**

Company covenants and agrees that, until the Termination Date, Company shall perform (or cause to be performed, as applicable) all covenants in this Section 6.

**6.1 Indebtedness** . Company shall not directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except the Obligations.

**6.2 Liens** . Company shall not directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document.

**6.3 Equitable Lien.** If Company shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Liens created under the Credit Documents, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

**6.4 No Further Negative Pledges** . Except pursuant to the Credit Documents Company shall not enter into any Contractual Obligation prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

**6.5 Restricted Junior Payments** . Company shall not through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that, Restricted Junior Payments may be made by Company from time to time with respect to any amounts distributed to Company (i) in accordance with Section 2.12(a)(xi) or (ii) from and after the occurrence and during the continuation of an Event of Default, in accordance with Section 2.12(b)(viii) only.

**6.6 Subsidiaries** . Company shall not form, create, organize, incorporate or otherwise have any Subsidiaries.

**6.7 Investments** . Company shall not, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except Investments in Cash, Permitted Investments and Receivables (and property received from time to time in connection with the workout or insolvency of any Receivables Obligor), and Permitted Investments in the Controlled Accounts.

**6.8 Fundamental Changes; Disposition of Assets; Acquisitions** . Company shall not enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and

whether tangible or intangible, whether now owned or hereafter acquired (other than, provided no Event of Default pursuant to Section 7.1(a), 7.1(g), 7.1(h) or 7.1(p) has occurred and is continuing, Permitted Asset Sales, provided, that Permitted Asset Sales under clause (d) of the definition thereof shall be permitted at all times subject to receipt of the consent required therein), or acquire by purchase or otherwise (other than acquisitions of Eligible Receivables, or Permitted Investments in a Controlled Account (and property received from time to time in connection with the workout or insolvency of any Receivables Obligor)) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person.

**6.9 Sales and Lease-Backs** . Company shall not, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which Company (a) has sold or transferred or is to sell or to transfer to any other Person, or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by Company to any Person in connection with such lease.

**6.10 Transactions with Shareholders and Affiliates** . Company shall not, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of ten percent (10%) or more of any class of Capital Stock of Holdings or any of its Subsidiaries or with any Affiliate of Holdings or of any such holder other than the transactions contemplated or permitted by the Credit Documents and the Related Agreements.

**6.11 Conduct of Business** . From and after the Closing Date, Company shall not engage in any business other than the businesses engaged in by Company on the Closing Date.

**6.12 Fiscal Year** . Company shall not change its Fiscal Year-end from December 31<sup>st</sup> .

**6.13 Servicer; Backup Servicer; Custodian** . Company shall use its commercially reasonable efforts to cause Servicer, the Backup Servicer and the Custodian respectively, to comply at all times with the applicable terms of the Servicing Agreement, the Backup Servicing Agreement and the Custodial Agreement respectively. The Company may not (i) terminate, remove, replace Servicer, Backup Servicer or the Custodian or (ii) subcontract out any portion of the servicing or permit third party servicing other than the Backup Servicer, except, in each case, as expressly set forth in the applicable Credit Document and subject to satisfaction of the related requirements therein. The Administrative Agent may not terminate, remove, replace Servicer, Backup Servicer or the Custodian except as expressly set forth in the applicable Credit Document and subject to satisfaction of the related requirements therein.

**6.14 Acquisitions of Receivables.** Company may not acquire Receivables from any Person other than Holdings pursuant to the Asset Purchase Agreement.

**6.15 Independent Manager.** Company shall not fail at any time to have at least one independent manager (an “**Independent Manager**”) who:

(a) is provided by a nationally recognized provider of independent directors;

(b) is not and has not been employed by Company or Holdings or any of their respective Subsidiaries or Affiliates as an officer, director, partner, manager, member (other than as a special member in the case of single member Delaware limited liability companies), employee, attorney or counsel of, Company or Holdings or any of their respective Affiliates within the five years immediately prior to such individual's appointment as an Independent Manager, provided that this paragraph (b) shall not apply to any person who serves as an independent director or an independent manager for any Affiliate of any of Company or Holdings;

(c) is not, and has not been within the five years immediately prior to such individual's appointment as an Independent Manager, a customer or creditor of, or supplier to, Company or Holdings or any of their respective Affiliates who derives any of its purchases or revenue from its activities with Company or Holdings or any of their respective Affiliates thereof (other than a de minimis amount);

(d) is not, and has not been within the five years immediately prior to such individual's appointment as an Independent Manager, a person who controls or is under common control with any Person described by clause (b) or (c) above;

(e) does not have, and has not had within the five years immediately prior to such individual's appointment as an Independent Manager, a personal services contract with Company or Holdings or any of their respective Subsidiaries or Affiliates, from which fees and other compensation received by the person pursuant to such personal services contract would exceed 5% of his or her gross revenues during the preceding calendar year;

