

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

SUPERIOR TELECOM INC

CIK: **1019285** | IRS No.: **582248978** | State of Incorporation: **DE** | Fiscal Year End: **1231**
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SIC: **3357** Drawing & insulating of nonferrous wire

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended September 30, 2002

- 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 1-12261

SUPERIOR TELECOM INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

58-2248978

(I.R.S. Employer Identification No.)

One Meadowlands Plaza

East Rutherford, New Jersey

(Address of principal executive offices)

07073

(Zip code)

201-549-4400

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 and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class

Outstanding at November 11, 2002

Common Stock, \$.01 Par Value

21,382,749

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 and, therefore, do not include all information and footnotes required by generally accepted accounting principles. However, in the opinion of management, all adjustments (which, except as disclosed elsewhere herein, consist only of normal recurring accruals) necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

SUPERIOR TELECOM INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share data)

	September 30, 2002 (unaudited)	December 31, 2001
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 13,987	\$ 19,311
Accounts receivable (less allowance for doubtful accounts of \$8,267 and \$8,391 at September 30, 2002 and December 31, 2001, respectively)	210,656	201,376
Inventories, net	224,790	263,210
Other current assets	48,471	36,844
Total current assets	497,904	520,741
Property, plant and equipment, net	339,729	508,768
Long-term investments and other assets	95,944	95,887
Goodwill (net of accumulated amortization and impairment charges of \$495,048 and \$70,541 at September 30, 2002 and December 31, 2001, respectively)	326,107	750,543
Total assets	\$ 1,259,684	\$ 1,875,939
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Short-term borrowings	\$ 136,715	\$ 124,388
Current portion of Superior Israel long-term debt	31,823	31,482
Current portion of long-term debt	1,101,505	73,311
Accounts payable	79,314	110,465
Accrued expenses	102,689	93,446
Total current liabilities	1,452,046	433,092
Long-term debt, less current portion	106,823	1,128,214
Minority interest in subsidiary	1,954	5,393

Other long-term liabilities	52,810	96,460
Total liabilities	1,613,633	1,663,159
Company-obligated Mandatorily Redeemable Trust Convertible Preferred Securities of Superior Trust I holding solely convertible debentures of the Company (net of discount)	136,949	136,040
Commitments and contingencies		
Stockholders' equity (deficit):		
Common stock, \$.01 par value; 35,000,000 shares authorized; 22,177,959 and 21,667,661 shares issued at September 30, 2002 and December 31, 2001, respectively	222	217
Capital in excess of par value	44,573	43,651
Accumulated other comprehensive deficit	(15,106)	(12,164)
Retained earnings (deficit)	(502,209)	63,833
	(472,520)	95,537
Treasury stock, at cost; 795,210 shares at September 30, 2002 and 813,357 shares at December 31, 2001	(18,378)	(18,797)
Total stockholders' equity (deficit)	(490,898)	76,740
Total liabilities and stockholders' equity (deficit)	\$ 1,259,684	\$ 1,875,939

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

SUPERIOR TELECOM INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Three Months Ended	
	September 30,	
	2002	2001
Net sales	\$ 368,186	\$ 420,306
Cost of goods sold	322,349	350,129
Gross profit	45,837	70,177
Selling, general and administrative expenses	37,285	36,139
Amortization of goodwill	-	5,264
Unusual charges	1,077	-
Impairment charges on long-lived assets to be sold	114,497	-

Operating income (loss)	(107,022)	28,774
Interest expense	(30,099)	(27,616)
Other income (expense), net	(746)	(572)
	<u> </u>	<u> </u>
Income (loss) before income taxes, distributions on preferred securities of Superior Trust I and minority interest	(137,867)	586
Benefit (provision) for income taxes	46,002	(1,020)
	<u> </u>	<u> </u>
Loss before distributions on preferred securities of Superior Trust I and minority interest	(91,865)	(434)
Distributions on preferred securities of Superior Trust I	(4,172)	(3,819)
	<u> </u>	<u> </u>
Loss before minority interest	(96,037)	(4,253)
Minority interest in net loss of subsidiary	1,111	328
	<u> </u>	<u> </u>
Net loss	\$ (94,926)	\$ (3,925)
	<u> </u>	<u> </u>
Net loss per share of common stock:		
Basic	\$ (4.44)	\$ (0.19)
	<u> </u>	<u> </u>
Diluted	\$ (4.44)	\$ (0.19)
	<u> </u>	<u> </u>
Weighted average shares outstanding:		
Basic	21,362	20,690
	<u> </u>	<u> </u>
Diluted	21,362	20,690
	<u> </u>	<u> </u>

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

SUPERIOR TELECOM INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Nine Months Ended	
	September 30,	
	2002	2001
Net sales	\$ 1,136,761	\$ 1,385,469
Cost of goods sold	996,343	1,159,245
	<u> </u>	<u> </u>
Gross profit	140,418	226,224
Selling, general and administrative expenses	111,274	116,343
Amortization of goodwill	–	15,794

Unusual charges	32,756	1,025
Impairment charges on long-lived assets to be sold	114,497	–
Operating income (loss)	(118,109)	93,062
Interest expense	(82,754)	(90,436)
Other income (expense), net	(2,321)	1,231
Income (loss) before income taxes, distributions on preferred securities of Superior Trust I, minority interest and cumulative effect of accounting change for goodwill impairment	(203,184)	3,857
Benefit (provision) for income taxes	71,192	(3,764)
Income (loss) before distributions on preferred securities of Superior Trust I, minority interest and cumulative effect of accounting change for goodwill impairment	(131,992)	93
Distributions on preferred securities of Superior Trust I	(12,395)	(11,434)
Loss before minority interest and cumulative effect of accounting change for goodwill impairment	(144,387)	(11,341)
Minority interest in net loss of subsidiary	3,035	867
Loss before cumulative effect of accounting change for goodwill impairment	(141,352)	(10,474)
Cumulative effect of accounting change for goodwill impairment	(424,503)	–
Net loss	\$ (565,855)	\$ (10,474)
Net loss per share of common stock:		
Basic before cumulative effect of accounting change for goodwill impairment	\$ (6.65)	\$ (0.51)
Cumulative effect of accounting change for goodwill impairment	(19.97)	–
Net loss–basic	\$ (26.62)	\$ (0.51)
Diluted before cumulative effect of accounting change for goodwill impairment	\$ (6.65)	\$ (0.51)
Cumulative effect of accounting change for goodwill impairment	(19.97)	–
Net loss–diluted	\$ (26.62)	\$ (0.51)
Weighted average shares outstanding:		
Basic	21,255	20,563
Diluted	21,255	20,563

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

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT)

(in thousands, except share data)

(unaudited)

	Nine Months Ended September 30, 2002	
	Shares	Amount
Common stock:		
Balance at beginning of period	21,667,661	\$ 217
Employee stock purchase plan	163,575	2
Stock grants	346,723	3
	<u>22,177,959</u>	<u>222</u>
Capital in excess of par value:		
Balance at beginning of period		43,651
Employee stock purchase plan		157
Compensation expense related to stock grants		765
		<u>44,573</u>
Accumulated other comprehensive deficit:		
Balance at beginning of period		(12,164)
Foreign currency translation adjustment		(271)
Change in unrealized gains (losses) on derivatives, net		(2,671)
		<u>(15,106)</u>
Retained earnings (deficit):		
Balance at beginning of period		63,833
Stock grants		(187)
Net loss		(565,855)
		<u>(502,209)</u>
Treasury stock:		
Balance at beginning of period	(813,357)	(18,797)
Stock grants from treasury stock	18,147	419
	<u>(795,210)</u>	<u>(18,378)</u>
Total stockholders' deficit	<u>21,382,749</u>	<u>\$ (490,898)</u>
Comprehensive loss		<u>\$ (568,797)</u>

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

SUPERIOR TELECOM INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	Nine Months Ended	
	September 30,	
	2002	2001
Cash flows from operating activities:		
Net loss before cumulative effect of accounting change for goodwill impairment	\$ (141,352)	\$ (10,474)
Adjustments to reconcile net loss to net cash (used for) provided by operating activities:		
Depreciation and goodwill amortization	34,942	49,868
Deferred distributions on Trust Convertible Preferred Securities	11,486	–
Amortization of deferred financing costs	11,481	4,391
Interest costs satisfied by payment-in-kind notes	14,172	–
Write-down of idled property, plant and equipment	18,279	–
Impairment charge on long-lived assets to be sold	114,497	–
(Benefit) provision for deferred taxes	(42,436)	3,799
Minority interest in losses of subsidiary	(3,035)	(867)
Change in assets and liabilities:		
Accounts receivable, net	(12,219)	33,789
Inventories, net	36,809	(11,336)
Other current and non-current assets	(16,261)	(5,412)
Accounts payable and accrued expenses	(28,087)	(21,566)
Other, net	(747)	(1,425)
	<u>(2,471)</u>	<u>40,767</u>
Cash flows (used for) provided by operating activities		
Cash flows from investing activities:		
Capital expenditures	(7,536)	(22,370)
Superior Israel customer loan repayments (advances)	6,156	(9,428)
Net proceeds from the sale of assets	–	3,810
Other	241	(678)
	<u>(1,139)</u>	<u>(28,666)</u>
Cash flows used for investing activities		
Cash flows from financing activities:		
Short-term borrowings (repayments), net	12,586	(15,851)
Borrowings under revolving credit facilities, net	14,600	57,943
Debt issuance costs	(3,939)	–
Long-term borrowings–Israel	1,475	13,736
Repayments of long-term borrowings	(26,612)	(66,066)
Other, net	(209)	(1,113)

Cash flows used for financing activities	(2,099)	(11,351)
Effect of exchange rate changes on cash	385	–
Net (decrease) increase in cash and cash equivalents	(5,324)	750
Cash and cash equivalents at beginning of period	19,311	13,002
Cash and cash equivalents at end of period	13,987	\$ 13,752
Supplemental disclosures:		
Cash paid for interest	\$ 65,062	\$ 96,451
Cash (received) paid for income taxes, net	\$ (17,722)	\$ 67

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

SUPERIOR TELECOM INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

SEPTEMBER 30, 2002

(unaudited)

1. General

Basis of presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of Superior TeleCom Inc. and its majority owned subsidiaries (collectively, unless the context otherwise requires, "Superior" or the "Company"). Certain reclassifications have been made to the prior period presentation to conform to the current period presentation.

Trust Convertible Preferred Securities

Included in the condensed consolidated balance sheet are company-obligated Mandatorily Redeemable Trust Convertible Preferred Securities of Superior Trust I holding solely convertible debentures of the Company ("Trust Convertible Preferred Securities"), totaling \$136.9 million net of discount at September 30, 2002. The convertible debentures, which are the sole assets of Superior Trust I, accrue interest at the rate of 8.50% per annum and mature on March 30, 2014. Pursuant to the provisions of the related indenture, the Company may defer quarterly cash distribution payments on the Trust Convertible Preferred Securities for a period of up to twenty consecutive quarters, during which period unpaid distributions are cumulative and accrue additional interest at a rate of 8.50% per annum. Additionally, during such deferral period the Company, among other things, cannot pay dividends on or redeem or repurchase any of its capital stock. The Company elected to defer quarterly distributions on the Trust Convertible Preferred Securities for September 2001, December 2001, March 2002, June 2002, and September 2002. Based on restrictions included in a 2001 amendment to the Company's senior subordinated note credit agreement, the Company is currently restricted from paying such distributions in cash and will likely continue the deferral of such cash distributions for the foreseeable future.

Derivative financial instruments

Effective January 1, 2001, the Company adopted SFAS No. 133 "Accounting for Derivative Instruments and Hedging Activities" as amended by SFAS No. 137 and SFAS No. 138. These statements establish accounting and reporting standards for derivative instruments and require recognition of all derivatives as either assets or liabilities in the statements of financial position and measurement of those instruments at fair value. The cumulative effect of the change in accounting upon adoption of SFAS No. 133 was not material.

All derivatives are recognized on the balance sheet at fair value. On the date the derivative contract is entered, the Company designates the derivative as either (i) a fair value hedge of a recognized liability, (ii) a cash flow hedge of a forecasted transaction, (iii) a hedge of a net investment in a foreign operation or (iv) a non-designated derivative instrument. The Company currently engages in certain derivatives that are classified as fair value hedges, cash flow hedges and non-designated derivative instruments. Changes in the fair value of a derivative that is designated as a fair value hedge are recorded in the consolidated statements of operations in the same line item as the underlying exposure being hedged with any ineffective portion of a financial instrument hedge immediately recognized in earnings. Changes in the fair value of a derivative that is designated as a cash flow hedge are recorded in other comprehensive income with any ineffective portion of a financial instrument hedge immediately recognized in earnings. Changes in the fair value of non-designated derivative contracts and the ineffective portion of designated derivative instruments are reported in current earnings.

The Company formally documents all relationships between hedging instruments and hedged items, as well as the risk management objectives and strategy for undertaking various hedge transactions. The Company formally assesses, both at the hedge's inception and on an ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting changes in fair values or cash flow of hedged items. When it is determined that a derivative is no longer highly effective as a hedge, hedge accounting is discontinued on a prospective basis.

2. Liquidity and operating plan

The Company has indebtedness which is substantial in relation to its overall capital structure and current cash flows from operations. As of September 30, 2002, the Company had total debt of approximately \$1.2 billion excluding (i) debt of its 50.2% owned Israeli subsidiary, Superior Cables, Limited ("Superior Israel"), which debt is non-recourse to Superior and its other subsidiaries and (ii) approximately \$167 million of Trust Convertible Preferred Securities due in 2014. Further, as a result of net losses incurred during the nine month period ended September 30, 2002 (which losses include a \$425 million non-cash write-off of goodwill in connection with implementation of SFAS No. 142—see Note 3; and a \$77 million non-cash after tax charge for asset impairment—see Note 9), the Company has a deficit stockholders' equity as of September 30, 2002 of \$491 million.

The Company's leveraged financial position exposes it to certain liquidity risks discussed herein and in Note 7 as well as additional risks of increases in interest rates. Further, its current leveraged capital structure may impede its ability to obtain financing in the future for working capital, capital expenditures and general corporate purposes, and makes the Company more vulnerable to economic downturns and limits its ability to withstand competitive pressures.

The Company's results of operations have declined over the past two years with the most pronounced reductions occurring over the most recent twelve month period. The Company believes the recent declines in consolidated sales relate to both generally depressed economic conditions and specific industry conditions in the telecommunications sector. In response to the reduced level of operating results and the negative impact on operating cash flow, the Company has taken certain actions to reduce its debt service and other cash commitments in 2002 and 2003. Pursuant to agreements reached with its subordinated debt holders, the Company has suspended cash interest payments on its subordinated debt (\$215 million principal balance at September 30, 2002) in 2002 and the Company has deferred for 2002 cash distributions on the Trust Convertible Preferred Securities (which deferral, in general, is contractually permitted for a period of up to 20 consecutive quarters). Additionally, as further discussed in Note 7, based upon a September 2002 amendment to the Company's senior bank credit agreement, all remaining term loan payment requirements for 2002 have been eliminated.

In 2003, the Company expects to continue to defer payments of distributions on the Trust Convertible Preferred Securities and has initiated discussions with its subordinated debt holders to continue the suspension of cash interest payments through 2003 on the subordinated debt. Additionally, the September 2002 senior bank credit agreement amendment includes an elimination of term loan

payments through June 30, 2003 (subject to certain contingent term loan payments which may be required as discussed below) and substantially reduced term loan principal amortization requirements in the second half of 2003. However, if the Company does not obtain an agreement from the subordinated debt holders to suspend cash interest payments on the subordinated debt for 2003 by January 15, 2003, the Company must then make an accelerated term loan payment of \$50 million on such date.

The Company must also meet certain financial covenant requirements so as to be in compliance with its principal credit agreements and have access to liquidity under its revolving credit facility. The September 2002 senior bank credit agreement amendment included a substantial modification to and reduction in operating performance required to comply with financial covenants for 2002 and 2003. Based upon these revised covenants, the Company was in compliance with such covenants at September 30, 2002 and expects to be in compliance for October 2002.

As discussed in Note 9, the Company has entered into a definitive purchase agreement to sell certain assets (the "Asset Sale") including its Electrical wire operations, its electronics subsidiary (DNE Systems Inc.) and its 50.2% investment in Superior Israel for cash proceeds of \$85 million and other consideration. The Company also expects to realize a cash tax benefit (through tax refunds) in 2003 of \$25-\$35 million as a result of the Asset Sale. Approximately \$10 million of the Asset Sale cash proceeds would be available to increase liquidity under the Company's revolving credit facility and the balance (including cash tax refunds) would be applied as a permanent reduction of the Company's senior debt. Completion of the Asset Sale should favorably impact the Company's 2003 cash flow and liquidity as a result of the \$10 million in cash proceeds being applied to revolver liquidity as well as the impact of reduced interest expense, capital expenditures and working capital requirements.

The Company has also completed a replacement financing for its \$160 million accounts receivable securitization financing facility which was due to expire on October 31, 2002. The replacement facility, which matures in February 2004, includes terms and conditions generally consistent with the expiring facility. The replacement facility provides the Company with continued access to financing of its commercial receivables on a basis substantially similar to past practice. The accounts receivable securitization facility is reflected as short-term borrowings in the accompanying condensed consolidated financial statements.

While the September 2002 senior bank credit agreement amendment and the accounts receivable securitization replacement financing favorably impact the Company's 2002 and 2003 cash flow requirements, the ability to continue to meet ongoing debt service and other obligations is contingent upon, among other things, (i) obtaining the consent of the subordinated debt holders to continue to defer interest payments in 2003, thereby eliminating approximately \$15 million in 2003 cash interest payments and \$50 million in accelerated term loan amortization payments in 2003, (ii) completion of the Asset Sale and (iii) stabilization of, and an improvement in 2003 operating results. Additionally, as a result of the Company's current liquidity position and limited access to other available funding, the Company is exposed in the short term to the risk of fluctuations in cash flow resulting from periodic and unfavorable short term swings in working capital, sales and billings, and disbursements which could result in the Company being unable to meet its debt service and other commitments.