(f) is not affiliated with a tax-exempt entity that receives, or has received within the five years prior to such appointment as an Independent Manager, contributions from Company or Holdings or any of their respective Subsidiaries or Affiliates, in excess of the lesser of (i) 3% of the consolidated gross revenues of Holdings and its Subsidiaries during such fiscal year and (ii) 5% of the contributions received by the tax-exempt entity during such fiscal year;

(g) is not and has not been a shareholder (or other equity owner) of any of Company or Holdings or any of their respective Affiliates within the five years immediately prior to such individual's appointment as an Independent Manager;

(h) is not a member of the immediate family of any Person described by clause (b) through (g) above;

(i) is not, and was not within the five years prior to such appointment as an Independent Manager, a financial institution to which Company or Holdings or any of their respective Subsidiaries or Affiliates owes outstanding Indebtedness for borrowed money in a sum exceeding more than 5% of Holdings' total consolidated assets;

(j) has prior experience as an independent director or manager for a corporation or limited liability company whose charter documents required the unanimous consent of all

independent directors thereof before such corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy; and

(k) has at least three (3) years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities.

Upon Company learning of the death or incapacity of an Independent Manager, Company shall have ten (10) Business Days following such death or incapacity to appoint a replacement Independent Manager. Any replacement of an Independent Manager will be permitted only upon (a) two (2) Business Days' prior written notice to each Agent and Lender, (b) Company's certification that any replacement manager will satisfy the criteria set forth in clauses (a)-(i) of this Section 6.15 and (c) the Administrative Agent' written consent to the appointment of such replacement manager. For the avoidance of doubt, other than in the event of the death or incapacity of an Independent Manager, Company shall at all times have an Independent Manager and may not terminate any Independent Manager without the prior written consent of the Administrative Agent, which consent the Administrative Agent may withhold in its sole discretion.

**6.16 Organizational Agreements** . Except as otherwise expressly permitted by other provisions of this Agreement or any other Credit Document, Company shall not (a) amend, restate, supplement or modify, or permit any amendment, restatement, supplement or modification to, its Organizational Documents, without obtaining the prior written consent of the Requisite Lenders to such amendment, restatement, supplement or modification, as the case may be; (b) agree to any termination, amendment, restatement, supplement or other modification to, or waiver of, or permit any termination, amendment, restatement, supplement or other modification to, or waivers of, any of the provisions of any Credit Document without the prior written consent of the Requisite Lenders; or (c) amend, restate, supplement or modify in any material respect, or permit any amendments, restatements, supplements or modifications in any material respect, to any Receivables Program Agreement in a manner that could reasonably be expected to be materially adverse to the Lenders.

**6.17 Changes in Underwriting or Other Policies** . Company shall provide the Administrative Agent and the Requisite Class B Revolving Lenders with prior written notice of any change or modification to the Underwriting Policies that would reasonably be expected to be adverse to the Lenders. Without the prior consent of the Administrative Agent and the Requisite Class B Revolving Lenders, such consent not to be unreasonably withheld, conditioned or delayed (with any such consent being deemed to be automatically granted by the Administrative Agent and the Requisite Class B Revolving Lenders on the fifteenth (15th) calendar day after the Administrative Agent and the Requisite Class B Revolving Lenders receives notice of the applicable change unless the Administrative Agent or the Requisite Class B Revolving Lenders shall have notified the Company in writing that the requested consent is not being provided and its rationale therefor), the Company shall not agree to, and shall cause Holdings not to, (a) make any change to (i) the forms of Business Loan and Security Agreement, Business Loan and Security Agreement Supplement and Loan Summary used to originate Receivables from the form provided to the Administrative Agent

prior to the Closing Date, or (ii) the form of Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit ) used in connection with the origination of Loans in substantially the form provided to the Administrative Agent on or prior to the Closing Date that, in any such case, would reasonably be expected to result in an Adverse Effect, or (b) make any change to the Underwriting Policies that would reasonably be expected to be materially adverse to the Lenders (provided, that any change to the Underwriting Policies which has the effect of modifying the Eligibility Criteria in a manner which changes the calculation of the Class A Borrowing Base and the Class B Borrowing Base shall be deemed to be materially adverse to the Lenders for purposes of this Section 6.17).

**6.18 Receivable Program Agreements .** The Company shall (a) perform and comply with its obligations under the Receivables Program Agreements and (b) enforce the rights and remedies afforded to it against the Receivables Account Bank under the Receivables Program Agreements, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in an Adverse Effect.

## **SECTION 7. EVENTS OF DEFAULT**

**7.1 Events of Default .** If any one or more of the following conditions or events shall occur.

(a) Failure to Make Payments When Due . Other than with respect to a Borrowing Base Deficiency, failure by Company to pay (i) when due, the principal on any Revolving Loan whether at stated maturity, by acceleration or otherwise; (ii) within two (2) Business Days after its due date, any interest on any Revolving Loan or any fee due hereunder; (iii) within thirty (30) days after its due date, any other amount due hereunder; or (iv) the amounts required to be paid pursuant to Section 2.8 on or before the Revolving Commitment Termination Date; or

(b) Default in Other Agreements .