If the Company is not able to meet its principal term loan amortization or interest payment requirements due to the uncertainties discussed herein or for other reasons, the Company would be in default under its senior credit agreement resulting in probable acceleration of all debt owed under such facility as well as other debt cross-defaulted with the senior credit agreement including amounts outstanding under

the subordinated debt and the accounts receivable securitization facility. If such acceleration occurs, the Company may be required to dispose of certain assets at values less than reflected in the accompanying condensed consolidated financial statements.

3. SFAS No. 142—"Goodwill and Other Intangible Assets"

The Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets" effective January 1, 2002. SFAS No. 142 requires that the amortization of goodwill and certain other intangible assets cease as of January 1, 2002 and that the related recorded value of goodwill be allocated to the Company's principal business segments and be reviewed annually for impairment. If the carrying value (including goodwill) of any business segment exceeds the fair value (determined on a discounted cash flow basis or other fair value method), impairment of goodwill exists resulting in a charge to earnings to the extent of goodwill impairment.

The transitional rules for implementing SFAS No. 142 provide that an initial assessment as to whether there is an implied impairment to the carrying value of goodwill must be completed within six months of adoption of SFAS No. 142, with the final determination of goodwill impairment completed by the end of 2002. SFAS No. 142 requires that any goodwill impairment that results from initial application of this new rule be reflected through a charge to income as a cumulative effect of an accounting change, applied retroactively to January 1, 2002.

The Company completed its final determination of initial goodwill impairment in August 2002. As anticipated, the impact of recent economic conditions and industry specific conditions affecting the Company's business segments resulted in substantially reduced fair values and thus, gave rise to a non-cash goodwill impairment charge of \$425 million including \$167 million related to its Electrical segment and \$258 million related to its OEM segment. The goodwill impairment charge was recorded retroactively to January 1, 2002 as a cumulative effect of accounting change for goodwill impairment in accordance with SFAS No. 142.

This non-cash goodwill impairment charge does not impact the Company's liquidity, cash flow or its compliance with financial or other covenants under its principal credit agreements or other contractual arrangements.

The table below reconciles the reported net loss (and related per share data) to an adjusted net income (and related per share data) assuming SFAS No. 142 had been applied as of January 1, 2001 rather than January 1, 2002.

	Three Months Ended	
	September 30,	
	2002	2001
	(in thousands, except per share data)	
Reported net loss	\$ (94,926)	\$ (3,925)
Goodwill amortization	-	5,264
Adjusted net income (loss) before cumulative effect of accounting change	\$ (94,926)	\$ 1,339
Basic loss per share of common stock:		
Reported net loss	\$ (4.44)	\$ (0.19)
Goodwill amortization	-	0.25
Adjusted net income (loss) before cumulative effect of accounting change	\$ (4.44)	\$ 0.06
Diluted loss per share of common stock:		
Reported net loss	\$ (4.44)	\$ (0.19)

	–	0.25
Goodwill amortization		
Adjusted net income (loss) before cumulative effect of accounting change	\$ (4.44)	\$ 0.06
Nine Months Ended September 30,		
	2002	2001
(in thousands, except per share data)		
Reported net loss	\$ (565,855)	\$ (10,474)
Cumulative effect of accounting change for goodwill impairment	424,503	–
Goodwill amortization	–	15,794
Adjusted net income (loss) before cumulative effect of accounting change	\$ (141,352)	\$ 5,320
Basic loss per share of common stock:		
Reported net loss	\$ (26.62)	\$ (0.51)
Cumulative effect of accounting change	19.97	–
Goodwill amortization	–	0.77
Adjusted net income (loss) before cumulative effect of accounting change	\$ (6.65)	\$ 0.26
Diluted loss per share of common stock:		
Reported net loss	\$ (26.62)	\$ (0.51)
Cumulative effect of accounting change	19.97	–
Goodwill amortization	–	0.77
Adjusted net income (loss) before cumulative effect of accounting change	\$ (6.65)	\$ 0.26

4. Inventories, net

At September 30, 2002 and December 31, 2001, the components of inventories were as follows:

	September 30, 2002	December 31, 2001
(in thousands)		
Raw materials	\$ 30,719	\$ 37,743
Work in process	28,291	35,148
Finished goods	160,101	185,688
	219,111	258,579
LIFO reserve	5,679	4,631
	\$ 224,790	\$ 263,210

Inventories valued using the LIFO method amounted to \$136.7 million and \$149.8 million at September 30, 2002 and December 31, 2001, respectively.

5. Comprehensive loss

The components of comprehensive loss for the three and nine months ended September 30, 2002 and 2001 were as follows:

	Three Months		Nine Months	
	Ended September 30,		Ended September 30,	
	2002	2001	2002	2001
	(in thousands)			
Net loss before cumulative effect of accounting change for goodwill impairment	\$ (94,926)	\$ (3,925)	\$ (141,352)	\$ (10,474)
Cumulative effect of accounting change for goodwill impairment	–	–	(424,503)	–
Foreign currency translation adjustment	(962)	(1,852)	(271)	(2,460)
Change in unrealized gains (losses) on derivatives, net	(2,936)	63	(2,671)	23
Comprehensive loss	\$ (98,824)	\$ (5,714)	\$ (568,797)	\$ (12,911)

6. Restructuring and unusual charges

During the nine months ended September 30, 2002, the Company recorded unusual charges of \$32.8 million. These charges included \$26.8 million, \$4.2 million, \$0.9 million and \$0.9 million, respectively, related to (i) the closure of its Communications Group Elizabethtown, Kentucky and Winnipeg, Canada manufacturing facilities; (ii) the closure of its OEM Group Rockford, Illinois manufacturing facility; (iii) the discontinuance of its Electrical Group Canadian operations and (iv) operational restructuring activities at Superior Israel. These actions were principally taken to more closely align productive capacity with current market demands and to reduce overall manufacturing costs. The \$32.8 million charge included a \$18.3 million write-down of idled property, plant and equipment, \$9.0 million of employee separation costs (422 personnel) and \$5.5 million of other facility

related closure costs. Costs to relocate inventory and manufacturing equipment into remaining facilities are being expensed as incurred. At September 30, 2002, \$5.1 million, primarily related to employee separation costs, is included in accrued liabilities in the condensed consolidated financial statements.

During the nine months ended September 30, 2001, the Company recorded unusual charges of \$1.0 million related to operational restructuring activities at Superior Israel.

7. Debt

The Company's principal debt arrangements (exclusive of the debt of Superior Israel which is financed under separate credit arrangements and is non-recourse to Superior and its subsidiaries other than Superior Israel) include borrowings under a senior credit facility and an accounts receivable securitization facility, as well as outstanding Senior Subordinated Notes. The Company finances its operating

activities, debt service requirements and other capital requirements from operating cash flows, availability under its revolving credit facility and allowable borrowings under its accounts receivable securitization financing arrangement.

The revolving credit facility is a component of the senior credit facility which is also comprised of a Term Loan A (\$307 million outstanding at September 30, 2002) and a Term Loan B (\$390 million outstanding at September 30, 2002), all of which are governed by an Amended and Restated Credit Agreement (the "Credit Agreement"). During December 2001 and March 2002, the Company entered into amendments to the Credit Agreement which included, among other things, a reduction in operating performance levels required to meet certain financial covenants, a deferral until 2003 of certain term loan payments otherwise due on June 30, 2002 and the elimination of a required \$175 million accelerated term loan payment due on January 3, 2003. In September 2002, the Company entered into a further amendment to the Credit Agreement which included, among other things, (i) an elimination of all regularly scheduled term loan principal amortization through June 30, 2003 and a substantial reduction in regularly scheduled term loan principal amortization during the second half of 2003; (ii) a contingent \$50 million term loan amortization payment due on January 15, 2003, but only if the Company has not obtained by such date the consent of the Company's Senior Subordinated Note holders to continue to suspend cash interest payments on such debt through 2003 (discussed further below); (iii) a further reduction through 2003 in operating performance levels required to meet certain financial covenant requirements; (iv) an acceleration to the maturity date of Term Loan B to May 2004 and (iv) the consent for the Company to complete the Asset Sale (discussed further below).

The revolving credit facility provides for borrowings up to \$214 million and matures in May 2004. At September 30, 2002, \$181 million was outstanding under the revolving credit facility.

The Company's expiring accounts receivable securitization program provides for funding up to \$160 million (based on the level of qualified accounts receivable) in short-term financing through the issuance of commercial paper. At September 30, 2002, \$137 million was outstanding under this program which, based on the then current level of qualified accounts receivable, was fully drawn. On November 6, 2002, the Company refinanced its expiring accounts receivables securitization program on terms and conditions generally consistent with the expiring facility. The replacement accounts receivable securitization financing facility matures in February 2004. The accounts receivable securitization facility is reflected as short-term borrowings in the accompanying condensed consolidated financial statements.

In addition to the senior credit facility and the accounts receivable securitization facility, the Company's other principal debt obligations include \$215 million outstanding under Senior Subordinated Notes which are due in 2007 and have no principal amortization requirements. In December 2001, the Company entered into an amendment to the agreement governing the Senior Subordinated Notes which granted the Company the option in certain circumstances to make three of the four quarterly interest payments due in 2002 in the form of payment-in-kind notes ("PIK notes") in lieu of cash interest payments. Additionally, pursuant to this amendment the Company's principal stockholder, The Alpine Group, Inc. ("Alpine"), provided a funded cash commitment on behalf of the Company that made available sufficient cash to make one quarterly cash interest payment in 2002. A PIK note was issued (in lieu of cash) for the May 2002 and the August 2002 interest payments, causing the interest rate on the Senior Subordinated Notes to increase to LIBOR plus 11% from LIBOR plus 5%. It is anticipated that PIK notes also will be issued (in lieu of cash) for the November quarterly interest payment, resulting in the interest rate on the Senior Subordinated Notes increasing to LIBOR plus 12%. In consideration for its funding of the February 2002 interest payment under the Senior Subordinated Notes, Alpine was issued a PIK note from Superior Telecommunications Inc. in the principal sum of \$3.7 million (the "Alpine PIK Note"). The Alpine PIK Note matures in May 2009 and, generally, accrues interest at a rate equal to that paid under the Senior Subordinated Notes, with interest payments being made solely through the issuance of additional PIK notes in favor of Alpine at any time that cash interest is not being paid currently to the holders of the Senior Subordinated Notes.

The Company is currently in discussions with the holders of the Senior Subordinated Notes to continue to allow the Company to make interest payments through 2003 in the form of PIK Notes rather than cash. There can be no assurance as to the outcome of these discussions, and if such consent is not obtained by January 15, 2003, the Company is required pursuant to the Credit Agreement to make a special one-time \$50 million term loan payment on such date.

In order to maintain adequate liquidity to operate its business on a normal basis, the Company must generate sufficient cash flow to meet interest payments under its Credit Agreement (and, to the extent the aforementioned consents are not obtained from the holders of the Senior Subordinated Notes, interest on the Senior Subordinated Notes) as well as principal payments on its Term Loans A and B so as not to be in default under the Credit Agreement. As previously discussed, as a result of the September 2002 Credit Agreement amendment, the Company's regularly scheduled term loan principal repayment requirements have been substantially reduced for 2002 and 2003. The Company does not have any regularly scheduled term loan principal repayment requirements for the balance of 2002 or for the first six months of 2003. Scheduled principal repayments for the second half of 2003 total \$35 million. As noted above, however, the Company does have a contingent \$50 million term loan repayment due January 15, 2003, but only if the Company does not obtain by such date the aforementioned consent of the holders of the Senior Subordinated Notes to continue to accept PIK Notes in lieu of cash for interest payments otherwise due under the Senior Subordinated Notes in 2003.

Additionally, in order not to be in default under the Credit Agreement, the Company must maintain compliance with certain financial covenants including a minimum EBITDA test as defined therein, and beginning in July 2003 an interest coverage ratio as defined therein. As a result of the September 2002 Credit Agreement amendment, such financial covenants for the remainder of 2002 and 2003 are at reduced levels from the comparable financial covenant requirements in 2001 and the first

half of 2002. Failure to maintain compliance with these revised financial covenants would require the Company to obtain modification and/or waivers to the Credit Agreement or otherwise would result in a default under the Credit Agreement.

As discussed in Note 2 and Note 9, the Company has also entered into a definitive purchase agreement in respect of the Asset Sale which, if consummated, would generate approximately \$110-\$120 million in cash purchase price proceeds and cash tax benefits related to the sale. The September 2002 Credit Agreement amendment provides that approximately \$10 million of such proceeds may be retained by the Company for liquidity and general corporate purposes with the balance applied to a permanent reduction in borrowings under the accounts receivable securitization financing facility and borrowings under the Credit Agreement.

In conjunction with the September 2002 Credit Agreement amendment and the contemplated Asset Sale to Alpine, the Company entered into an agreement with Steven S. Elbaum, Chairman and Chief Executive Officer of the Company, pursuant to which Mr. Elbaum will resign as CEO of the Company upon the earlier of December 31, 2002 and the appointment of a successor. Mr. Elbaum will continue to serve as the Chairman of the Board of Directors of the Company. The agreement provides that Mr. Elbaum will receive from the Company, in lieu of amounts otherwise due to Mr. Elbaum upon the termination of his employment agreement and in consideration of a covenant not to compete, (a) a payment of \$750,000 and (b) an additional \$750,000 only if the definitive purchase agreement with Alpine is terminated and the Company enters into a definitive agreement for the Asset Sale with another party, which payments in the aggregate represent an amount that in general is less than the amount that Mr. Elbaum would be entitled to receive in the event he were to be terminated under his employment agreement.

As discussed in Note 2, the Company's operating results and cash flows have declined substantially over the past twelve months, resulting in the Company being required to obtain multiple amendments to its Credit Agreement for, among other things, the rescheduling of term loan principal repayments and the revision of financial covenants. Despite the reduction in debt service cash requirements for 2002 and 2003 and reduced financial covenant performance requirements, the Company's ability to meet its debt service obligations and continue to maintain compliance with financial covenants for the next twelve months is contingent upon the Company not experiencing further declines in its operating income or EBITDA for the remainder of 2002 and generating a moderate improvement in operating income and EBITDA, particularly in the second half of 2003. Further, if the Company is not successful in obtaining consents from the holders of its Senior Subordinated Notes related to the suspension of cash interest payments in 2003, it would not be able to meet, in any event, the contingent \$50 million term loan payment required under the September 2002 Credit Agreement amendment.

Based upon the uncertainty surrounding future operating results, cash flow (including risks associated with the Company's current liquidity position and the resulting exposure to short term fluctuations in working capital, sales and disbursements), and the Company's ability to meet all of its debt service obligations (including the contingent \$50 million term loan payment, if such payment is required) and the

resulting consequences of such, which would include an acceleration of all amounts owed under the Credit Agreement and the Senior Subordinated Notes, the Company has reflected all debt under the Credit Agreement and Senior Subordinated Notes as current liabilities on the accompanying September 30, 2002 condensed consolidated balance sheet. If such acceleration occurs, the Company may be required to dispose of certain assets at values less than reflected in the accompanying condensed consolidated financial statements.

8. Loss per share

The computation of basic and diluted loss per share for the three and nine months ended September 30, 2002 and 2001 is as follows:

	Three Months Ended September 30,					
	2002			2001		
	Net Loss	Shares	Per Share Amount	Net Loss	Shares	Per Share Amount
	(in thousands, except per share amounts)					
Basic loss per common share	\$ (94,926)	21,362	\$ (4.44)	\$ (3,925)	20,690	\$ (0.19)
Diluted loss per common share	\$ (94,926)	21,362	\$ (4.44)	\$ (3,925)	20,690	\$ (0.19)

	Nine Months Ended September 30,					
	2002			2001		
	Net Loss	Shares	Per Share Amount	Net Loss	Shares	Per Share Amount
	(in thousands, except per share amounts)					
Basic loss per common share before cumulative effect of accounting change for goodwill impairment	\$ (141,352)	21,255	\$ (6.65)	\$ (10,474)	20,563	\$ (0.51)
Cumulative effect of accounting change for goodwill impairment	(424,503)		(19.97)	–		–
Basic loss per common share	\$ (565,855)	21,255	\$ (26.62)	\$ (10,474)	20,563	\$ (0.51)

The Company has excluded the assumed conversion of the Trust Convertible Preferred Securities from the loss per share calculation for the three and nine months ended September 30, 2002 and 2001 as the impact would be anti-dilutive.

As a publicly-traded company, Superior Israel has certain stock options outstanding pursuant to stock option plans in existence prior to investment by the Company therein. At September 30, 2002 and 2001, the dilutive impact of such stock options to the Company's loss per share calculation was immaterial.

9. Asset divestitures and asset impairment

On October 31, 2002, the Company entered into a definitive purchase agreement with Alpine for the sale to a wholly-owned subsidiary of Alpine ("Buyer") of (i) substantially all of the assets comprising the Electrical wire business (including the assumption of accounts payable, accruals and other liabilities associated with the Electrical wire business), (ii) 100% of the common stock of the Company's electronics subsidiary, DNE Systems Inc., ("DNE") and (iii) the Company's interest in Superior Israel. The total purchase price is comprised of \$85 million in cash proceeds, the assumption of certain liabilities by the Buyer and a stock purchase warrant issued to Superior representing the option to acquire an approximate 20% equity interest in the Buyer's subsidiary which will own the

operations of the divested Electrical wire business. The Asset Sale (if consummated in 2002) is also anticipated to generate \$25-\$35 million in incremental cash tax refunds expected to be received in 2003.

Closing of the Asset Sale is conditioned upon certain third party consents and approvals, mutual agreements on certain transitional and supply issues related to the divested operations and business and consummation of financing for the transaction. Either party to the agreement may terminate the agreement if the Asset Sale does not close by December 15, 2002.

The assets and operating results of the divested businesses will be reflected as a component of continuing operations until the date of sale due to the Company's continuing interest and involvement in the divested assets through the aforementioned stock purchase warrant and other transitional and continuing supply agreements. At September 30, 2002, the net assets related to the operations to be divested were approximately \$123 million. Related revenues were \$152 million and \$472 million for the three and nine month periods ended September 30, 2002, respectively, and \$158 million and \$494 million for the three and nine months ended September 30, 2001, respectively.

As a result of the proposed Asset Sale, the Company has evaluated for impairment the long-lived assets of its Electrical wire business, DNE and Superior Israel as of September 30, 2002 pursuant to SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". In accordance with SFAS No. 144, such impairment test was based on probability weighted estimated future cash flows related to such assets including assessment of cash proceeds associated with the proposed divestitures of the Electrical wire business, DNE and the Company's investment in Superior Israel. As a result of such review, the Company has determined that identified long-lived assets of the Electrical wire business and Superior Israel have been impaired and accordingly, a pre-tax charge, principally related to the Electrical wire business, of \$114.5 million (\$77.3 million on an after-tax basis) has been reflected in the condensed consolidated income statement for the quarter ended September 30, 2002.

10. Business segments

The Company's reportable segments are strategic businesses that offer different products and services to different customers. These segments are communications, original equipment manufacturer ("OEM") and electrical. The communications segment includes (i) copper and fiber optic outside plant wire and cable for voice and data transmission in telecommunications networks, (ii) copper and fiber optic datacom or premise wire and cable for use within homes and offices for local area networks, Internet connectivity and other applications and (iii) all of the operations of its 50.2% owned Superior Israel subsidiary and its wholly-owned DNE Systems, Inc. subsidiary. The OEM segment includes magnet wire and related products. The electrical segment includes building and industrial wire and cable. As discussed in Note 9, the Company has entered into a definitive purchase agreement for the sale of the assets and business of the Electrical segment as well as the common stock of DNE Systems, Inc. and Superior Israel included in the Communications segment.

The Company evaluates segment performance based on a number of factors, with operating income being the most critical. Intersegment sales are generally recorded at cost, are not significant and, therefore, have been eliminated below.

Operating results for each of the Company's three reportable segments are presented below. Corporate and other items shown below are provided to reconcile to the Company's condensed consolidated statements of operations and balance sheets.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2002	2001	2002	2001
	(in thousands)			
Net sales:				
Communications	\$ 129,968	\$ 172,051	\$ 393,593	\$ 594,027
OEM	122,170	129,009	382,258	419,393
Electrical	116,048	119,246	360,910	372,049
	<u>\$ 368,186</u>	<u>\$ 420,306</u>	<u>\$ 1,136,761</u>	<u>\$ 1,385,469</u>
Operating income (loss):				
Communications	\$ 7,048	\$ 25,718	\$ 22,492	\$ 91,419
OEM	9,296	12,656	31,703	41,459
Electrical	(997)	979	(6,976)	(4,917)
Corporate and other	(6,795)	(5,315)	(18,075)	(18,080)
Amortization of goodwill	–	(5,264)	–	(15,794)
Unusual charges	(1,077)	–	(32,756)	(1,025)
Impairment charges	(114,497)	–	(114,497)	–
	<u>\$ (107,022)</u>	<u>\$ 28,774</u>	<u>\$ (118,109)</u>	<u>\$ 93,062</u>

	September 30,	December 31,
	2002	2001
	(in thousands)	
Total assets:		
Communications	\$ 423,392	\$ 482,886
OEM	279,904	294,674
Electrical	141,995	256,370
Corporate and other (including goodwill)	414,393	842,009
	<u>\$ 1,259,684</u>	<u>\$ 1,875,939</u>

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

General

Superior TeleCom Inc. (together with its subsidiaries, unless the context otherwise requires, "Superior" or the "Company") manufactures a broad portfolio of wire and cable products grouped into the following primary industry segments: (i) communications; (ii) original

equipment manufacturer ("OEM") and (iii) electrical. The Communications Group includes communications wire and cable products sold primarily to telephone companies and, to a lesser degree, other local exchange and interexchange carriers, distributors and systems integrators, principally in North America. In addition, included within the Communications Group is the Company's 50.2% owned Israeli subsidiary, Superior Cables Limited ("Superior Israel"), which manufactures a range of wire and cable products in Israel, including communications cable, power cable and other industrial and electronic wire and cable products, and DNE Systems, Inc., a wholly-owned manufacturer of electronics products. The OEM Group includes magnet wire and accessory products for motors, transformers and electrical controls sold primarily to OEMs. The Electrical Group includes building and industrial wire for applications in commercial and residential construction and industrial facilities.

As discussed in Note 9 to the condensed consolidated financial statements, the Company has entered into a definitive purchase agreement for the sale of the assets and business of the Electrical Group as well as the common stock of DNE Systems, Inc. and the Company's interest in Superior Israel.

Industry segment financial data (including sales and operating income by industry segment) for the three and nine month periods ended September 30, 2002 and 2001 is included in Note 10 to the accompanying condensed consolidated financial statements.

Impact of Copper Price Fluctuations on Operating Results

Copper is one of the principal raw materials used in the Company's wire and cable product manufacturing. Fluctuations in the price of copper do affect per unit product pricing and related revenues. However, the cost of copper has not had a material impact on profitability, as the Company, in most cases, has the ability to adjust prices billed for its products to properly match the copper cost component of its inventory shipped.

Results of Operations—Three and Nine Month Periods Ended September 30, 2002 as Compared to the Three and Nine Month Periods Ended September 30, 2001

Consolidated sales for the quarter ended September 30, 2002 were \$368.2 million, a decrease of 12% as compared to sales of \$420.3 million for the quarter ended September 30, 2001. Adjusted for a constant cost of copper, the sales decline in the September 2002 quarter as compared to the September 2001 quarter also approximated 12%.

Communications Group sales for the September 30, 2002 quarter were \$130.0 million, a decrease of 24% on a copper-adjusted basis from the September 30, 2001 quarter. The sales decline in the current quarter as compared to the prior year period was due primarily to a 34% reduction in comparative sales of copper outside plant ("OSP") cables (the largest product segment), which are used principally by telephone companies in the local loop segment of the telephony network. OSP cables sales were lower due to significantly reduced spending levels by all of the Company's major telephone company customers following budgetary constraints imposed during the second half of 2001 and continued in 2002.

OEM Group sales were \$122.2 million for the quarter ended September 30, 2002, a copper-adjusted decline of 5% as compared to the September 30, 2001 quarter. The sales decline in the

September 30, 2002 quarter as compared to the September 30, 2001 quarter was due to reduced demand for magnet wire from the Company's major OEM customers due principally to the comparative decline on a year-over-year basis in the general economy, and particularly in the industrial sector.

Electrical Group sales were \$116.0 million for the September 30, 2002 quarter representing a decrease of 4% on a copper-adjusted basis as compared to the quarter ended September 30, 2001. The comparative sales decline was due principally to continuing weak industry-wide pricing conditions caused by severe competitive pressures in the building wire market.

Consolidated sales for the nine month period ended September 30, 2002 were \$1.137 billion, a decrease on a copper-adjusted basis of 16% as compared to sales of \$1.385 billion for the nine month period ended September 30, 2001. The comparative reduction in sales for the 2002 nine month period was due primarily to comparative declines of 32% in Communications Group sales, attributable principally to the aforementioned reduction in spending by the Company's telephone company customers in 2002 along with a smaller comparative decline in OEM Group sales (7% copper-adjusted sales decline) due to general weakness in the industrial sector.

Gross profit for the September 30, 2002 quarter was \$45.8 million, a decline of \$24.3 million as compared to gross profit of \$70.2 million for the quarter ended September 30, 2001. The gross profit margin in the September 30, 2002 quarter was 12.4% which was consistent with the gross margin percentage for the first six months of 2002, however, it represented a decline on a copper-adjusted basis of 4% as compared to the prior year September quarter. The decline in gross profit margin as compared to the prior year September quarter was primarily the result of (i) continued depressed pricing conditions in the building wire market (Electrical Group), partially offset by productivity gains and manufacturing cost reductions and (ii) the impact of competitive pricing conditions and unfavorable manufacturing cost absorption (due to lower production rates) in the Communications and OEM Groups.

For the nine month period ended September 30, 2002, gross profit was \$140.4 million, a decline of 38% as compared to the prior year nine month period. The comparative decline in gross profit was principally the result of lower sales and lower gross profit margins associated with the aforementioned spending reductions by the telephone companies, pricing pressures and the impact of the weak industrial sector economic conditions.

Selling, general and administrative expense ("SG&A expense") for the three month period ended September 30, 2002 was \$37.3 million, an increase of 3%, as compared to SG&A expense of \$36.1 million for the three months ended September 30, 2001. The comparative increase for the three month period ended September 30, 2002 was due to higher group and other insurance related costs. For the nine months ended September 30, 2002, SG&A expense decreased 4% to \$111.3 million as compared to the nine month period ended September 30, 2001. The decline for the nine month period is due to cost reductions in all of the Company's business units in response to reduced sales and commercial activity, partially offset by higher insurance costs.

The Company incurred unusual charges of \$1.1 million and \$32.8 million for the three and nine month periods ended September 30, 2002, respectively, which includes non-cash charges for the write-down of property, plant and equipment of \$18.3 million for the nine months ended September 30, 2002. These charges reflect (i) the closure of its Communications Group Elizabethtown, Kentucky and Winnipeg, Canada manufacturing facilities; (ii) the closure of its OEM Group Rockford, Illinois manufacturing facility; (iii) the discontinuance of the Electrical Group's Canadian operations and (iv) operational restructuring activities at Superior Israel. These actions were principally taken to more closely align productive capacity with current market demands and to reduce overall manufacturing costs. For the nine month period ended September 30, 2001, the Company incurred unusual charges of \$1.0 million related to restructuring activities of Superior Israel.

As discussed in Note 9 to the condensed consolidated financial statements, the Company incurred a non-cash asset impairment charge of \$114.5 million (\$77.3 million after tax) for the September 30, 2002 quarter associated with the pending Asset Sale principally related to the Electrical wire business and assets.

The Company incurred an operating loss of \$107.0 million for the September 30, 2002 three month period. Before unusual and long-lived asset impairment charges, the Company generated operating income of \$8.6 million for the September 30, 2002 quarter, a decline of \$20.2 million as compared to the September 30, 2001 quarter. For the nine month period ended September 30, 2002, the Company generated operating income before unusual and long-lived asset impairment charges of \$29.1 million, a decline of \$64.9 million as compared to the September 30, 2001 nine month period. The comparative decline in operating income for the current year three and nine month periods was principally attributable to lower sales in the Communications Group and reduced gross margins, primarily in the Company's Communications and Electrical business segments.

Interest expense for the three and nine month periods ended September 30, 2002 was \$30.1 million and \$82.8 million, respectively, representing an increase of \$2.5 million and a decrease of \$7.7 million, respectively, over the prior year three and nine month periods. The increase in interest expense for the three month period ended September 30, 2002 was due to increased interest spreads over LIBOR on the Company's Senior Subordinated Notes, which interest was being paid in the form of PIK Notes rather than cash (see Note 7 to the accompanying condensed consolidated financial statements). The decrease in interest expense for the nine month period ended September 30, 2002 was primarily the result of lower comparative LIBOR market interest rates, particularly in the first half of 2002, partially offset by the aforementioned increase in interest rate spreads on the Company's Senior Subordinated Notes.

Loss before unusual and long-lived asset impairment charges for the quarter ended September 30, 2002 was \$16.9 million or \$0.79 per diluted share as compared to income before unusual charges and goodwill amortization charges of \$1.3 million or \$0.06 per diluted share for the quarter ended September 30, 2001. Net loss for the September 30, 2002 quarter was \$94.9 million or \$4.44 per diluted share as compared to a net loss of \$3.9 million or \$0.19 per diluted share for the quarter ended September 30, 2001.

For the nine month period ended September 30, 2002, loss before unusual and long-lived asset impairment charges and before the cumulative effect of accounting change for goodwill impairment was \$43.2 million or \$2.03 per diluted share as compared to income before unusual charges and goodwill amortization charges of \$5.8 million or \$0.29 per diluted share for the nine month period ended September 30, 2001. As further discussed in Note 3 to the September 30, 2002 condensed consolidated financial statements, during the nine months ended September 30, 2002, the Company incurred a \$424.5 million non-cash charge related to the impairment of goodwill which was recorded in connection with the Company's adoption of SFAS No. 142 and a \$77.3 million (after tax) charge for impairment of long-lived assets—see Note 9. As a result, the Company incurred a net loss for the nine month period ended September 30, 2002 of \$565.9 million or \$26.62 per diluted share. For the September 30, 2001 nine month period the Company incurred a net loss of \$10.5 million or \$0.51 per diluted share.

Liquidity and Capital Resources

For the nine months ended September 30, 2002, the Company used \$2.5 million in cash flows in operating activities consisting of \$18.0 million in cash flows generated from operations (net loss plus non-cash charges) and \$20.5 million in cash flows used for net working capital changes. Cash used for net working capital included an anticipated seasonal increase in receivables of \$12.2 million (which was funded by \$12.6 million in matching borrowings under the accounts receivable securitization facility) and a \$28.1 million reduction in accounts payable and accrued expenses, partially offset by inventory

reductions of \$36.8 million. Cash used for investing activities amounted to \$1.1 million and included capital expenditures of \$7.5 million offset by payments received on certain long-term loans made to one of Superior Israel's principal customers. Cash used by financing activities amounted to \$2.1 million, consisting of borrowings under the Company's revolving credit facility (\$14.6 million) and its accounts receivable securitization facility (\$12.6 million) offset by term loan amortization payments.

The Company finances its operating activities (exclusive of the operating activities of Superior Israel which are financed under separate financing arrangements which are non-recourse to Superior and its subsidiaries other than Superior Israel), debt service and other capital requirements principally from (i) operating cash flow; (ii) funding availability under its revolving credit facility and (iii) allowable borrowings under its accounts receivable securitization financing arrangement. As a result of reductions in operating performance and operating cash flow over the past twelve months, funding available under the revolving credit facility and the accounts receivable securitization facility has been essential in financing the Company's operating activities and other commitments.

The revolving credit facility provides for borrowings up to \$214 million and matures in May 2004. At September 30, 2002 \$181 million was outstanding under the revolving credit facility. The revolving credit facility along with Term Loan A and Term Loan B comprise the Company's senior credit facilities which are governed by an Amended and Restated Credit Agreement (the "Credit Agreement"). The total balance outstanding on Term Loans A and B at September 30, 2002 was \$697 million. Obligations under the Credit Agreement are secured by substantially all of the assets of the Company and its subsidiaries (other than receivables sold pursuant to the accounts receivable

securitization facility). The Credit Agreement contains certain restrictive covenants, including, among others, requirements to maintain certain financial ratios (discussed further herein), limitations on the amount of dividends the Company is allowed to pay on its capital stock and restrictions on additional indebtedness. Violation of these covenants is an event of default under the Credit Agreement, and unless waived or modified, would likely result in acceleration of all debt thereunder.

During December 2001 and March 2002, the Company entered into amendments to the Credit Agreement which included, among other things, a reduction in operating performance levels required to meet certain financial covenants, a deferral until 2003 of certain term loan payments otherwise due on June 30, 2002, and the elimination of a required \$175 million accelerated term loan payment due on January 3, 2003. In September 2002, the Company entered into a further amendment to its Credit Agreement which included, among other things, (i) an elimination of all regularly scheduled term loan principal amortization through June 30, 2003 and a substantial reduction in regularly scheduled term loan principal amortization during the second half of 2003; (ii) a contingent \$50 million term loan amortization payment due on January 15, 2003, but only if the Company has not obtained by such date the consent of the Company's Senior Subordinated Note holders to continue to suspend cash interest payments on such debt through 2003 (discussed further below); (iii) a further reduction through 2003 in operating performance levels required to meet certain financial covenant requirements; (iv) an acceleration to the maturity date of Term Loan B to May 2004 and (v) the consent for the Company to complete the Asset Sale (discussed further below).

The Company's expiring accounts receivable securitization program provides for funding up to \$160 million (based on the level of qualified accounts receivable) in short-term financing through the issuance of commercial paper. At September 30, 2002, \$137 million was outstanding under this program which, based on the then current level of qualified accounts receivable, was fully drawn. On November 6, 2002 the Company refinanced its expiring accounts receivables securitization program, on terms and conditions generally consistent with the expiring facility. The replacement accounts receivable securitization financing facility matures in February 2004.

In addition to borrowings outstanding under the Credit Agreement and the accounts receivable securitization financing facility, the Company also has outstanding \$215 million in Senior Subordinated

Notes due in May 2007. In December 2001, the Company entered into an amendment to the agreement governing the Senior Subordinated Notes. Such amendment granted the Company the option in certain circumstances to make three of the four quarterly interest payments due in 2002 in the form of payment-in-kind notes ("PIK notes") in lieu of cash interest payments. Additionally, pursuant to this amendment the Company's principal stockholder, The Alpine Group, Inc. ("Alpine"), provided a funded cash commitment on behalf of the Company that made available sufficient cash to make one quarterly cash interest payment in 2002. A PIK note was issued (in lieu of cash) for the May 2002 and the August 2002 interest payments, causing the interest rate on the Senior Subordinated Notes to increase to LIBOR plus 11% from LIBOR plus 5%. It is anticipated that PIK notes also will be issued (in lieu of cash) for the November quarterly interest payments, resulting in the interest rate on the Senior Subordinated Notes increasing to LIBOR plus 12%. In consideration for its funding of the February 2002 interest payment under the Senior Subordinated Notes, Alpine was issued a PIK note from Superior Telecommunications Inc. in the principal sum of \$3.7 million. The Company has initiated discussions with the holders of the Senior Subordinated Notes to continue to allow the Company to make interest payments through 2003 in the form of PIK Notes rather than cash interest payments. There can be no assurance as to the outcome of these discussions, and if such consent is not obtained by January 15, 2003, the Company is required pursuant to the September 2002 Credit Agreement amendment to make a special one-time \$50 million term loan payment on such date.