(i) Failure of Company to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 7.1(a) ), in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by Company with respect to any other material term of (1) one or more items of Indebtedness referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefore, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be;

(ii) (A) Failure of Holdings or any Subsidiary of Holdings (other than Company) to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness for borrowed money with a principal amount in excess of \$1,000,000, in each case beyond the grace period, if any, provided therefor; or

(B) breach or default by Holdings or any Subsidiary of Holdings (other than Company) with respect to any other material term of (1) one or more items of Indebtedness for borrowed money with a principal amount in excess of \$1,000,000, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness for borrowed money, and, in each case, such failure, breach or default, as the case may be, results in the acceleration of amounts owed thereunder, provided that any such failure, breach or default, as the case may be, and acceleration shall constitute an Event of Default hereunder only after the Administrative Agent shall have provided written notice to Company that such failure, breach or default constitutes an Event of Default hereunder; or

(c) Breach of Certain Covenants. Failure of Company to perform or comply with any term or condition contained in Section 2.3, Section 2.11, Section 5.1(h), Section 5.1(j), Section 5.2, Section 5.7 or Section 6, or failure to distribute Collections in accordance with Section 2.12; or

(d) Breach of Representations, etc. Any representation or warranty, certification or other statement made or deemed made by Company or Holdings (or Holdings as Servicer) in any Credit Document or in any statement or certificate at any time given by Company or Holdings (or Holdings as Servicer) in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect, other than any representation, warranty, certification or other statement which is qualified by materiality or “Material Adverse Effect”, in which case, such representation, warranty, certification or other statement shall be true and correct in all respects, in each case, as of the date made or deemed made and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of Company or Holdings becoming aware of such default, or (ii) receipt by Company of notice from any Agent or Lender of such default; or

(e) Other Defaults Under Credit Documents. Company or Holdings shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents other than any such term referred to in any other Section of this Section 7.1 and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of Company or Holdings becoming aware of such default, or (ii) receipt by Company or Holdings of notice from Administrative Agent or any Lender of such default, provided, however, that notwithstanding the foregoing or any other provision of this Agreement, a failure by Company to satisfy its obligations under Section 4 of the Undertakings Agreement shall not result in a Default or Event of Default hereunder; or

(f) Breach of Portfolio Performance Covenants. A breach of any Portfolio Performance Covenant shall have occurred and the Administrative Agent shall have provided written notice to the Company that an Event of Default under this Section 7.1(f) has occurred and is continuing; or

(g) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or Holdings in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any

other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or Holdings under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or Holdings, or over all or a substantial part of its respective property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or Holdings for all or a substantial part of its respective property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or Holdings, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(h) Voluntary Bankruptcy; Appointment of Receiver, etc. . (i) Company or Holdings shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its respective property; or Company or Holdings shall make any assignment for the benefit of creditors; or (ii) Company or Holdings shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Company or Holdings (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 7.1(g); or

(i) Judgments and Attachments .

(i) Any money judgment, writ or warrant of attachment or similar process (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Company or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(ii) Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$2,000,000 or (ii) in the aggregate at any time an amount in excess of \$5,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Holdings (or Holdings as Servicer) or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(iii) Any tax lien or lien of the PBGC shall be entered or filed against Company or Holdings (involving, with respect to Holdings only, an amount in excess of \$1,000,000) or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of ten (10) days;

(j) Dissolution. Any order, judgment or decree shall be entered against Company or Holdings decreeing the dissolution or split up of Company or Holdings, as the case may be, and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(k) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in a Material Adverse Effect during the term hereof or result in a Lien being imposed on the Collateral; or (ii) Company shall establish or contribute to any Employee Benefit Plan; or

(l) Change of Control. A Change of Control shall occur; or

(m) Collateral Documents and other Credit Documents. Company or Holdings shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party; or

(n) Servicing Agreement. A Servicer Default shall have occurred and be continuing; or

(o) Backup Servicer Default. The Backup Servicing Agreement shall terminate for any reason and, provided that the Administrative Agent shall have used commercially reasonable efforts to timely engage a replacement Backup Servicer following such termination, within ninety (90) days of such termination no replacement agreement with an alternative backup servicer shall be effective; or

(p) Borrowing Base Deficiency; Repurchase Failure. (i) Failure by Company to cure any Borrowing Base Deficiency within two (2) Business Days after the due date thereof, or (ii) failure of Holdings to repurchase any Receivable as and when required under the Asset Purchase Agreement; or