At September 30, 2002, the Company had unused and excess borrowing availability under its revolving credit facility of \$24 million. Additionally, as discussed in Note 2 and Note 9, the Company has also entered into a definitive purchase agreement for the sale of certain assets which, if consummated, would generate approximately \$110-\$120 million in cash purchase price proceeds and cash tax benefits related to the sale. The September 2002 Credit Agreement amendment provides that approximately \$10 million of such proceeds may be used to increase excess borrowing availability under the revolving credit facility with the balance applied to a permanent reduction in borrowings under the accounts receivable securitization financing facility and borrowings under the Credit Agreement.

The Company's operating income and results of operations have declined over the past two years with the most pronounced reductions occurring over the most recent twelve month period. The Company believes the recent declines in consolidated sales relate to generally depressed economic conditions and specific industry conditions in the telecommunications sector. In response to the reduction in operating income and resulting reduced levels of operating cash flow, the Company has taken actions to reduce cash outlay requirements for servicing interest costs, distributions on its Trust Convertible Preferred Securities and capital expenditures. Also, as a result of the recent amendments to the Credit Agreement, the Company's regularly scheduled term loan principal amortization requirements have been eliminated for the remainder of 2002 and substantially reduced for 2003.

The Company is currently benefiting from the substantial reduction in market interest rates that has occurred over the past eighteen months which, along with the Company's option, as discussed previously, to pay interest on the Senior Subordinated Notes in the form of PIK notes rather than cash during 2002, is resulting, and is expected to continue to result, in a reduction in cash outlays for interest expense in 2002. Cash interest expense, based on current market interest rates, is expected to approximate only \$65-\$70 million in 2002, a reduction of approximately \$35 million as compared to cash interest costs incurred in 2001. For the first nine months of 2002, the Company incurred cash interest costs of \$54 million as compared to \$86 million in the first nine months of 2001. Capital expenditures are expected to approximate \$15 million in 2002. For the first nine months of 2002, capital expenditures were only \$8 million as compared to \$22 million for the first nine months of 2001. The Company also intends to continue to defer during 2002 distributions on its outstanding Trust Convertible Preferred Securities which would result in additional annualized cash flow savings of \$7 million as compared to cash distributions paid in 2001. In addition to outlays for cash interest and capital expenditures, the Company has eliminated substantially all of its 2002 principal amortization

requirements on its Term Loans A and B (as compared to \$80 million in 2001). In total, the Company's 2002 cash outlays for interest, distributions on its Trust Convertible Preferred Securities, capital expenditures and term loan principal amortization are projected to be approximately \$115 million lower than comparable outflows in 2001.

In 2003, the Company expects to continue to defer payments of distributions on the Trust Convertible Preferred Securities and has initiated discussions with its Senior Subordinated Note holders to continue the suspension of cash interest payments through 2003 on the Senior Subordinated Notes which cash interest payments, if made, would amount to approximately \$15 million in 2003. The Company estimates that cash interest related to its senior secured financing arrangement and its accounts receivable securitization financing arrangement will approximate \$65-\$70 million in 2003, consistent with 2002. Additionally, the aforementioned September 2002 Credit Agreement amendment includes an elimination of regularly scheduled term loan payments through June 30, 2003 (subject to certain contingent term loan payments discussed below) and \$35 million in regularly scheduled term loan principal loan payments in the second half of 2003. However, as previously discussed, if the Company does not obtain an agreement from the Senior Subordinated Note holders to suspend cash interest payments on the Senior Subordinated Notes for 2003 by January 15, 2003, then the Company must make an accelerated term loan payment of \$50 million on such date which, in this instance, would result in total term loan payment requirements in 2003 of \$85 million, a substantial increase over 2002 term loan payment requirements.

In addition to meeting the aforementioned 2003 principal and interest payment obligations, the Company must also maintain compliance under the Credit Agreement with certain financial covenants including a minimum EBITDA test as defined therein, and beginning in July 2003 an interest coverage ratio, as defined therein. As a result of the September 2002 Credit Agreement amendment, such financial covenants for the remainder of 2002 and 2003 are at reduced levels from financial covenant requirements in 2001 and the first half of 2002.

Failure to meet the aforementioned scheduled principal and interest payment obligations under its debt agreements or failure to maintain compliance with revised financial covenants would require the Company to obtain modification and/or waivers to the Credit Agreement or otherwise would result in a default and possibly acceleration of debt under the Credit Agreement, the accounts receivable securitization financing arrangements and the Senior Subordinated Notes.

The decline in the Company's operating results and cash flow over the past twelve months has resulted in the Company being required to obtain multiple amendments to its Credit Agreement for, among other things, the rescheduling of term loan principal repayments and the

revision of financial covenants. Despite the reduction in debt service cash requirements for 2002 and 2003 and reduced financial covenant performance requirements, the Company's ability to meet its debt service obligations and continue to maintain compliance with financial covenants for the next twelve months is contingent upon the Company not experiencing further declines in its operating income or EBITDA for the remainder of 2002, and generating a moderate improvement in operating income and EBITDA, particularly in the second half of 2003. Additionally, as a result of the Company's current liquidity position and limited access to other available funding, the Company is exposed in the short term to the risk of fluctuations in cash flow resulting from periodic and unfavorable short term swings in working capital, sales and billings, and disbursements which could result in the Company being unable to meet its debt service and other commitments. Further, if the Company is not successful in obtaining consents from the holders of its Senior Subordinated Notes related to the suspension of cash interest payments in 2003, it would be unable to meet, in any event, such cash interest payments under the Senior Subordinated Notes or the contingent \$50 million term loan payment required under the September 2002 Credit Agreement amendment.

Based upon the uncertainty surrounding future operating results, and cash flow and the Company's ability to meet all of its financial covenants and debt service obligations (including the contingent \$50 million term loan payment, if such payment is required) and the resulting consequences of such, which could include an acceleration of all amounts owed under the Credit Agreement and the Senior Subordinated Notes, the Company has reflected all debt under the Credit Agreement and Senior Subordinated Notes as current liabilities on the accompanying September 30, 2002 condensed consolidated balance sheet.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company's exposure to market risk primarily relates to interest rates on long-term debt. There have been no material changes in market risk since December 31, 2001.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Controls and Procedures

Based on their evaluation of the Company's disclosure controls and procedures as of a date within 90 days of the filing of this Report, the Chief Executive Officer and Chief Financial Officer have concluded that such controls and procedures are effective.

There were no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of the evaluation.

Except for the historical information herein, the matters discussed in this Form 10-Q include forward-looking statements that may involve a number of risks and uncertainties. Actual results may vary significantly based on a number of factors, including, but not limited to, risks in product and technology development, market acceptance of new products and continuing product demand, prediction and timing of customer orders, the impact of competitive products and pricing, and changing economic conditions, including changes in short-term interest rates and foreign exchange rates, and other risk factors detailed in the Company's most recent filings with the Securities and Exchange Commission.

PART II. OTHER INFORMATION

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

10.1* Amendment Number Nine dated as of September 13, 2002, to the Amended and Restated Credit Agreement dated as of November 27, 1998, among Superior Telecommunications Inc., Essex Group Inc., the guarantors named therein, various lenders, Deutsche Bank Trust Company Americas, as administrative agent, Merrill Lynch & Co., as documentation agent and Fleet National Bank, as syndication agent.

10.2* Purchase Agreement, dated October 31, 2002, by and among Superior TeleCom Inc., Superior Telecommunications Inc., Essex International Inc., Essex Group, Inc., The Alpine Group, Inc. and Alpine Holdco Inc.

10.3* Settlement Agreement dated as of September 13, 2002, by and among Steven S. Elbaum, Superior TeleCom Inc. and Superior Telecommunications Inc.

10.4* Receivables Sale Agreement, dated November 6, 2002, by and among each of the entities party hereto from time to time as originators, Superior Telecommunications Inc. and Superior Essex Funding LLC.

10.5* Receivables Funding Agreement, dated November 6, 2002, by and among Superior Essex Funding LLC, as borrower, Superior Telecommunications Inc., as servicer, the financial institutions signatory hereto from time to time, as lenders and General Electric Capital Corporation, as a lender and as administrative agent.

99.1* Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

99.2* Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(b) Reports on Form 8-K

Superior TeleCom Inc. filed Form 8-K on August 13, 2002 regarding the adoption of SFAS No. 142, "Goodwill and Other Intangible Assets", effective January 1, 2002.

Superior TeleCom Inc. filed Item 9 Forms 8-K(i) on August 13, 2002 regarding the submission by each of the Chief Executive Officer and Chief Financial Officer of the Company to the Securities and Exchange Commission of a sworn statement pursuant to Commission Order No. 4-460 and (ii) on August 15, 2002 regarding the certification by each of the Chief Executive Officer and Chief Financial Officer of the Company required pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, accompanying the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

* Filed herewith

SIGNATURES

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

SUPERIOR TELECOM INC.

/s/ DAVID S. ALDRIDGE

David S. Aldridge

Date: November 14, 2002

By: *Chief Financial Officer and Treasurer*
(duly authorized officer and principal financial
and accounting officer)

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CERTIFICATIONS

I, Steven S. Elbaum, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Superior TeleCom Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - (a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
 - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - (c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
- (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ STEVEN S. ELBAUM

Steven S. Elbaum
Chief Executive Officer

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CERTIFICATIONS

I, David S. Aldridge, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Superior TeleCom Inc.;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - (a) designed such disclosure controls and procedures 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 quarterly report is being prepared;

- (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - (c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
- (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ DAVID S. ALDRIDGE

David S. Aldridge
Chief Financial Officer

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CERTIFICATIONS

CERTIFICATIONS

AMENDMENT NUMBER NINE, dated as of September 13, 2002 (this "*Amendment*"), to the Amended and Restated Credit Agreement dated as of November 27, 1998, as previously amended, modified and supplemented and as last amended by Amendment Number Eight, dated as of July 29, 2002 (the "*Credit Agreement*"), among SUPERIOR TELECOMMUNICATIONS INC. (formerly known as Superior/Essex Corp.), a Delaware corporation (the "*Company*"), ESSEX GROUP INC., a Michigan corporation ("*Essex*" and, together with the Company, the "*Borrowers*"), each of the Guarantors party thereto (the "*Guarantors*") (which Guarantors include Superior TeleCom Inc., a Delaware corporation (the "*Parent*")), the lending institutions from time to time party thereto (each a "*Lender*" and, collectively, the "*Lenders*"), DEUTSCHE BANK TRUST COMPANY AMERICAS (f/k/a Bankers Trust Company), as Administrative Agent, MERRILL LYNCH & CO., as Documentation Agent, and FLEET NATIONAL BANK, as Syndication Agent (the "*Agents*"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

WHEREAS, pursuant to the Credit Agreement, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrowers;

WHEREAS, the Borrower and the Parent intend to consummate a sale transaction (the "*2002 Asset Sale*") pursuant to which (i) a newly-formed, directly or indirectly wholly-owned subsidiary of Alpine or another entity (the "*Buyer*") will acquire substantially all of the assets of the Parent, the Borrower and Essex relating to their electrical wire business, which is principally engaged in the manufacture and sale of building and industrial wire products, and (ii) the Buyer (or a subsidiary or affiliate thereof) will acquire (a) all of the issued and outstanding shares of capital stock of DNE Systems Inc., a Delaware corporation, from the Parent and (b) all of the issued and outstanding shares of capital stock of Texas SUT Inc., a Texas corporation, and Superior Cables Holding (1997) Ltd., an Israel corporation, from the Borrower;

WHEREAS, the Borrower intends to make certain prepayments of Term Loans and Revolving Loans from the proceeds of the 2002 Asset Sale, as well as from the proceeds of certain tax refunds expected to be generated thereby;

WHEREAS, the Borrowers have requested that the Agents and the Lenders amend certain sections of the Credit Agreement to, among other things, (i) approve the consummation of the 2002 Asset Sale, (ii) amend the timing of certain scheduled term loan repayments and (iii) modify certain financial covenants contained therein;

WHEREAS, the Agents and the Required Lenders have considered and agreed to the Borrowers' requests, upon the terms and conditions set forth in this Amendment; and

WHEREAS, the consent of the Required Lenders of each Tranche of Term Loans and the Revolving Loans is necessary to effect this Amendment;

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

SECTION ONE—AMENDMENTS

1.1 Amendments to Section 10 (Definitions) of the Credit Agreement

(a) Section 10 of the Credit Agreement is hereby amended by adding the following new definitions to such section in appropriate alphabetical order:

"Acceptable Floating Rate Facility Amendment' shall mean a duly executed amendment to the Floating Rate Facility setting forth the agreement between the Borrowers and each Lender (as that term is defined in the Floating Rate Facility) and any other

holders of notes issued under the Floating Rate Facility to the effect that no cash interest and no cash fees shall be payable under the Floating Rate Facility under any circumstances at any time prior to February 28, 2004."

"Additional Amendment Fee' shall have the meaning assigned to that term in Amendment Number Nine.

"Amendment Number Eight' shall mean Amendment Number Eight, dated as of July 29, 2002, to this Agreement."

"Amendment Number Nine' shall mean Amendment Number Nine, dated as of September 13, 2002, to this Agreement."

"Amendment Number Nine Effective Date' shall have the meaning assigned to that term in Amendment Number Nine."

"Cash Amendment Fee' shall have the meaning assigned to that term in Amendment Number Nine."

"Elbaum' shall have the meaning assigned to that term in Section 7.22."

"Elbaum Agreement' shall have the meaning assigned to that term in Section 7.22."

"Electrical Acquisition Sub' shall mean (i) the directly or indirectly wholly-owned subsidiary of Alpine formed for the purpose of acquiring the Electrical Business pursuant to the Electrical Sale or (ii) any other entity which acquires the Electrical Business pursuant to the Electrical Sale."

"Electrical Business' shall have the meaning assigned to that term in the definition of 'Electrical Sale'."

"Electrical Sale' shall mean the sale by the Parent, the Borrower and Essex (the "Electrical Sellers") to Electrical Acquisition Sub, as part of the 2002 Asset Sale, of substantially all of the assets and liabilities of the Electrical Sellers relating to their electrical wire business, which is principally engaged in the manufacture and sale of building and industrial wire products, including the Electrical Sellers' copper continuous casting operations principally conducted in Columbia City, Indiana (such assets, collectively, the "Electrical Business"), including, without limitation, the related facilities, inventories, buildings, furniture, fixtures, leasehold improvements, equipment, contract rights, accounts receivable, technology, intellectual property, product registrations, trademarks, permits, licenses and authorizations, but excluding therefrom those assets that are customarily excluded from transactions similar in nature to the such sale and as may be specified in the definitive purchase agreement governing such sale."

"Electrical Sellers' shall have the meaning assigned to that term in the definition of 'Electrical Sale'."

"GE Capital' shall mean General Electric Capital Corporation, a Delaware corporation."

"GE Commitment Letter' shall mean the draft Commitment Letter, dated September 13, 2002, from GE Capital to the Borrower, attached hereto as Exhibit P."

"Israel Sale' shall mean the sale by the Borrower to the Purchaser (or an affiliate thereof), as part of the 2002 Asset Sale, of all of the issued and outstanding shares of capital stock of Texas SUT Inc., a Texas corporation, and Superior Cables Holding (1997) Ltd., an Israel corporation."

"Non-LIFO Revolving Loans' shall mean any Revolving Loans that are not Excess Revolving Loans."

"Purchaser' shall collectively mean (i) any subsidiaries of Alpine formed for the purpose of consummating the 2002 Asset Sale or (ii) any other entity or entities consummating the 2002 Asset Sale."

"Revolving Loan Tax Refund Prepayment Amount' shall mean the amount of the prepayment set forth in Section 4.02(o) which is applied to repay Non-LIFO Revolving Loans; *provided* that

until any such prepayment is actually made pursuant to Section 4.02(o), the Revolving Loan Tax Refund Prepayment Amount shall be zero."

"2002 Asset Sale' shall mean the collective transaction consisting of the Electrical Sale, the DNE Asset Sale and the Israel Sale."

(b) Section 10 of the Credit Agreement is hereby further amended by deleting the definitions of the following terms and inserting in lieu thereof the following new definitions:

"Applicable Base Rate Margin' shall mean 5.00%."

"Applicable Euro Rate Margin' shall mean 5.50%."

"DNE Asset Sale' shall mean the sale by the Parent to the Purchaser (or an affiliate thereof), as part of the 2002 Asset Sale, of all of the issued and outstanding shares of capital stock of DNE Systems."

"Excess Revolving Loans' shall mean the dollar amount (if any) of Total Revolving Outstandings in excess of an amount equal to the difference between (i) \$167,527,100 and (ii) the sum of (a) the Revolving Loan Tax Refund Prepayment Amount and (b) the amount of any prepayment of Non-LIFO Revolving Loans made pursuant to Section 4.02(p)."

"Revolving Loan Maturity Date' shall mean May 27, 2004."

"Total Revolving Loan Commitment' shall mean the sum of the then Revolving Loan Commitments of each Lender, it being understood that (i) the Total Revolving Loan Commitment as of the Amendment Number Nine Effective Date shall be \$214,000,000, and (ii) the Total Revolving Loan Commitment shall be reduced, (a) upon any prepayment of Non-LIFO Revolving Loans pursuant to Section 4.02(o), by the Revolving Loan Tax Refund Prepayment Amount, and (b) upon any prepayment of Non-LIFO Revolving Loans pursuant to Section 4.02(p), by the amount of such prepayment."