(q) Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Collateral Document ceases to be in full force and effect (other than in accordance with its terms) or shall be declared null and void by a court of competent jurisdiction or the enforceability thereof shall be impaired in any material respect, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document (in each case, other than (A) by reason of a release of Collateral in accordance with the terms hereof or thereof or (B) the satisfaction in full of the Obligations and any other amount due hereunder or any other Credit Document in accordance with the terms hereof); or (ii) any of the Credit Documents for any reason, other than the satisfaction in full of all Obligations and any other amount due hereunder or any other Credit Document (other than contingent indemnification obligations for which demand has not been made), shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void by a court of competent jurisdiction or a party thereto, as the case may be, or Holdings shall repudiate its obligations thereunder or shall contest the validity or enforceability of any Credit Document in writing; or

(r) Breach of Financial Covenants . A breach of any Financial Covenant shall have occurred; or

(s) Investment Company Act . Holdings or Company become subject to any federal or state statute or regulation which may render all or any portion of the Obligations unenforceable, or Company becomes a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940;

**THEN** , upon the occurrence of any Event of Default, the Administrative Agent may, and shall, at the written request of the Requisite Lenders, take any of the following actions: (w) upon notice to the Company, terminate the Revolving Commitments, if any, of each Lender having such Revolving Commitments, (x) upon notice to the Company, declare the unpaid principal amount of and accrued interest on the Revolving Loans and all other Obligations immediately due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company; (y) direct the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents and (z) take any and all other actions and exercise any and all other rights and remedies of the Administrative Agent under the Credit Documents; provided that upon the occurrence of any Event of Default described in Section 7.1(g) or 7.1(h), the unpaid principal amount of and accrued interest on the Revolving Loans and all other Obligations shall immediately become due and payable, and the Revolving Commitments shall automatically and immediately terminate, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company.

## **SECTION 8. AGENTS**

**8.1 Appointment of Agents** . Each Class A Revolving Lender hereby authorizes Bank of America, N.A. to act as Administrative Agent to the Class A Revolving Lenders hereunder and under the other Credit Documents and each Class A Revolving Lender hereby authorizes Bank of America, N.A, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Lender hereby authorizes Wells Fargo Bank N.A., to act as the Collateral Agent on its behalf under the Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 8 are solely for the benefit of Agents and Lenders and neither Company or Holdings shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent (other than Administrative Agent) shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of the Class A Revolving Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Class B Revolving Lender, Holdings or any of its Subsidiaries. On or prior to the first date upon which any Class B Revolving Lender makes a Class B Revolving Loan to Company pursuant to Section 2.1(a)(ii), each Class B Lender hereby agrees to appoint an agent to act in accordance with the terms hereof and the other Credit Documents (the “Class B Agent”). In performing its functions and duties hereunder, the

Class B Agent shall act solely as an agent of the Class B Revolving Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Class A Revolving Lender, Holdings or any of its Subsidiaries.

**8.2 Powers and Duties .** Each Lender irrevocably authorizes each Agent (other than Administrative Agent) to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Class A Revolving Lender irrevocably authorizes Administrative Agent to take such action on such Class A Revolving Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each such Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No such Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any such Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

### **8.3 General Immunity .**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of Company or Holdings to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of Company or Holdings or any other Person liable for the payment of any Obligations or any other amount due hereunder or any other Credit Document, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Revolving Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, neither the Paying Agent nor the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Revolving Loans or the component amounts thereof.

(b) Exculpatory Provisions Relating to Agents. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Each such Agent shall be entitled to refrain from any

act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from the Administrative Agent or the Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.5) and, upon receipt of such instructions from the Administrative Agent or Requisite Lenders, as applicable (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each such Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and Company), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any such Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.5).

**8.4 Agents Entitled to Act as Lender .** Any agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Revolving Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

**8.5 Lenders’ Representations, Warranties and Acknowledgment .**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and Company in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and Company. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Revolving Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document

and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

**8.6 Right to Indemnity .** Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent (each, an **“Indemnatee Agent Party”** ), to the extent that such Indemnatee Agent Party shall not have been reimbursed by Company or Holdings, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnatee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnatee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY ;** provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnatee Agent Party’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final non-appealable order. If any indemnity furnished to any Indemnatee Agent Party for any purpose shall, in the opinion of such Indemnatee Agent Party, be insufficient or become impaired, such Indemnatee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnatee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender’s Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Indemnatee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**8.7 Successor Administrative Agent and Collateral Agent .**

(a) Administrative Agent.

(i) Administrative Agent may resign at any time by giving thirty (30) days’ prior written notice thereof to the Class A Revolving Lenders and Company. Upon any such notice of resignation, the Requisite Class A Revolving Lenders shall have the right, upon five (5) Business Days’ notice to Company, to appoint a successor Administrative Agent provided, that the appointment of a successor Administrative Agent shall require (so long as no Default or Event of Default has occurred and is continuing) Company’s approval, which approval shall not be unreasonably withheld, delayed or conditioned. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all records and other documents necessary or appropriate in

connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the appointment of such successor Administrative Agent, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. If Administrative Agent is a Class A Revolving Lender or an Affiliate thereof on the date on which the Revolving Commitment Termination Date shall have occurred and all Class A Revolving Loans and all other Obligations owing to the Class A Revolving Lender Groups have been paid in full in cash, such Administrative Agent shall provide immediate notice of resignation to the Company, and the Requisite Class B Revolving Lenders shall have the right, upon five (5) Business Days' notice to the Company, to appoint a successor Administrative Agent; provided, that the appointment of any successor Administrative Agent that is not a Class B Revolving Lender or an Affiliate thereof shall require (so long as no Default or Event of Default has occurred and is continuing) Company's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(ii) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent hereunder to one of its Affiliates without the prior written consent of, or prior written notice to, Company or the Revolving Lenders; *provided* that Company and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Credit Documents.

(b) Collateral Agent.

(i) Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, the Requisite Lenders shall have the right, upon five (5) Business Days' notice to Company, to appoint a successor Collateral Agent *provided*, that the appointment of a successor Collateral Agent shall require (so long as no Default or Event of Default has occurred and is continuing) Company's approval, which approval shall not be unreasonably withheld, delayed or conditioned. If, however, a successor Collateral Agent is not appointed within sixty (60) days after the giving of notice of resignation, the Collateral Agent may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the retiring Collateral Agent shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance

of the duties of the successor Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the appointment of such successor Collateral Agent and the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent hereunder.

(ii) Notwithstanding anything herein to the contrary, Collateral Agent may assign its rights and duties as Collateral Agent hereunder to one of its Affiliates without the prior written consent of, or prior written notice to, Company or the Lenders; *provided* that Company and the Lenders may deem and treat such assigning Collateral Agent as Collateral Agent for all purposes hereof, unless and until such assigning Collateral Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Collateral Agent hereunder and under the other Credit Documents.

## **8.8 Collateral Documents .**

(a) Collateral Agent under Collateral Documents . Each Lender hereby further authorizes Collateral Agent, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Collateral and the Collateral Documents. Subject to Section 9.5 , without further written consent or authorization from Lenders, Collateral Agent may execute any documents or instruments necessary to release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 9.5 ) have otherwise consented. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company, the Agents and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Collateral Agent acting at the written direction of the Administrative Agent (unless otherwise expressly set forth herein or in another Credit Document), on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations or any other amount due hereunder as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale. Notwithstanding any other provision of the Credit Documents, prior to consummating any such public or private sale, the Collateral Agent shall provide the Class B Revolving Lenders with the

right (exercisable for a period of one (1) Business Day after written notice) to purchase any such Collateral for cash in immediately available funds at a price equal to \$0.03125 higher than the next highest legitimate and observable third-party bid (as designated to the Collateral Agent by the Administrative Agent).

## **SECTION 9. MISCELLANEOUS**

**9.1 Notices** . Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to Company, Collateral Agent or Administrative Agent shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent, provided, however, that Company may deliver, or cause to be delivered, the Borrowing Base Certificate, Borrowing Base Report and any financial statements or reports (including the Financial Plan and any collateral performance tests) by electronic mail pursuant to procedures approved by the Administrative Agent until any Agent or Lender notifies Company that it can no longer receive such documents using electronic mail. Any Borrowing Base Certificate, Borrowing Base Report or financial statements or reports sent to an electronic 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, if available, return electronic mail or other written acknowledgement), provided, that if such document is sent after 5:00 p.m. Eastern Standard time, such document shall be deemed to have been sent at the opening of business on the next Business Day.

**9.2 Expenses** . Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) (i) all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and expenses (including reasonable and customary fees and expenses of counsel to the Administrative Agent of negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and (ii) reasonable and customary fees and expenses of a single counsel to the Lenders in connection with any consents, amendments, waivers or other modifications to the Credit Documents; (b) all the actual, documented out-of-pocket costs and reasonable out-of-pocket expenses of creating, perfecting and enforcing Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented out-of-pocket fees, expenses and disbursements of a single counsel for all Lenders; (c) subject to the terms of this Agreement (including any limitations set forth in Section 5.5), all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and reasonable fees, expenses for, and disbursements of any of Administrative Agent's, auditors, accountants, consultants or appraisers incurred by Administrative Agent; (d) subject to the terms of this Agreement, all the actual, reasonable and documented out-of-pocket costs and expenses (including the reasonable fees,

expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (e) subject in all cases to any express limitations set forth in any Credit Document, all other actual, reasonable and documented out-of-pocket costs and expenses incurred by each Agent in connection with the syndication of the Revolving Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (f) after the occurrence of a Default or an Event of Default, all documented, out-of-pocket costs and expenses, including reasonable attorneys' fees, and costs of settlement, incurred by any Agent or any Lender in enforcing any Obligations of or in collecting any payments due from Company or Holdings hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