"Tranche B Term Loan Maturity Date' shall mean May 27, 2004."

(c) Section 10 of the Credit Agreement is hereby further amended by inserting the following proviso immediately prior to the period at the end of the definition of "Receivables Financing Agreement":

"; *provided* that the term "Receivables Financing Agreement" shall include any funding agreement (or other similar instrument) and any related sales or servicing agreements entered into pursuant to, and on terms no less favorable to the Parent and its Subsidiaries than those set forth in, the GE Commitment Letter."

(d) Section 10 of the Credit Agreement is hereby further amended by deleting the last sentence of the definition of "Consolidated Interest Expense" and inserting in lieu thereof the following sentence:

"With respect to periods ending on or prior to December 31, 2003 (where covenant compliance is being determined as of December 31, 2003 or earlier), Consolidated Interest Expense shall not include (x) non-cash interest on the Floating Rate Facility or (y) non-cash interest accrued by the Parent on the Trust Preferred Securities."

(e) Section 10 of the Credit Agreement is hereby further amended by making the following changes to the definition of "Net Cash Proceeds": (a) deleting the word "and" at the end of clause (b) of such definition and inserting in lieu thereof the phrase ",", (b) deleting the period at the end of clause (c) of such definition and inserting in lieu thereof the phrase ", and", and (c) adding the following new clause (d) immediately following clause (c) of such definition:

(f) Section 10 of the Credit Agreement is hereby further amended by inserting the following proviso immediately prior to the period at the end of the definition of "Required Lenders":

"; *provided* that for purposes of any decision of the Lenders with respect to any amendment or modification of the prepayment provisions set forth in Section 4.02(o), the phrase "a majority" in this definition shall be replaced with the phrase "66²/3%".

1.2 *Amendments to Section 3 (Fees; Commitments) of the Credit Agreement*

It is hereby agreed that Section Four of Amendment Number Six and Waiver, dated as of November 30, 2001, to the Credit Agreement shall no longer be of any force or effect, but that in lieu thereof there shall be added to the Credit Agreement the following new Section 3.04:

"3.04. *Excess Revolving Loans.* Notwithstanding any other provisions of this Agreement to the contrary, repayment of Excess Revolving Loans shall be paid in full before payment is made on any other Revolving Loans or on any Tranche of Term Loans with respect to the receipt of proceeds upon liquidation of any Collateral in bankruptcy or any distributions from a bankruptcy plan or other insolvency proceeding."

1.3 *Amendments to Section 4 (Payments) of the Credit Agreement.*

(a) Section 4.02(b) of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"(b) In addition to any other mandatory repayments or commitment reductions pursuant to this Section 4.02, on each date set forth below, the Borrowers shall be required to repay that principal amount of Tranche A Term Loans, to the extent then outstanding, set forth opposite such date (each such repayment, as the same may be reduced as provided in Sections 4.01 and 4.02(i), a "*Tranche A Term Loan Scheduled Repayment*," and each such date, a "*Tranche A Term Loan Scheduled Repayment Date*");

Tranche A Term Loan Scheduled Repayment Date	Amount
July 31, 2003	\$ 1,150,000.00
August 29, 2003	1,150,000.00
September 30, 2003	4,600,000.00
October 31, 2003	2,300,000.00
November 28, 2003	2,300,000.00
December 31, 2003	4,600,000.00
January 15, 2004	23,000,000.00
May 27, 2004	267,718,640.94

All Tranche A Term Loans will be repaid on the Tranche A Term Loan Maturity Date."

(b) Section 4.02(c) of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"(c) In addition to any other mandatory repayments or commitment reductions pursuant to this Section 4.02, on each date set forth below, the Borrowers shall be required to repay that principal amount of Tranche B Term Loans, to the extent then outstanding, set forth opposite such date (each such repayment, as the same may be reduced as provided in Sections 4.01 and 4.02(i), a

"Tranche B Term Loan Scheduled Repayment," and each such date, a "Tranche B Term Loan Scheduled Repayment Date"):

Tranche B Term Loan Scheduled Repayment Date	Amount
July 31, 2003	\$ 1,350,000.00
August 29, 2003	1,350,000.00
September 30, 2003	5,400,000.00
October 31, 2003	2,700,000.00
November 28, 2003	2,700,000.00
December 31, 2003	5,400,000.00
January 15, 2004	27,000,000.00
May 27, 2004	343,887,652.32

All Tranche B Term Loans will be repaid on the Tranche B Term Loan Maturity Date."

(c) Section 4.02(d) of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"(d) In addition to any other mandatory repayments or commitment reductions pursuant to this Section 4.02, on each date on or after the Amendment No. 6 Effective Date on which either of the Borrowers or any of their respective Subsidiaries receives Net Cash Proceeds from an Asset Sale or Sales (other than a sale of Margin Stock prior to consummation of the Merger), an amount equal to 100% of such Net Cash Proceeds shall be applied as a mandatory repayment of principal of outstanding Loans in accordance with the requirements of Sections 4.02(i), (j) and (n)."

(d) Section 4.02(f) of the Credit Agreement is hereby amended by deleting the word "In" immediately at the beginning of such section and replacing it with the following:

"Other than in connection with the 2002 Asset Sale, and in".

(e) (i) Section 4.02(i) of the Credit Agreement is hereby amended by deleting the word "Each" immediately at the beginning of such section and replacing it with the following:

"Other than in connection with the 2002 Asset Sale, each".

(ii) Section 4.02(i) of the Credit Agreement is hereby further amended by inserting the phrase "(other than amounts applied pursuant to Section 4.02(n), (o) or (p))" immediately following the phrase "Section 4" in the second sentence of such section.

(f) Section 4.02(l) of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"(l) Intentionally omitted."

(g) Section 4.02 of the Credit Agreement is hereby amended by adding the following new Sections 4.02(n), 4.02(o), 4.02(p) and 4.02(q) immediately following Section 4.02(m) at the end thereof:

"(n) Upon the consummation of the 2002 Asset Sale, the Borrowers will (i) *first*, prepay Revolving Loans using the first \$12,000,000 of Net Cash Proceeds from the 2002 Asset Sale (*provided* that such prepayment shall not permanently reduce the Total Revolving Loan Commitments) and (ii) *second*, prepay Term Loans using the Net Cash Proceeds from the 2002 Asset Sale

remaining after the prepayment described in clause (i) of this Section 4.02(n). The amount required to be prepaid in respect of Term Loans pursuant to clause (ii) of this Section 4.02(n) shall be applied *pro rata* to each Tranche of Term Loans, with each Tranche of Term Loans to be allocated that percentage of the amount to be applied as is equal to a fraction

(expressed as a percentage), the numerator of which is equal to the then-outstanding principal amount of such Tranche of Term Loans and the denominator of which is equal to the then-outstanding principal amount of all Term Loans.

(o) Promptly upon receipt of its tax refund for the 2002 tax year, the Company shall prepay the Tranche A Term Loans, the Tranche B Term Loans and the Non-LIFO Revolving Loans on a *pro rata* basis, with each such Tranche of Loans to be allocated that percentage of the amount to be prepaid as is equal to a fraction (expressed as a percentage), the numerator of which is equal to the then-outstanding principal amount of such Tranche of Loans and the denominator of which is equal to the sum of (x) the then-outstanding principal amount of all Term Loans and (y) the then-outstanding principal amount of Non-LIFO Revolving Loans. Any prepayment of Non-LIFO Revolving Loans pursuant to this Section 4.02(o) shall constitute a permanent reduction in the Total Revolving Loan Commitments.

(p) Unless an Acceptable Floating Rate Facility Amendment shall have been entered into (with a copy of such Acceptable Floating Rate Facility Amendment having been delivered to the Administrative Agent on behalf of the Lenders) prior to such date, on January 15, 2003, the Borrowers shall prepay Tranche A Term Loans, Tranche B Term Loans and Non-LIFO Revolving Loans in the aggregate amount of \$50,000,000, with each Tranche of Loans to be allocated that percentage of the amount to be prepaid as is equal to a fraction (expressed as a percentage) the numerator of which is equal to the then-outstanding principal amount of such Tranche of Loans and the denominator of which is equal to the sum of (x) the then-outstanding principal amount of all Term Loans and (y) the then-outstanding principal amount of Non-LIFO Revolving Loans. Any prepayment of Non-LIFO Revolving Loans pursuant to this Section 4.02(p) shall constitute a permanent reduction in the Total Revolving Loan Commitments.

(q) Any amount required to be applied to any Tranche of Term Loans pursuant to Section 4.02(n), (o) or (p) shall be applied to reduce the Scheduled Repayments of the respective Tranche due after January 15, 2004 (but not to reduce any Scheduled Repayment due on or prior to January 15, 2004), such reduction to be made *pro rata* based upon the then remaining principal amount of each such Scheduled Repayment, in each case reducing the Loans incurred by each of the Company and Essex *pro rata*, and, if no Term Loans remain outstanding, all such amounts shall be applied to repay outstanding borrowings under the Revolving Loans."

1.4 Amendments to Section 7 (Affirmative Covenants) of the Credit Agreement.

(a) Section 7 of the Credit Agreement is hereby amended by adding the following new Sections 7.22, 7.23, 7.24, 7.25 and 7.26 immediately following Section 7.21 at the end thereof:

"Section 7.22. *Chief Executive Officer.* Simultaneously with the effectiveness of Amendment Number Nine, the Parent and the Borrower will enter into an agreement (the "*Elbaum Agreement*"), in the form attached hereto as Exhibit Q, with Steven S. Elbaum ("*Elbaum*"), terminating the Amended and Restated Executive Employment Agreement, dated as of January 1, 2001, among the Parent, the Company and Elbaum. Upon the closing of the 2002 Asset Sale, the Parent and the Company shall commence a search through a nationally recognized recruitment firm to locate and employ a successor Chief Executive Officer on or before January 31, 2003 (or such later date as may be approved by a majority of the Steering Committee of the Lenders, but in no event later than February 28, 2003). The Parent and the Company will keep the Administrative Agent and the Steering Committee of the Lenders reasonably informed as to the progress of the search. Any proposed successor Chief Executive Officer (and any further successor thereto) will be reasonably acceptable to a majority of the Steering Committee of the Lenders and will not be an Affiliate of Alpine or the Borrower prior to being employed by the Parent as Chief Executive Officer.

Section 7.23. *Tax Refunds for the 2002 Tax Year.* The Parent and the Company will file the Returns for the 2002 tax year as promptly as practicable, and in no event later than April 30, 2003. The Parent and the Company agree to cooperate with the Administrative Agent to arrange to have all tax refunds for the 2002 tax year paid as directed by the Administrative Agent to an account established with the Administrative Agent in the name of the Borrower. The Parent and the Company will furnish to the Administrative Agent, promptly after the filing thereof, copies of each of the Returns for the 2002 tax year.

Section 7.24. *Repayment, Refinancing or Other Settlement Plan.* The Parent and the Company will deliver to the Lenders, no later than January 25, 2003, a preliminary business plan for their remaining businesses for the period through December 31, 2004, together with a plan for the repayment, refinancing or other settlement of their debt obligations. The Parent and the Borrower will deliver a final, detailed version of such plan no later than March 31, 2003.

Section 7.25. *Electrical Acquisition Sub Warrant.* Simultaneously with the consummation of the 2002 Asset Sale, the Borrower will take (or cause any of its Affiliates to take, as applicable) all necessary action, including entering into the appropriate security documents and filing the appropriate financing statements under the provisions of the UCC or applicable non-U.S., domestic or local laws, rules or regulations in each of the offices where such filing is necessary or appropriate, to grant the Collateral Agent a perfected Lien in any warrants or other equity interests in Electrical Acquisition Sub acquired by the Borrower (or any of its Affiliates) as consideration for the 2002 Asset Sale pursuant to and to the full extent required by the Security Documents and this Agreement. Such actions shall include, but shall not be limited to, (i) delivery to the Collateral Agent of any stock certificates or warrants received by the Borrower as consideration for the 2002 Asset Sale, accompanied by appropriate stock powers or warrant powers, as applicable, duly executed in blank, or other instruments of transfer satisfactory to the Collateral Agent, and (ii) if necessary, the procurement of an appropriate control agreement from Electrical Acquisition Sub, including an express acknowledgement of the Lien of the Collateral Agent. All actions taken by the parties in connection with the pledge of such Collateral, including, without limitation, reasonable costs of counsel for the Collateral Agent, shall be for the account of the Borrower, which shall pay all sums due on demand.

Section 7.26 *Payment of Lender Fees Relating to Amendment Number Nine.* (a) The Borrower shall pay the Cash Amendment Fee upon the earlier of (i) the consummation of the 2002 Asset Sale or (ii) October 31, 2002 (or such later date that has been approved by a majority of the Steering Committee of the Lenders in accordance with the proviso to Section 8.02(u)).

(b) The Borrower shall pay the Additional Amendment Fee on April 30, 2003."

1.5 *Amendment to Section 8.02 (Consolidation, Merger, Sale or Purchase of Assets, etc.) of the Credit Agreement*

Section 8.02 of the Credit Agreement is hereby amended by (a) deleting the word "and" at the end of clause (s) of such section, (b) deleting the period at the end of clause (t) of such section and inserting in lieu thereof the phrase "; and", and (c) adding the following new clause (u) immediately following clause (t) of such section:

"(u) The Borrower may consummate the 2002 Asset Sale on terms no less favorable to the Borrower and the Parent and their respective Subsidiaries than those set forth on Exhibit R; *provided* that (i) the Borrower shall have executed definitive documentation with respect to the 2002 Asset Sale on or prior to October 31, 2002 and (ii) such 2002 Asset Sale is consummated on or prior to November 30, 2002; *provided, further*, that such November 30, 2002 deadline may be extended until a date no later than December 31, 2002 if (A) such extension is approved by a majority of the Steering Committee of the Lenders and (B) the Borrower has entered into a

receivables financing transaction on terms (including as to the tenor thereof) no less favorable to the Borrower and the Parent and their respective Subsidiaries than those set forth in the GE Commitment Letter."

1.7 *Amendment to Section 8.05 (Advances, Investments and Loans) of the Credit Agreement*

Section 8.05 of the Credit Agreement is hereby amended by (a) deleting the word "and" at the end of clause (p) of such section, (b) deleting the period at the end of clause (q) of such section and inserting in lieu thereof the phrase "; and", and (c) adding the following new clause (r) immediately following clause (q) of such section:

"(r) Investments in stock or warrants of Electrical Acquisition Sub acquired as partial consideration for the 2002 Asset Sale (including any Investment acquired as the result of the exercise of warrants acquired in accordance with this Section 8.05(r))."

1.8 *Amendment to Section 8.07 (Transactions with Affiliates) of the Credit Agreement*

Section 8.07 of the Credit Agreement is hereby amended by (a) deleting the word "and" at the end of clause (vii) of the proviso contained in such section, (b) deleting the period at the end of clause (viii) of the proviso contained in such section and inserting in lieu thereof a semicolon, and (c) adding the following language immediately following clause (viii) of the proviso of such section:

"(ix) the 2002 Asset Sale, on the terms permitted pursuant to Section 8.02(u); (x) the Elbaum Agreement; and (xi) the Company may enter into an expense reimbursement arrangement with Alpine that (A) provides that in the event that the Company enters into definitive documentation relating to the 2002 Asset Sale with a party other than Alpine or its affiliates, the Company shall reimburse Alpine for its actual, reasonable out-of-pocket expenses incurred in connection with the sale process, not to exceed \$1,500,000, or (B) is otherwise on terms and conditions reasonably satisfactory to a majority of the Steering Committee of the Lenders."