### 9.3 Indemnity .

(a) In addition to the payment of expenses pursuant to Section 9.2, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Affected Party and each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents (each, an **"Indemnitee"** ), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE** excluding any amounts not otherwise payable by Company under Section 2.16(b)(iii); provided, Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final non-appealable order of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 9.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no party hereto shall assert, and all parties hereto hereby waive, any claim against any other parties and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Revolving Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and all

parties hereto hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

#### **9.4 Reserved .**

#### **9.5 Amendments and Waivers .**

(a) Requisite Lenders' Consent . Subject to Sections 9.5(b) and 9.5(c) , no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Holdings therefrom, shall in any event be effective without the written concurrence of Company, Administrative Agent and the Requisite Lenders.

(b) Affected Lenders' Consent . Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Revolving Loan or Revolving Loan Note;
  - (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
  - (iii) reduce the rate of interest on any Revolving Loan (other than any waiver of any increase in the interest rate applicable to any Revolving Loan pursuant to Section 2.8.) or any fee payable hereunder;
  - (iv) extend the time for payment of any such interest or fees;
  - (v) reduce the principal amount of any Revolving Loan;
  - (vi) (x) amend the definition of "Class A Borrowing Base" or "Class B Borrowing Base" or (y) amend, modify, terminate or waive Section 2.12 , Section 2.13 or Section 2.14 or any provision of this Section 9.5(b) or Section 9.5(c) ;
  - (vii) amend the definition of **"Requisite Lenders"**, **"Requisite Class A Revolving Lenders," "Requisite Class B Revolving Lenders," "Class A Revolving Exposure," "Class B Revolving Exposure," "Committed Lender Pro Rata Share," "Pro Rata Share," "Applicable Class A Advance Rate," "Applicable Class B Advance Rate," "Class A Revolving Availability," "Class B "Revolving Availability"** or any definition used therein ; provided , with the consent of Administrative Agent, Company and the Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of **"Requisite Lenders"** or **"Pro Rata Share"** on substantially the same basis as the Revolving Commitments and the Revolving Loans are included on the Closing Date;
  - (viii) release all or substantially all of the Collateral except as expressly provided in the Credit Documents;
- or

(ix) consent to the assignment or transfer by Company or Holdings of any of its respective rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Holdings therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Credit Extension of the Class A Revolving Lenders without the consent of the Class A Requisite Lenders; or amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Credit Extension of the Class B Revolving Lenders without the consent of the Requisite Class B Revolving Lenders;

(iii) amend the definitions of **“Eligibility Criteria”** or **“Eligible Receivables Obligor”** or amend any portion of Appendix C without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders;

(iv) amend or modify any provision of Sections 2.11, other than Sections 2.11(c)(vii) and 2.11(d), without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders; provided, however, that, notwithstanding the foregoing, any such amendment or modification during the continuance of any Hot Backup Servicer Event (as such term is defined in the Backup Servicer Agreement), Event of Default or Servicer Default shall only require the consent of the Requisite Lenders;

(v) amend or modify any provision of Section 7.1 without the consent of each of the Requisite Class A Revolving Lenders and the Requisite Class B Revolving Lenders; provided, however, that, notwithstanding the foregoing, any waiver of the occurrence of a Default or an Event of Default shall only require the consent of the Requisite Lenders; or

(vi) amend, modify, terminate or waive any provision of Section 8 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent. In the event of any amendment or waiver of this Agreement without the consent of the Collateral Agent or Paying Agent, the Company shall promptly deliver a copy of such amendment or waiver to the Collateral Agent and the Paying Agent upon the execution thereof.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of the Class A Requisite Lenders or any Class A Revolving Lender, execute amendments, modifications, waivers or consents on behalf of the Requisite Class

A Revolving Lenders or such Class A Revolving Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company or Holdings in any case shall entitle Company or Holdings to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company. Notwithstanding anything to the contrary contained in this Section 9.5, if the Administrative Agent and Company shall have jointly identified an obvious error or any error or omission of a technical nature, in each case that is immaterial (as determined by the Administrative Agent in its sole discretion), in any provision of the Credit Documents, then the Administrative Agent (as applicable, and in its respective capacity thereunder, the Administrative Agent or Collateral Agent) and Company shall be permitted to amend such provision and such amendment shall become effective without any further action or consent by the Requisite Lenders if the same is not objected to in writing by the Requisite Lenders within five (5) Business Days following receipt of notice thereof.