1.9 *Amendment to Section 8.08 (Capital Expenditures) of the Credit Agreement*

Section 8.08(a) of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"(a) The Company will not, and will not permit any of its Subsidiaries to, make any Capital Expenditures during any twelve-month period set forth below in excess of the amount set forth below with respect to such period:

<u>Period Ending:</u>	<u>Maximum Capital Expenditure Amount:</u>
12/31/2002	N/A
12/31/2003	N/A
12/31/2004	\$ 50,000,000
12/31/2005	\$ 50,000,000"

1.10 *Amendment to Section 8.09 (Minimum Consolidated EBITDA) of the Credit Agreement*

Section 8.09 of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"8.09. *Minimum Consolidated EBITDA.* (a) The Company will not permit Consolidated EBITDA during any Test Period set forth below to be less than the amount set forth below with respect to such Test period:

<u>Test Period Ending:</u>	<u>Consolidated EBITDA:</u>
09/30/2002	N/A
12/31/2002	N/A
03/31/2003	N/A
06/30/2003	N/A
09/30/2003	N/A
12/31/2003	N/A

03/31/2004 and the last
day of each fiscal \$ 380,000,000"
quarter thereafter

1.11 *Amendment to Section 8.10 (Interest Coverage Ratio and Fixed Charge Coverage Ratio) of the Credit Agreement*

Section 8.10 of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"8.10. *Interest Coverage Ratio and Fixed Charge Coverage Ratio.* The Company will not permit either (x) the Interest Coverage Ratio or (y) the ratio of Consolidated EBITDA to the sum of (1) Consolidated Interest Expense and (2) Capital Expenditures (such ratio, the "Fixed Charge Coverage Ratio") for any Test Period set forth below to be equal to or less than the ratio set forth below with respect to such Test Period:

Test Period Ending:	Fixed Charge Coverage Ratio	Interest Coverage Ratio
09/30/2002	N/A	N/A
12/31/2002	N/A	N/A
03/31/2003	N/A	N/A
06/30/2003	N/A	N/A
09/30/2003	N/A	N/A
12/31/2003	N/A	N/A
03/31/04 and the last day of each fiscal quarter thereafter	N/A	3.50x"

1.12 *Amendment to Section 8.11 (Leverage Ratio) of the Credit Agreement.*

Section 8.11 of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing with the following:

"8.11. *Leverage Ratio.* The Company will not permit the Pro Forma Leverage Ratio at any time during the Test Period set forth below to be equal to or more than the ratio set forth below with respect to such Test Period:

Test Period Ending:	Leverage Ratio:
09/30/2002	N/A
12/31/2002	N/A
03/31/2003	N/A
06/30/2003	N/A
09/30/2003	N/A
12/31/2003	N/A
03/31/2004 and the last day of each fiscal quarter thereafter	2.75x"

1.13 *Amendment to Section 8.11A (Monthly Covenants) of the Credit Agreement.*

Section 8.11A of the Credit Agreement is hereby amended by deleting the text thereof in its entirety and replacing it with the following:

"8.11A. *Monthly Covenants.*

(a) *Minimum Consolidated EBITDA.* The Company will not permit Consolidated EBITDA during any trailing twelve-month period ending on the dates set forth below to be less than the amount set forth below with respect to such trailing twelve-month period:

Trailing Twelve Months Ended:	Minimum Consolidated EBITDA:
09/30/2002	\$ 71,220,000
10/31/2002	\$ 70,755,000
11/30/2002	\$ 72,697,000
12/31/2002	\$ 75,023,000
01/31/2003	\$ 74,748,000
02/28/2003	\$ 74,106,000
03/31/2003	\$ 74,916,000
04/30/2003	\$ 73,891,000
05/31/2003	\$ 74,571,000
06/30/2003	\$ 78,329,000
07/31/2003	\$ 82,476,000
08/31/2003	\$ 87,096,000
09/30/2003	\$ 91,626,000
10/31/2003	\$ 94,908,000
11/30/2003	\$ 98,788,000
12/31/2003	\$ 102,939,000

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(b) *Interest Coverage Ratio.* The Company will not permit the Interest Coverage Ratio during any trailing twelve-month period ending on the dates set forth below to be less than the ratio set forth below with respect to such trailing twelve-month period:

Trailing Twelve Months Ended:	Interest Coverage Ratio:
06/30/2003	1.07x
07/31/2003	1.13x
08/31/2003	1.20x
09/30/2003	1.27x
10/31/2003	1.32x
11/30/2003	1.38x
12/31/2003	1.44x

(c) *Capital Expenditures.* The Company will not, and will not permit any of its Subsidiaries to, make any Capital Expenditures during any trailing three-month period ending on the dates set forth below in excess of the amount set forth below with respect to such trailing three-month period:

Trailing Three Months Ended:	Maximum Capital Expenditure Amount:
09/30/2002	\$ 6,000,000
10/31/2002	\$ 5,600,000

11/30/2002	\$	5,000,000
12/31/2002	\$	4,600,000
01/31/2003	\$	4,600,000
02/28/2003	\$	4,600,000
03/31/2003	\$	4,600,000
04/30/2003	\$	4,600,000
05/31/2003	\$	4,600,000
06/30/2003	\$	4,600,000
07/31/2003	\$	4,900,000
08/31/2003	\$	5,200,000
09/30/2003	\$	5,400,000
10/31/2003	\$	5,400,000
11/30/2003	\$	5,400,000
12/31/2003	\$	5,400,000

(d) *Reports.* The monthly reports, quarterly reports and annual reports required to be delivered pursuant to Section 7.01(a), (b) and (c) of this Credit Agreement shall each include an Officer's Certificate certifying compliance with the monthly covenants contained in this Section 8.11A.

(e) *Addbacks to Consolidated EBITDA.* In calculating Consolidated EBITDA for the purposes of determining compliance during fiscal 2002 and 2003 with the covenants set forth in this Section 8.11A, there shall be excluded from Consolidated EBITDA:

(i) Any non-cash charges (pertaining to the impairment of goodwill) incurred as a result of the application of FASB 142;

(ii) up to \$17,500,000 (in the aggregate for all applicable test periods) of cash charges incurred and all non-cash charges in connection with the closure of the Rockford, Elizabethtown and Winnipeg facilities, the closure of the Electrical Canada warehouse and the downsizing of the magnet wire U.K. facility;

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(iii) Any non-cash charges and cash charges up to \$10,000,000 (in the aggregate for all applicable test periods) to be incurred in connection with the closure of additional facilities to be identified by the Company, if approved by a majority of the Steering Committee of the Lenders;

(iv) Policano & Manzo advisory fees;

(v) Legal fees incurred in connection with Amendment Number Eight and Amendment Number Nine;

(vi) Rothschild Inc. advisory fees;

(vii) Costs and expenses (including legal fees and expenses) of advisors to the Borrower and the Parent (including advisors to the independent members of the Board of Directors of the Parent) associated with the 2002 Asset Sale;

(viii) Other expenses associated with the 2002 Asset Sale, not to exceed \$500,000;

(ix) Expenses (including any sign-on bonus but excluding regular salary) associated with recruiting and/or hiring of a new Chief Executive Officer in accordance with Section 7.22;

(x) Certain severance expenses, not to exceed \$1,000,000; and

(xi) Any amendment fees or write-off of prior deferred financing fees.

1.14 *Amendment to Section 8.17 (Limitation of Activities of Parent) of the Credit Agreement.*

Section 8.17 of the Credit Agreement is hereby amended by inserting the following proviso immediately prior to the period at the end of such section:

"; *provided* that the Parent may participate in the 2002 Asset Sale on the terms permitted pursuant to Section 8.02(u)."

1.15 *Amendment to Section 9 (Events of Default) of the Credit Agreement*

Section 9.03 of the Credit Agreement is hereby amended by deleting the phrase "Section 8 or Section 7.15" contained therein and inserting in lieu thereof the phrase "Section 7.18, 7.19, 7.20, 7.21, 7.22, 7.23, 7.24, 7.25 or 7.26 or Section 8".

1.16 *Amendment to Section 12 (Miscellaneous) of the Credit Agreement*

Section 12.01 of the Credit Agreement is hereby amended by adding the following new paragraph immediately at the end thereof:

"In addition, the Borrowers, jointly and severally, agree to pay up to \$15,000 of reasonable out-of-pocket expenditures of each member of the Steering Committee of the Lenders (excluding the Administrative Agent, whose out-of-pocket expenses are addressed in the first paragraph of this Section 12.01) incurred in connection with the negotiation, preparation and execution of Amendment Number Eight and Amendment Number Nine."

1.17 *Additional Exhibits to the Credit Agreement*

Annex I to this Amendment Number Nine is hereby added to the Credit Agreement as Exhibit P thereto. Annex II to this Amendment Number Nine is hereby added to the Credit Agreement as Exhibit Q thereto. Annex III to this Amendment Number Nine is hereby added to the Credit Agreement as Exhibit R thereto.

1.18 *Reduction in Revolving Loan Commitments*

It is hereby understood and agreed that as of the Amendment Number Nine Effective Date, the Revolving Loan Commitment of each Revolving Loan Lender shall be reduced on a *pro rata* basis to

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reflect the reduction in the Total Revolving Loan Commitment from \$225,000,000 to \$214,000,000 in accordance with the proviso to Section 3.02(a) of the Credit Agreement.

SECTION TWO—CONDITIONS TO EFFECTIVENESS

(a) This Amendment shall become effective on the date (the "*Amendment Number Nine Effective Date*") on which the Administrative Agent shall have received:

(i) counterparts of this Amendment executed by each Borrower, each Guarantor and the Required Lenders of each Tranche of Term Loans and the Revolving Loans;

(ii) payment in full of all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of Simpson Thacher & Bartlett and Policano & Manzo) pursuant to the Credit Agreement (which costs and expenses

shall be paid by wire transfer of immediately available funds and distributed by the Administrative Agent to the parties entitled thereto);

(iii) an Officer's Certificate from the Borrowers certifying that no Default or Event of Default has occurred or is continuing (after giving effect to this Amendment) and, in the view of the Steering Committee of the Lenders, no material adverse fact or circumstance or development has become known or been disclosed;

(iv) evidence satisfactory to it that the Borrower and General Electric Capital Corporation have executed (or are executing simultaneously with the effectiveness of this Amendment) the GE Commitment Letter (as defined in Section 1.1 of this Amendment), which GE Commitment Letter shall be effective through at least October 31, 2002; and

(v) evidence satisfactory to it that Steven S. Elbaum, the Company and the Parent have executed (or are executing simultaneously with the effectiveness of this Amendment) the Elbaum Agreement (as defined in Section 1.4(a) of this Amendment).

(b) The effectiveness of this Amendment (other than Section Four) is further conditioned upon the accuracy of the representations and warranties set forth in Section Four hereof.

SECTION THREE-AMENDMENT FEES

(a) Each Lender that executes and delivers a signature page to this Amendment not later than 12:00 p.m. (Eastern Standard Time) on September 12, 2002 (each, a "*Qualifying Lender*") will be entitled to receive a cash amendment fee (the "*Cash Amendment Fee*") of 0.50% of the total aggregate credit exposure (i.e., Loans plus undrawn Revolving Loan Commitments) of such Lender on the Amendment Number Nine Effective Date and payable upon the earlier of (i) the consummation of the 2002 Asset Sale or (ii) November 30, 2002 (or such later date that has been approved by a majority of the Steering Committee of the Lenders in accordance with the second proviso to Section 8.02(u) of the Credit Agreement). The Cash Amendment Fee shall be paid by the Borrowers by wire transfer of immediately available funds to the Administrative Agent and shall be distributed by the Administrative Agent to each of the Qualifying Lenders.

(b) In addition, all Lenders will be entitled to receive an additional cash amendment fee (the "*Additional Amendment Fee*") of 0.50% of the total aggregate credit exposure (i.e., Loans plus undrawn Revolving Loan Commitments) of such Lender on the Amendment Number Nine Effective Date and due on April 30, 2003. The Additional Amendment Fee shall be paid by the Borrowers by wire transfer of immediately available funds to the Administrative Agent and shall be distributed by the Administrative Agent to each of the Lenders.

SECTION FOUR-REPRESENTATIONS AND WARRANTIES

Each of the Parent and the Company hereby confirms, reaffirms and restates the representations and warranties made by it in Section 6 of the Credit Agreement and all such representations and warranties are true and correct in all material respects as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date), except such representations and warranties need not be true and correct to the extent that changes in the facts and conditions on which such representations and warranties are based are required or permitted under the Credit Agreement or such changes arise out of events not prohibited by the covenants set forth in Sections 7 and 8 of the Credit Agreement or otherwise permitted by consents or waivers. The Company hereby further represents and warrants (which representations and warranties shall survive the execution and delivery hereof) to the Agents and each Lender that:

(a) Each Credit Party has the corporate power and authority to execute, deliver and perform this Amendment and has taken all corporate actions necessary to authorize the execution, delivery and performance of this Amendment;

(b) No Default or Event of Default has occurred and is continuing;

(c) No consent of any person other than all of the Lenders and the Agents parties hereto, and no consent, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability against any Credit Party of this Amendment;

(d) This Amendment has been duly executed and delivered on behalf of each Credit Party by a duly authorized officer or attorney-in-fact of such Credit Party, and constitutes a legal, valid and binding obligation of each Credit Party enforceable against such Credit Party in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, preferential transfer, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors' rights and remedies generally, (b) general principles of equity (whether such enforceability is considered in a proceeding in equity or at law), and by the discretion of the court before which any proceeding therefor may be brought, or (c) public policy considerations or court administrative, regulatory or other governmental decisions that may limit rights to indemnification or contribution or limit or affect any covenants or agreements relating to competition or future employment; and

(e) The execution, delivery and performance of this Amendment will not violate (i) any provision of law applicable to any Credit Party or (ii) any contractual obligation of any Credit Party, other than such violations that would not reasonably be expected to result in, singly or in the aggregate, a Material Adverse Effect.

SECTION FIVE – MISCELLANEOUS

(a) Except as herein expressly amended, the Credit Agreement and all other agreements, documents, instruments and certificates executed in connection therewith, except as otherwise provided herein, are ratified and confirmed in all respects and shall remain in full force and effect in accordance with their respective terms.

(b) This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

(c) THIS AMENDMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(d) This Amendment shall not constitute a consent or waiver to or modification of any provision, term or condition of the Credit Agreement, other than such terms, provisions, or conditions that are required to consummate the transactions contemplated by this Amendment. All terms, provisions, covenants, representations, warranties, agreements and conditions contained in the Credit Agreement, as amended hereby, shall remain in full force and effect.

(e) Each of the Borrowers, the Parent and their respective Subsidiaries acknowledges and consents to all of the terms and conditions of this Amendment and agrees that this Amendment and all documents executed in connection herewith do not operate to reduce or discharge such obligations of the Borrowers, the Parent and their respective Subsidiaries under the Credit Agreement or the other Credit Documents. Each of the Borrowers, the Parent and their respective Subsidiaries further acknowledges and agrees that such Borrowers, the Parent and their respective Subsidiaries each has no claims, counterclaims, offsets, or defenses to the Credit Documents and the performance of such obligations of the Borrowers, the Parent and their respective Subsidiaries thereunder or if such Borrowers, the Parent and their respective Subsidiaries did have any such claims, counterclaims, offsets or defenses to the Credit Documents or any transaction related to the Credit Documents, the same are hereby waived, relinquished and released in consideration of the Lenders' execution and delivery of this Amendment. Each of the Borrowers, the Parent and their respective Subsidiaries listed as a Guarantor on the signature pages hereof acknowledges that it is a Guarantor under the Credit Agreement.

Sale Term Sheet

Purchaser (or affiliates thereof) to purchase (i) substantially all of the assets, subject to substantially all of the related liabilities, of the Electrical Business (including related copper continuous casting operations (the "*Concast Facilities*")) and (ii) the stock of DNE and Israel.

Any contracts or other supply arrangements to be entered into by the Parent, the Borrower or any of their respective Subsidiaries, on the one hand, and Purchaser (or any of its affiliates), on the other hand, relating to the transferred Concast Facilities to be reasonably acceptable to a majority of the Steering Committee of the Lenders.

Total consideration of \$85,000,000 cash + warrant to purchase 20% (on a fully-diluted basis) equity interest (with customary "tag-along" rights in favor of the Borrower and "drag-along" rights in favor of the majority stockholder in Electrical Acquisition Sub), for an aggregate exercise price of \$560,000, in Electrical Acquisition Sub.

Acquisition to be accomplished substantially on an "as is, where is" basis, with purchase agreement to include limited but customary representations, warranties and indemnities of sellers, in all respects reasonably satisfactory to a majority of the Steering Committee of the Lenders.

For a period of four years, none of Purchaser or any of its affiliates (other than Superior Israel, if applicable) may compete anywhere in the world with any business currently conducted by the Parent or any of its Subsidiaries, subject to customary exceptions and except for sales of premises wire products consistent with past practice (it being understood that Purchaser or the relevant affiliate shall offer to buy such premises wire products from the Parent, the Borrower or one of their Subsidiaries

at prevailing market rates).

The Borrower shall receive a tax opinion from Proskauer Rose LLP, which opinion shall be reasonably satisfactory to a majority of the Steering Committee of the Lenders, relating to tax matters associated with the 2002 Asset Sale.

The Borrower and the Parent shall have undertaken a marketing effort for the assets that are the subject of the 2002 Asset Sale, consisting of no less than the following:

Preparation of a summary description of the assets to be sold as part of the 2002 Asset Sale, together with pertinent financial information (the "Marketing Information"). Such Marketing Information shall be provided to the Administrative Agent (with a copy to each Lender).

The Borrower and the Parent, together with their financial advisors, shall identify prospective purchasers that would likely be interested in the assets being divested.

Concurrently with the preparation of the Marketing Information, the Borrower and the Parent shall establish a data room where prospective purchasers, subject to execution of satisfactory confidentiality agreements, could review more detailed information concerning the assets being divested.

The Borrower and the Parent will provide the Administrative Agent with periodic reports regarding the progress of the marketing effort, with such reports to include (i) the identity of any parties contacted regarding the proposed sale and (ii) the identity of any parties

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signing confidentiality agreements in connection with the proposed sale and to whom the Marketing Information has been provided.

The Borrower and the Parent shall deliver to the Administrative Agent, promptly after receipt thereof, any indication of interest, letter of intent or other writing provided by or on behalf of a prospective purchaser in connection with the 2002 Asset Sale.

All other terms and conditions to be reasonably satisfactory to a majority of the Steering Committee of the Lenders

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QuickLinks

[Exhibit 10.1](#)

[ANNEX I TO AMENDMENT NUMBER NINE EXHIBIT P](#)

PURCHASE AGREEMENT

BY AND AMONG

SUPERIOR TELECOM INC.,

SUPERIOR TELECOMMUNICATIONS INC.,

ESSEX INTERNATIONAL INC.,

ESSEX GROUP, INC.,

THE ALPINE GROUP, INC.

AND

ALPINE HOLDCO INC.

DATED: October 31, 2002

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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into this 31st day of October, 2002 by and among Superior TeleCom Inc., a Delaware corporation ("SUT"), Superior Telecommunications Inc., a Delaware corporation ("STI"), Essex International Inc., a Delaware corporation ("Essex International"), Essex Group, Inc., a Michigan corporation ("Essex Group" and, together with Essex International, "Essex"), The Alpine Group, Inc., a Delaware corporation ("Alpine"), and Alpine Holdco Inc., a Delaware corporation ("Buyer") and a newly-formed, wholly-owned corporate subsidiary of Alpine. SUT, STI and Essex are sometimes hereinafter referred to individually as a "Seller" and collectively as the "Sellers."