## **9.6 Successors and Assigns; Participations .**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by it without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 8.6, Indemnitees under Section 9.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, the Paying Agent, Administrative Agent, Class B Agent and Lenders shall deem and treat the Persons listed as Lenders in the Registers as the holders and owners of the corresponding Commitments and Revolving Loans listed therein for all purposes hereof, and no assignment or transfer of any such Revolving Commitment or Revolving Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Registers as provided in Section 9.6(e). Prior to such recordation, all amounts owed with respect to the applicable Revolving Commitment or Revolving Loan shall be owed to the Lender listed in the Registers as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Registers as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Revolving Commitments or Revolving Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Revolving Commitment or Revolving Loans owing to it or other Obligations ( provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Revolving Loan and any related

Revolving Commitments) to any Person constituting an Eligible Assignee. Each such assignment pursuant to this Section 9.6(c) (other than an assignment to any Person meeting the criteria of clause (i) of the definition of the term of “Eligible Assignee”) shall be in an aggregate amount of not less than \$1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Revolving Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Commitments and Revolving Loans.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.16(d).

(e) Notice of Assignment. Upon the Administrative Agent’s or Class B Agent’s, as applicable, receipt and acceptance of a duly executed and completed Assignment Agreement and any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent or Class B Agent, as applicable, shall (i) record the information contained in such notice in the Class A Register or the Class B Register, as applicable, (ii) give prompt notice thereof to Company, and (iii) maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Revolving Commitments or Revolving Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Revolving Commitments or Revolving Loans for its own account in the ordinary course of its business and without a view to distribution of such Revolving Commitments or Revolving Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 9.6, the disposition of such Revolving Commitments or Revolving Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 9.6, as of the “Effective Date” specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 9.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender

shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising prior to the effective date of such assignment; (iii) the Revolving Commitments shall be modified to reflect the Revolving Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Revolving Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Revolving Loan Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Revolving Loan Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Revolving Loans of the assignee and/or the assigning Lender.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates or a Direct Competitor) in all or any part of its Revolving Commitments, Revolving Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Revolving Loan or Revolving Loan Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Revolving Commitment shall not constitute a change in the terms of such participation, and that an increase in any Revolving Commitment or Revolving Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by Company of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Revolving Loans hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of Sections 2.15 or 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Sections 2.15 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation, unless the sale of the participation to such participant is made with Company's prior written consent, and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless Company (through a Designated Officer) is notified of the participation at the time it is sold to such participant and such participant agrees, for the benefit of Company, to comply with Section 2.16 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 9.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender. Any Lender that sells such a participation shall, acting solely for this purpose as an agent of the Company, maintain a register on which it enters the name and address of each

Participant and the principal amounts (and stated interest) of each Participant's interest in such participation and other obligations under this Agreement (the “ **Participant Register** ”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person other than Company (through a Designated Officer), including the identity of any Participant or any information relating to a Participant’s interest or obligations under any Credit Document, except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Paying Agent (in its capacity as Paying Agent) shall have no responsibility for maintaining a Participant Register. The Participant Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice. Company shall not disclose the identity of any Participant of any Lender or any information relating to such Participant's interest or obligation to any Person, provided that Company may make (1) disclosures of such information to Affiliates of such Lender and to their agents and advisors provided that such Persons are informed of the confidential nature of the information and will be instructed to keep such information confidential, and (2) disclosures required or requested by any Governmental Authority or representative thereof or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, Company shall make reasonable efforts to notify the applicable Lender of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of Company by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 9.6 any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Revolving Loans, the other Obligations owed by or to such Lender, and its Revolving Loan Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

**9.7 Independence of Covenants** . All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**9.8 Survival of Representations, Warranties and Agreements** . All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the

making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of Company set forth in Sections 2.15, 2.16, 9.2, 9.3 and 9.10, the agreements of Lenders set forth in Sections 2.14 and 8.6 shall survive the payment of the Revolving Loans and the termination hereof.

**9.9 No Waiver; Remedies Cumulative** . No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**9.10 Marshalling; Payments Set Aside** . Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other Person or against or in payment of any or all of the Obligations or any other amount due hereunder. To the extent that Company makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

**9.11 Severability** . In case any provision in or obligation hereunder or any Revolving Loan Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**9.12 Obligations Several; Actions in Concert.** The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document 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 any Revolving Loan Note or otherwise with respect to the Obligations without first obtaining the prior written consent of the Administrative Agent or the Class B Agent or Requisite Lenders (as

applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Revolving Loan Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of the Administrative Agent or Class B Agent or Requisite Lenders (as applicable).

**9.13 Headings** . Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**9.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

**9.15 CONSENT TO JURISDICTION .**

**(A) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST COMPANY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, COMPANY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.1 AND TO ANY PROCESS AGENT APPOINTED BY IT IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER COMPANY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (d) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST COMPANY IN THE COURTS OF ANY OTHER JURISDICTION.**

**(B) COMPANY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 9.1 OR ON HOLDINGS, WHICH COMPANY HEREBY APPOINTS AS ITS AGENT FOR SERVICE OF PROCESS HEREUNDER. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST COMPANY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE. IN THE EVENT HOLDINGS SHALL NOT BE ABLE TO ACCEPT SERVICE OF PROCESS AS AFORESAID AND IF COMPANY SHALL NOT MAINTAIN AN OFFICE IN NEW YORK CITY, COMPANY SHALL PROMPTLY APPOINT AND MAINTAIN AN AGENT**

QUALIFIED TO ACT AS AN AGENT FOR SERVICE OF PROCESS WITH RESPECT TO THE COURTS SPECIFIED IN THIS SECTION 9.15 ABOVE, AND ACCEPTABLE TO THE ADMINISTRATIVE AGENT, AS COMPANY'S AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON COMPANY'S BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION, SUIT OR PROCEEDING.

**9.16 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE REVOLVING LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**9.17 Confidentiality** . Each Agent and Lender shall hold all non-public information regarding Holdings and its Affiliates and their businesses obtained by such Lender or Agent confidential and shall not disclose information of such nature, it being understood and agreed by Company that, in any event, a Lender or Agent may make (a) disclosures of such information to Affiliates of such Lender or Agent and to their agents, auditors, attorneys and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 9.17.) provided that such Persons are informed of the confidential nature of the information and agree to keep, or with respect to the Collateral Agent and Paying Agent will be instructed to keep, such information confidential, provided, further that no disclosure shall be made to any Person that is a Direct Competitor or, with respect to the Collateral Agent and Paying Agent only, any Person that the

Collateral Agent and/or Paying Agent has actual knowledge is a Direct Competitor, (b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Revolving Loans or any participations therein, provided that such Persons are informed of the confidential nature of the information and agree to keep such information confidential pursuant to a non-disclosure agreement, (c) disclosure to any rating agency when required by it provided that such Persons are informed of the confidential nature of the information and agree to keep, or with respect to the Collateral Agent and Paying Agent will be instructed to keep, such information confidential, (d) disclosures required by any applicable statute, law, rule or regulation or requested by any Governmental Authority or representative thereof or by any regulatory body or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, each Lender or Agent shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender or Agent by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information, and (e) any other disclosure authorized by the Company in writing in advance. Notwithstanding the foregoing, (i) the foregoing shall not be construed to prohibit the disclosure of any information that is or becomes publicly known or information obtained by a Lender or Agent from sources other than the Company other than as a result of a disclosure by an Agent or Lender in violation of this Section 9.17, and (ii) on or after the Closing Date, the Administrative Agent may, at its own expense issue news releases and publish “tombstone” advertisements and other announcements generally describing this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of Company or Holdings) (collectively, “ **Trade Announcements** ”). Company shall not issue, and shall cause Holdings not to issue, any Trade Announcement using the name of any Agent or Lender, or their respective Affiliates or referring to this Agreement or the other Credit Documents, or the transactions contemplated thereunder except (x) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (y) with the prior approval of Administrative Agent (such approval not to be unreasonably withheld).

**9.18 Usury Savings Clause** . Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Revolving Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Revolving Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to

any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Revolving Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

**9.19 Counterparts** . This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

**9.20 Effectiveness** . This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

**9.21 Patriot Act** . Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Company that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Company, which information includes the name and address of Company and other information that will allow such Lender or Administrative Agent, as applicable, to identify Company in accordance with the Act.

[ Remainder of page intentionally left blank ]

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**PRIME ONDECK RECEIVABLE TRUST, LLC** , as Company

By: /s/ Howard Katzenberg  
Name: Howard Katzenberg  
Title: Chief Financial Officer

**BANK OF AMERICA, N.A.** ,  
as Administrative Agent

By: /s/ Nina Austin  
Name: Nina Austin  
Title: Vice President

**BANK OF AMERICA, N.A.** ,  
as a Class A Revolving Lender

By: /s/ Nina Austin  
Name: Nina Austin  
Title: Vice President

**WELLS FARGO BANK, N.A.**,  
as Paying Agent and Collateral Agent

By: /s/ Chad Schafer  
Name: Chad Schafer  
Title: Vice President

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a), AS ADOPTED PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Noah Breslow, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of On Deck Capital, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2015

/s/ Noah Breslow

Noah Breslow  
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a), AS ADOPTED PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Howard Katzenberg, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of On Deck Capital, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2015

/s/ Howard Katzenberg

Howard Katzenberg  
Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Noah Breslow, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in my capacity as Chief Executive Officer of On Deck, Capital, Inc. (the "Company"), that, to my knowledge, the Quarterly Report of the Company on Form 10-Q for the fiscal quarter ended June 30, 2015 as filed with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 11, 2015

/s/ Noah Breslow

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Noah Breslow  
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Howard Katzenberg, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in my capacity as Chief Financial Officer of On Deck Capital , Inc. (the "Company"), that, to my knowledge, the Quarterly Report of the Company on Form 10-Q for the fiscal quarter ended June 30, 2015 as filed with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 11, 2015

/s/ Howard Katzenberg

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Howard Katzenberg  
Chief Financial Officer