RECITALS

WHEREAS, SUT is the owner of 100 shares of the common stock, no par value per share ("DNE Common Stock"), of DNE Systems Inc., a Delaware corporation ("DNE"), constituting all of the issued and outstanding shares of capital stock of DNE (the "DNE Shares"). DNE and its Subsidiaries (as defined herein) are sometimes hereinafter referred to collectively as the "DNE Group."

WHEREAS, STI is the owner of (i) 100 shares of the common stock, par value \$0.01 per share ("Texas SUT Common Stock"), of Texas SUT Inc., a Texas corporation ("Texas SUT"), constituting all of the issued and outstanding shares of capital stock of Texas SUT (the "Texas SUT Shares"), and (ii) 90 ordinary shares, par value NIS 1.00 per share (the "Ordinary Shares of Superior Cables Holding"), of Superior Cables Holding (1997) Ltd., an Israel corporation ("Superior Cables Holding"), constituting 90% of the issued and outstanding shares of capital stock of Superior Cables Holding (the "Superior Cables Holding Shares" and, together with the Texas SUT Shares, the "Superior Israel Shares") (the other 10% of the issued and outstanding shares of capital stock of Superior Cables Holding being owned by Texas SUT). Texas SUT and Superior Cables Holding (specifically excluding Superior Cables Ltd., a company organized under the laws of Israel ("Superior Cables Ltd.")) are sometimes hereinafter referred to collectively as the "Superior Israel Group."

WHEREAS, on and subject to the terms and conditions set forth in this Agreement, (i) SUT desires to sell to Buyer, and Buyer desires to purchase from SUT, all of the DNE Shares and (ii) STI desires to sell to Buyer, and Buyer desires to purchase from STI, all of the Superior Israel Shares.

WHEREAS, on and subject to the terms and conditions set forth in this Agreement, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, the assets of Sellers described herein relating to Sellers' electrical wire business conducted as of the date hereof, including the manufacture and sale of building and industrial wire products conducted as of the date hereof (the "Business"), and Buyer is prepared to assume liabilities and obligations of Sellers relating to the Business.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby agree as follows:

ARTICLE 1

PURCHASE OF ASSETS AND STOCK

1.1 Assets to be Purchased by Buyer.

Subject to Section 1.2 and on and subject to the other terms and conditions set forth in this Agreement, Sellers hereby agree to grant, sell, convey, assign, transfer and deliver to Buyer, or cause to be granted, sold, conveyed, assigned, transferred and delivered to Buyer, and Buyer

agrees to purchase as a going concern, as of the Closing (as defined herein), all of the assets owned by any of Sellers or any of Sellers' respective Affiliates (as defined herein) used exclusively in the Business, of every kind and description and wherever located, free and clear of all Liens (except for Permitted Encumbrances and Real Property Permitted Encumbrances), including, without limitation, the following:

(a) All of Sellers' right, title and interest in and to the real property, including all buildings, structures, improvements, fixtures and fittings located thereon or forming part thereof, at the

locations set forth on *Schedule 1.1(a)* hereto, and all rights, privileges, easements and other appurtenances thereto (collectively, the "Business Real Property");

(b) The rights under the leases set forth on *Schedule 1.1(b)* hereto (collectively, the "Business Real Property Leases") for the real property described therein and all leasehold interests therein and all rights to leasehold improvements located thereon and, to the extent covered by the Business Real Property Leases, all fixtures, machinery, installations and equipment located thereon or forming part thereof (such property being collectively referred to as the "Business Leased Real Property");

(c) All machinery, equipment, dies, tools, spare parts and furniture, including those set forth on *Schedule 1.1(c)* hereto (collectively, the "Equipment");

(d) All inventories of the products of the Business, including those set forth on *Schedule 1.1(d)* hereto (collectively, the "Products"), including, without limitation, raw materials, work-in-process, finished goods, supplies and packaging materials on hand or in route from suppliers as of the Closing (collectively, the "Inventory");

(e) All customer and supplier lists and files, including those set forth on *Schedule 1.1(e)*, sales literature, marketing data and promotional materials relating to such lists and files and, with respect to such materials relating to the Business that do not pertain solely to the Business, copies of all such materials;

(f) All of Sellers' right, title and interest in and to all of the patents, copyrights, trademarks, service marks, trade names, brand names, certification marks and rights under any applications or registrations therefor set forth on *Schedule 1.1(f)* hereto, as well as all know-how, inventions, technology, drawings, specifications, processes, formulae, discoveries, ideas, trade secrets and confidential information used exclusively in connection with the Business, together with any and all goodwill associated with any of the foregoing (collectively, the "Business Intellectual Property");

(g) All of Sellers' rights and interest as of the Closing in and to all contracts, agreements, leases, purchase orders and commitments relating to the Business, including those set forth on *Schedule 1.1(g)* hereto (collectively, the "Business Contracts");

(h) All books, records, files and papers, whether in hard copy or computer format, to the extent they contain information solely relating to the Purchased Assets or the Business, including, without limitation, all financial and Tax (as defined herein) records, correspondence and other documents and, with respect to (i) any employee of the Business hired by Buyer as set forth on *Schedule 10.2.1(a)* or whose employment agreement is assumed by Buyer pursuant to Section 10.2.1(f), and (ii) such materials relating to the Business that do not pertain solely to the Business, copies of all such materials, *provided that*, with respect to materials relating to Taxes that relate to but do not pertain solely to the Business, copies of such materials shall be provided only if such materials are less than six years old;

(i) All licenses, permits, registrations and other authorizations issued by any Governmental Authority (as defined herein) that are required for or currently used in connection with the operation of the Business, including those that are set forth on *Schedule 1.1(i)* hereto, and including, without limitation, all licenses, permits, registrations and other authorizations relating to environmental, health and safety matters, including those that are set forth on *Schedule 1.1(i)* hereto, but, in each case, only to the extent transferable;

(j) All accounts and notes receivable and other claims for money due any Seller or any of Sellers' respective Affiliates in existence as of the close of business on the Closing Date which have been generated by sales by such Seller or such Affiliate of Products prior to the Closing, other than as expressly set forth in Section 1.2(a) or *Schedule 1.2*;

(k) All claims, causes of action, choses in action, rights of recovery and rights of set-off of any kind pertaining solely to, or arising solely out of, the Business (other than as set forth on *Schedule 1.2* hereto);

(l) All rights and interests in and under the Business Benefit Plans (as defined herein) transferred pursuant to Section 10.2.1 hereof;

(m) The goodwill of the Business; and

(n) Claims for any refund of Non-Income Taxes with respect to the Business or the Purchased Assets.

The above-described assets to be purchased and sold pursuant to this Agreement are referred to as the "Purchased Assets." The Schedules relating to the Purchased Assets shall be subject to additions and deletions in the ordinary course of business from the date hereof through the Closing.

1.2 *Assets to be Retained by Sellers.*

Sellers shall retain and Buyer shall not purchase from Sellers or any of their respective Affiliates the following properties and assets used in the conduct of the Business:

(a) Cash on hand and checks received pending collection as of the close of business on the day preceding the Closing Date (as defined herein), notes, bank deposits, certificates of deposit and marketable securities, including, without limitation, the consideration payable by Buyer to Sellers under this Agreement in respect of the Purchase Price (as defined herein);

(b) Other than as set forth in Section 1.1(n), all income and other Tax credits and all Tax refund claims for periods or events occurring on or prior to the Closing Date;

(c) All rights of any Seller under this Agreement and the agreements and instruments delivered to any Seller by Alpine or Buyer pursuant to this Agreement;

(d) A copy of all books, records, files and papers, whether in hard copy or computer format, that (i) any Seller or any of Sellers' respective Affiliates shall be required to retain pursuant to any statute, law, rule, regulation, ordinance, contract or agreement and (ii) is set forth in Sections 1.1(e) and 1.1(h) in respect of the Sellers;

(e) Other than rights granted to Buyer pursuant to Section 10.2.14, insurance policies carried by or covering any Seller or any of Sellers' respective Affiliates (and in the case of policies carried by Alpine, Sellers' rights under such policies) and any credits or other amounts due or to become due on account of or with respect to such policies;

(f) All rights and interests in and under the Business Benefit Plans (as defined herein), other than assets of any Business Benefit Plans transferred pursuant to Section 10.2.1 hereof;

(g) All management information systems and related software whether used by the Business, any Seller or any of Sellers' respective Affiliates, except for standard stand-alone mass-market software applications, which software applications are included among the Purchased Assets;

(h) All of Sellers' right, title and interest in and to all intellectual property, other than as provided in Section 1.1(f) or in any trademark or patent license agreement to which Buyer is a party entered into pursuant to this Agreement;

(i) All of Sellers' rights and interest in any settlement proceeds received in the matter set forth on *Schedule 1.2* hereto; and

(j) All of Seller's right, title and interest in and to all assets of the Sellers not used exclusively in the Business as of the Closing Date.

The above-described assets to be retained by Sellers pursuant to this Agreement are referred to as the "Retained Assets."

1.3 *Purchase and Sale of Stock.*

At the Closing, on and subject to the terms and conditions set forth in this Agreement, (i) SUT shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from SUT, all of the DNE Shares and (ii) STI shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from STI, all of the Superior Israel Shares, in each case free and clear of all Liens.

ARTICLE 2

ASSUMPTION OF LIABILITIES

2.1 *Assumed Liabilities.*

Except as otherwise provided in Section 2.2, Buyer hereby agrees to assume at the Closing all of the obligations and liabilities of Sellers and their respective Affiliates to the extent related to the Business or the Purchased Assets, arising out of or related to events, actions or omissions occurring prior to the Closing Date and whether arising prior to, on or after the Closing Date, including, without limitation, (i) any Assumed Environmental Liabilities (as defined herein), (ii) all liabilities relating to the matters set forth in *Schedule 2.1(b)*, (iii) any liabilities and other obligations under any of the Business Real Property Leases or any of the Business Contracts existing at the Closing, (iv) any product return liabilities or warranty claims with respect to Products sold, shipped or manufactured on or prior to the Closing Date, (v) any liabilities, claims or obligations for bodily injury, death or property damage arising out of or related to any activities conducted at or in connection with the Business, or any Products sold, shipped or manufactured on or prior to the Closing Date, other than such liabilities, claims or obligations for bodily injury, death or property damage arising out of the manufacture, sale or distribution of asbestos-containing products, (vi) any liabilities or obligations in connection with employee-related matters that are assumed by Buyer or an Affiliate thereof under Section 10.2.1 and (vii) all liabilities for Taxes related to the Business or the Purchased Assets for which Buyer is designated as responsible pursuant to Section 10.2.3 or Section 11.2 (collectively, the "Assumed Liabilities"). The Schedules relating to Assumed Liabilities are subject to additions and deletions in the ordinary course of business from the date hereof through the Closing.

2.2 *Liabilities to be Retained by Sellers.*

Sellers shall retain, and Buyer shall not assume, pay, perform, defend or discharge, the following liabilities and obligations: (i) any liabilities or obligations related to any of the Retained Assets; (ii) any liabilities of any Seller or any of Sellers' respective Affiliates to the extent not related to the Business or the Purchased Assets; (iii) Environmental Liabilities other than the Assumed Environmental Liabilities, (iv) except as otherwise expressly provided in Section 10.2.1, any liabilities or obligations of any Seller or any Seller ERISA Affiliate (as defined herein) with respect to any Business Benefit Plan; (v) except as otherwise expressly provided in Section 10.2.1, any liabilities or obligations in connection with any claim made by any employee or former employee of the Business arising out of or related to (a) any event, action or omission occurring prior to the Closing Date or (b) such employee's employment (including the termination thereof) prior to the Closing Date; (vi) any criminal and civil fines arising out of or related to events, actions or omissions occurring prior to the Closing Date in connection with the Business; (vii) any liabilities, claims or obligations for bodily injury, death or property damage arising out of the manufacture, sale or distribution of asbestos-containing products; (viii) all liabilities and obligations of Sellers under this Agreement or with

respect to or arising out of the transactions contemplated hereby; (ix) all indebtedness for borrowed money relating to the agreements set forth on *Schedule 2.2*; and (x) all liabilities for Taxes related to the Business or the

Purchased Assets for which Sellers are designated as responsible pursuant to Section 10.2.3 or Section 11.1 (collectively, the "Retained Liabilities").

ARTICLE 3

CONSIDERATION

3.1 Purchase Price.

The aggregate cash purchase price for the Purchased Assets, the DNE Shares and the Superior Israel Shares (the "Purchase Price") is (a) Eighty-Five Million Dollars (\$85,000,000) *plus* (b) the aggregate amount of any expenditures set forth on *Schedule 3.1*, to the extent paid prior to Closing by any of the Sellers *minus* (c) any applicable amount payable under the Side Letter relating to the valuation of certain real property in Columbia City, Indiana, dated the date hereof, among the parties hereto, payable at the Closing by wire transfer of immediately available funds to an account(s) designated in writing by SUT at least two business days prior to the Closing Date. As additional consideration for the Purchased Assets, Buyer shall cause a warrant in the form of *Exhibit A* hereto (the "Warrant") to be issued to SUT on the Closing Date.

3.2 Allocation of Purchase Price.

The sum of (i) the Purchase Price, (ii) the value of the Warrant and (iii) the amount of the Assumed Liabilities (the "Aggregate Purchase Price") shall be allocated to the Superior Israel Shares, to the DNE Shares and to the Purchased Assets for purposes of Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code") and for all other Tax purposes. The allocations to the Superior Israel Shares and the DNE Shares shall be as set forth in *Schedule 3.2*. The excess of the Aggregate Purchase Price over the amounts allocated to the Superior Israel Shares and the DNE Shares is the "Remaining Aggregate Purchase Price". Within 30 days following the Closing Date SUT shall provide Buyer with a proposed determination of the Remaining Aggregate Purchase Price and a proposed allocation of the Remaining Aggregate Purchase Price among the Purchased Assets for purposes of Section 1060 of the Code and all other Tax purposes. Within 20 days of receipt of such proposed determination and allocation Buyer shall notify SUT whether Buyer has any objection to the proposed determination or allocation. If Buyer has no such objection, or timely notice is not provided, then Buyer and Sellers agree to be bound by such determination and allocation and to complete and attach Internal Revenue Service Form 8594 to the respective U.S. Tax returns accordingly and to file all other tax returns accordingly and not to take any position inconsistent therewith. If Buyer timely objects to the proposed determination or allocation, Buyer and SUT agree to attempt in good faith to resolve such disagreement. If any such disagreement is not resolved within 10 days following SUT's receipt of notice from Buyer of Buyer's objection, the disagreement shall be submitted to a public accounting firm (the "Expert") mutually agreed upon by Buyer and SUT. Buyer and Sellers shall instruct the Expert to make a determination regarding the item or items in dispute within 20 days of receipt of the dispute. Buyer and Sellers agree to be bound by any joint resolution of a disagreement described in this Section and by any determination of the Expert and to complete and attach Internal Revenue Service Form 8594 to the respective U.S. Tax returns accordingly and to file all other tax returns accordingly and not to take any position inconsistent therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLERS WITH RESPECT TO SELLERS AND THE BUSINESS

Sellers hereby, jointly and severally, represent and warrant to Alpine and Buyer that, except as set forth in the disclosure schedule delivered by Sellers to Buyer and attached hereto and made a part hereof (the "Seller Disclosure Schedule"):

4.1 *Corporate Status.*

Each Seller is a corporation duly organized, validly existing and in corporate good standing under the laws of the jurisdiction of its incorporation. Each Seller has full corporate power and authority to: (a) own, lease and operate the Purchased Assets and carry on the Business as and where such Purchased Assets are now owned, leased or operated and as and where such Business is presently being conducted; and (b) execute, deliver and perform this Agreement and all other agreements and documents to be executed and delivered by it in connection herewith.

4.2 *Seller's Enforceability.*

All requisite corporate action to approve, execute, deliver and perform this Agreement and each other agreement and document to be delivered by any Seller in connection herewith has been taken by each Seller. This Agreement and each other agreement and document to be delivered by any Seller in connection herewith have been, or will be, duly executed and delivered by the applicable Sellers and constitute, or will constitute, the legal, valid and binding obligations of such Sellers, enforceable against such Sellers in accordance with their respective terms except to the extent that such enforcement is limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other laws affecting the rights of creditors generally and by general equity principles.

4.3 *Consents.*

No authorization, approval, consent, permit or order of, or registration, declaration or filing with, or notice to, any federal, state, local or foreign government, or any subdivision, agency or instrumentality thereof, or any court, tribunal or arbitrator (each, a "Governmental Authority"), or other Person is required in connection with the execution, delivery or performance of this Agreement by any Seller or any other agreement, instrument or document to be delivered by or on behalf of any Seller in connection herewith, except for (i) such filings as may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) filings and notifications under the Connecticut Transfer Act (C.G.S.A. §22a-134 *et seq.*, as amended) ("Connecticut Transfer Act") and the Indiana Responsible Property Transfer Law (Ind. Code §13-25-3-1 *et seq.*) ("Indiana Responsible Property Transfer Law") and (iii) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not have, individually or in the aggregate, a material adverse effect on the Business or the business of any member of the DNE Group or the Superior Israel Group, materially impair the ability of any Seller to perform its obligations hereunder, or prevent the consummation by any Seller of the transactions contemplated hereby.

4.4 *Absence of Conflicts.*

Subject to receipt of the approvals, consents, orders, declarations and other matters set forth in Section 4.3, none of the execution, delivery or performance of this Agreement or any of the other agreements, instruments or documents to be delivered by or on behalf of any Seller in connection herewith will (i) result in the creation of any mortgage, pledge, lien, security interest or other encumbrance (collectively, "Liens") on any of the Purchased Assets, (ii) conflict with or violate in any material respect any judgment, decree, order, writ, injunction, statute, ordinance, law, rule or regulation (collectively, "Law") applicable to any Seller or by which any Seller or any of its properties or assets is

bound, (iii) conflict with or violate any provision of the Certificate of Incorporation or Bylaws, or equivalent organizational documents, of any Seller or (iv) conflict with, violate, result in any breach of, constitute a default under (with or without notice or the passage of time or both), or give rise to any right of termination, cancellation, amendment or acceleration under any Business Contract set forth on Schedule 1.1(g) hereto or Business Real Property Lease set forth on *Schedule 1.1(b)* hereto, other than, in the case of clauses (i), (ii) or (iv), any creation of Lien, any conflict, breach or violation that would not have, individually or in the aggregate, a material adverse effect on the Business or the business of

any member of the DNE Group or the Superior Israel Group, materially impair the ability of any Seller to perform its obligations hereunder, or prevent the consummation by any Seller of the transactions hereby.

4.5 *No Litigation.*

There is no claim, litigation, investigation, hearing, action, suit or proceeding pending or, to the knowledge of Sellers, threatened by or against any Seller, at law or in equity, by or before any Governmental Authority, with respect to the Business or the Purchased Assets that would materially impair or delay the ability of any Seller to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

4.6 *Title to Assets.*

Sellers have good, valid and marketable title to the Purchased Assets free and clear of all Liens, except for (i) liens for Taxes and other governmental charges and assessments that are not yet due and payable or that are being contested in good faith, (ii) liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of business for sums not yet due and payable or that are being contested in good faith or (iii) encumbrances which, in the aggregate, would not have, individually or in the aggregate, materially impair the ability of any Seller to perform its obligations hereunder, or prevent the consummation by any Seller of the transactions contemplated hereby (collectively, the "Permitted Encumbrances") and, upon consummation of the transactions contemplated by this Agreement, Buyer will have good, valid and marketable title to the Purchased Assets free and clear of all Liens except for Permitted Encumbrances.

4.7 *Real Property.*

With respect to the Business Real Property, Sellers have good, valid and insurable title thereto (without payment of extra premiums therefor), except for (i) liens for Taxes not yet due and payable or which are being contested in good faith or (ii) real estate taxes and assessments (general and special) not yet due and payable, zoning ordinances and municipal land use regulations, utility distribution line easements serving that parcel of real property, the rights of the public in and to any public roads abutting that parcel of real property, and any easements, restrictions, encumbrances, imperfections of title or other matters of record which would not unreasonably interfere with the use and occupancy thereof by Buyer ("Real Property Permitted Encumbrances"). With respect to the Business Leased Real Property, Sellers are currently in possession thereof and have valid leasehold interests therein in accordance with the terms of the controlling leases, except for the Real Property Permitted Encumbrances.

4.8 *Brokers and Finders.*

No broker, finder or other entity acting in a similar capacity has participated on behalf of any Seller or any of Sellers' respective Affiliates in bringing about the transactions herein contemplated, rendered any services with respect thereto, been in any way involved therewith or is entitled to any fee or commission in connection therewith.

4.9 *EXCLUSIVITY OF REPRESENTATIONS.*

THE REPRESENTATIONS AND WARRANTIES MADE BY SELLERS WITH RESPECT TO THE SELLERS AND THE BUSINESS IN THIS ARTICLE 4 ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SELLERS AS A GROUP AND THE BUSINESS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES. EACH SELLER HEREBY DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO ALPINE, BUYER OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

ARTICLE 5

**REPRESENTATIONS AND WARRANTIES OF SUT
WITH RESPECT TO THE DNE GROUP**

SUT hereby represents and warrants to Alpine and Buyer that, except as set forth in the Seller Disclosure Schedule:

5.1 Organization and Qualification; Subsidiaries.

Each member of the DNE Group is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power and authority to own, lease and operate its properties and assets and carry on its business as and where its properties and assets are now owned, leased or operated and as and where its business is presently being conducted.

Schedule 5.1 sets forth the name and jurisdiction of incorporation of each of DNE's Subsidiaries and the percentage of each such Subsidiary's capital stock owned by DNE. All the outstanding capital stock of each such Subsidiary is duly authorized, validly issued, fully paid and non-assessable and is owned by DNE free and clear of all Liens, stockholders' agreements and voting trusts. No member of the DNE Group directly or indirectly owns or controls any interest in any other corporation, partnership, joint venture or other business association or entity.

5.2 Title to Shares.

SUT is the record and beneficial owner of the DNE Shares, free and clear of all Liens, stockholders' agreements and voting trusts. On the Closing Date, SUT will have the full corporate power and authority to assign, transfer, convey and deliver the DNE Shares as provided in this Agreement, and such delivery will convey to Buyer (or its permitted assigns) good, valid and marketable title to the DNE Shares, free and clear of all Liens, stockholders' agreements and voting trusts.

5.3 Capitalization.

(a) The authorized capital stock of DNE consists of 1,000 shares of DNE Common Stock. As of the date hereof, 100 shares of DNE Common Stock are issued and outstanding (all of which are owned by SUT) and no such shares are reserved for issuance.

(b) There are no securities convertible into or exchangeable for capital stock, options, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of any member of the DNE Group, nor are there any obligations of any member of the DNE Group to issue, sell, repurchase or redeem any shares of capital stock of any member of the DNE Group or any such convertible or exchangeable securities, options or warrants. All issued and outstanding shares of DNE Common Stock are duly authorized, validly issued, fully paid and non-assessable.

5.4 Absence of Conflicts.

Subject to receipt of the approvals, consents, orders, declarations and other matters set forth in Section 4.3, none of the execution, delivery or performance of this Agreement or any of the other agreements, instruments or documents to be delivered by or on behalf of any Seller in connection herewith will (i) result in the creation of any Lien on any of the properties or assets of any member of the DNE Group, (ii) conflict with or violate in any material respect any Law applicable to any member of the DNE Group or by which any member of the DNE Group or any of its properties or assets is bound, (iii) conflict with or violate any provision of the Certificate of Incorporation or Bylaws, or equivalent organizational documents, of any member of the DNE Group or (iv) conflict with, violate, result in any breach of, constitute a default under (with or without notice or the passage of time or both), or give rise to any right of termination, cancellation, amendment or acceleration under any contract or other agreement set forth on *Schedule 5.4*, other than, in the case of clauses (i), (ii) or (iv), any creation of Lien, any conflict, breach or violation that would not have, individually or in the aggregate, a material adverse effect on the DNE Group, materially impair the ability of SUT to perform its obligations hereunder, or prevent the consummation by SUT of the transactions hereby.

5.5 No Litigation.

There is no claim, litigation, investigation, hearing, action, suit or proceeding pending or, to the knowledge of SUT, threatened by or against any member of the DNE Group, at law or in equity, by or before any Governmental Authority, with respect to the DNE Group, that would materially impair or delay the ability of SUT to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

5.6 *Certificates of Incorporation and Bylaws.*

SUT has heretofore delivered or made available to Buyer a complete and correct copy of the Certificate of Incorporation and Bylaws, or equivalent organizational documents, each as amended to date, of each member of the DNE Group. Such organizational documents are in full force and effect. No member of the DNE Group is in violation of each of the provisions of its organizational documents.

5.7 *EXCLUSIVITY OF REPRESENTATIONS.*

THE REPRESENTATIONS AND WARRANTIES MADE BY SUT WITH RESPECT TO THE DNE GROUP IN THIS ARTICLE 5 ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO DNE, EACH OF ITS SUBSIDIARIES AND THE BUSINESS AND OPERATIONS OF THE DNE GROUP, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES. SUT HEREBY DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO ALPINE, BUYER OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF SUT AND STI WITH RESPECT TO THE SUPERIOR ISRAEL GROUP

SUT and STI hereby, jointly and severally, represent and warrant to Alpine and Buyer that, except as set forth in the Seller Disclosure Schedule:

6.1 *Organization and Qualification; Subsidiaries.*

Each of Texas SUT, Superior Cables Holding and Superior Cables Ltd. is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power and authority to own, lease and operate its properties and assets and carry on its business as and where its properties and assets are now owned, leased or operated and as and where its business is presently being conducted. *Schedule 6.1* sets forth the name and jurisdiction of incorporation of each Subsidiary of Texas SUT or Superior Cables Holding and the percentage of each such Subsidiary's capital stock owned by Texas SUT or Superior Cables Holding. No member of the Superior Israel Group directly or indirectly owns or controls any interest in any other corporation, partnership, joint venture or other business association or entity.

6.2 *Title to Shares.*

STI is the record and beneficial owner of the Superior Israel Shares, free and clear of all Liens, stockholders' agreements and voting trusts. On the Closing Date, STI will have the full corporate power and authority to assign, transfer, convey and deliver the Superior Israel Shares as provided in this Agreement, and such delivery will convey to Buyer (or its permitted assigns) good, valid and marketable title to the Superior Israel Shares, free and clear of all Liens, stockholders' agreements and voting trusts.

6.3 *Capitalization.*

(a) The authorized capital stock of Texas SUT consists of 1,000 shares of Texas SUT Common Stock and no shares of preferred stock. As of the date hereof, 100 shares of Texas SUT Common Stock are issued and outstanding (all of which are owned by STI) and no such shares are reserved for issuance.

(b) The authorized capital stock of Superior Cables Holding consists of 32,700 Ordinary Shares of Superior Cables Holding. As of the date hereof, 100 Ordinary Shares of Superior Cables Holding are issued and outstanding (90 of which are owned by STI and 10 of which are owned by Texas SUT) and no such shares are reserved for issuance.

(c) There are no securities convertible into or exchangeable for capital stock, options, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of Texas SUT or Superior Cables Holding, nor are there any obligations of Texas SUT or Superior Cables Holding to issue, sell, repurchase or redeem any shares of capital stock of Texas SUT or Superior Cables Holding, as the case may be, or any such convertible or exchangeable securities, options or warrants. All issued and outstanding shares of Texas SUT Common Stock and Ordinary Shares of Superior Cables Holding are duly authorized, validly issued, fully paid and non-assessable.

6.4 *Absence of Conflicts.*

Subject to receipt of the approvals, consents, orders, declarations and other matters set forth in Section 4.3, none of the execution, delivery or performance of this Agreement or any of the other agreements, instruments or documents to be delivered by or on behalf of any Seller in connection herewith will (i) result in the creation of any Lien on any of the properties or assets of Texas SUT or Superior Cables Holding, (ii) conflict with or violate any Law applicable to Texas SUT or Superior

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Cables Holding or by which Texas SUT or Superior Cables Holding or any of their respective properties or assets is bound, (iii) conflict with or violate any provision of the Certificate of Incorporation or Bylaws, or equivalent organizational documents, of either Texas SUT or Superior Cables Holding or (iv) conflict with, violate, result in any breach of, constitute a default under (with or without notice or the passage of time or both), or give rise to any right of termination, cancellation, amendment or acceleration under any contract or other agreement set forth on *Schedule 6.4* other than, in the case of clauses (i), (ii) or (iv), any creation of any Lien, any conflict, breach or violation that would not have, individually or in the aggregate, a material adverse effect on the Superior Israel Group as a whole, materially impair the ability of either SUT or STI to perform its respective obligations hereunder, or prevent the consummation by either SUT or STI of the transactions contemplated hereby.

6.5 *No Litigation.*

There is no claim, litigation, investigation, hearing, action, suit or proceeding pending or, to the knowledge of SUT or STI, threatened by or against Texas SUT or Superior Cables Holding, at law or in equity, by or before any Governmental Authority, with respect to the Superior Israel Group, that would materially impair or delay the ability of SUT or STI to perform their respective obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

6.6 *Certificates of Incorporation and Bylaws.*

SUT and STI have heretofore delivered or made available to Buyer a complete and correct copy of the Certificate of Incorporation and Bylaws, or equivalent organizational documents, each as amended to date, of each member of the Superior Israel Group. Such organizational documents are in full force and effect. Neither member of the Superior Israel Group is in violation of any of the provisions of its organizational documents.

6.7 *EXCLUSIVITY OF REPRESENTATIONS.*

THE REPRESENTATIONS AND WARRANTIES MADE BY SUT AND STI WITH RESPECT TO TEXAS SUT AND SUPERIOR CABLES HOLDING IN THIS ARTICLE 6 ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES RELATING TO TEXAS SUT, SUPERIOR CABLES HOLDING AND THE OPERATIONS AND BUSINESS OF THE SUPERIOR ISRAEL GROUP, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES. SUT AND STI HEREBY DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO ALPINE, BUYER OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

ARTICLE 7

REPRESENTATIONS AND WARRANTIES OF ALPINE AND BUYER

Alpine and Buyer, jointly and severally hereby represent and warrant to each of the Sellers that:

7.1 Corporate Status.

Each of Alpine and Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Alpine and Buyer has full corporate power to execute, deliver and perform this Agreement and all other agreements and documents to be executed and delivered by them in connection herewith. Buyer is a wholly-owned subsidiary of Alpine and no person other than Alpine holds an option, warrant or other right to acquire any capital stock of Buyer.

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7.2 Alpine and Buyer's Enforceability.

All requisite corporate action to approve, execute, deliver and perform this Agreement and each other agreement and document to be delivered by Alpine and Buyer in connection herewith has been taken by Alpine and Buyer. This Agreement and each other agreement and document to be delivered by Alpine and Buyer in connection herewith has been, or will be, duly executed and delivered by each of Alpine and Buyer and constitute, or will constitute, the legal, valid and binding obligations of each of Alpine and Buyer, enforceable against each of Alpine and Buyer in accordance with their respective terms except to the extent that such enforcement is limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other laws affecting the rights of creditors generally and by general equity principles.

7.3 Consents.

No authorization, approval, consent, permit or order of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by either Alpine or Buyer or any other agreement, instrument or document to be delivered by or on behalf of Alpine or Buyer in connection herewith, except for (i) such filings as may be required under the HSR Act (ii) filings and notifications under the Connecticut Transfer Act and the Indiana Responsible Property Transfer Law and (iii) such other consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not, individually or in the aggregate, materially impair the ability of Alpine or Buyer to perform their respective obligations hereunder or prevent the consummation by Alpine or Buyer of the transactions contemplated hereby.

7.4 Absence of Conflicts.

Subject to receipt of the approvals, consents, orders, declarations and other matters set forth in Section 7.3, none of the execution, delivery or performance of this Agreement or any of the other agreements, instruments or documents to be delivered by or on behalf of Alpine or Buyer in connection herewith will (i) conflict with or violate any Law applicable to Alpine or Buyer or by which Alpine or Buyer or any of their respective properties or assets is bound, (ii) conflict with or violate any provision of the Certificate of Incorporation or Bylaws of Alpine or Buyer or (iii) conflict with, violate, result in any breach of, or constitute a default under (with or without notice or the passage of time or

both) any material note, bond, mortgage, indenture, license, franchise, permit, agreement, lease or other instrument or obligation to which Alpine or Buyer is a party or by which Alpine or Buyer or any of their respective properties or assets is bound, other than, in the case of clauses (i) or (iii), any conflict, breach, or violation that would not, individually or in the aggregate, materially impair the ability of Alpine or Buyer to perform its obligations hereunder, or prevent the consummation by Alpine or Buyer of the transactions hereby.

7.5 No Litigation.

There is no claim, litigation, investigation, hearing, action, suit or proceeding pending or, to the knowledge of Alpine or Buyer, threatened against Alpine or Buyer at law or in equity, by or before any Governmental Authority, with respect to any of the transactions contemplated by this Agreement, that would materially impair or delay the ability of each of Alpine or Buyer to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

7.6 Financing.

Alpine has provided to Sellers a true and complete copy of the commitment letter (the "Commitment Letter"), attached hereto as *Exhibit B*, pursuant to which Alpine has received a commitment to be provided the financing required in order to consummate the transactions

contemplated by this Agreement. As of the date hereof, the Commitment Letter has not been withdrawn and is in full force and effect.

7.7 Absence of Business Conduct.

Essex Electric Inc., a Delaware corporation, is a newly-formed, wholly-owned Subsidiary of Buyer formed solely for the purpose of holding the Purchased Assets and the Business ("Electrical Sub") and is the only Subsidiary of Buyer. Buyer has not conducted any business prior to the date hereof and has no, and prior to the Closing will have no, properties, assets, liabilities or obligations of any nature other than those incident to its formation and in connection with this Agreement and the transactions contemplated hereby. Electrical Sub has no Subsidiaries and has not conducted any business prior to the date hereof and has no, and prior to the Closing will have no, properties, assets, liabilities or obligations of any nature other than those incident to its formation and in connection with this Agreement and the transactions contemplated hereby. No person holds an option, warrant or other right to acquire any capital stock of Electrical Sub.

7.8 Brokers and Finders.

No broker, finder or other entity acting in a similar capacity has participated on behalf of Alpine or Buyer or any of Alpine or Buyer's respective Affiliates in bringing about the transactions herein contemplated, rendered any services with respect thereto, been in any way involved therewith or is entitled to any fee or commission in connection therewith.

7.9 Investigation by Alpine and Buyer.

Each of Alpine and Buyer has conducted its own independent review and analysis of the Business, the Purchased Assets, the Assumed Liabilities, the DNE Group and the Superior Israel Group and acknowledges that Sellers have provided Alpine and Buyer with access to the personnel, properties, premises and records of the Business for this purpose. In entering into this Agreement, each of Alpine and Buyer has relied solely upon its own investigation and analyses and the representations and warranties contained in Article 4, Article 5 and Article 6 of this Agreement, and each of Alpine and Buyer acknowledges that none of Sellers nor any of their respective Affiliates makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Alpine, Buyer or any of their respective Affiliates, except as and only to the extent expressly set forth in Article 4, Article 5 and Article 6 and subject to the limitations and restrictions contained in this Agreement.

7.10 Section 267 of the Code.

Alpine and Buyer, in the aggregate, will not, at any time during the Closing Date, own directly, or be treated as owning under the rules applicable for purposes of determining whether any of Sellers and Buyer have a relationship described in Section 267(b) of the Code, (i) more than 10,460,371 shares of common stock, par value \$.01 per share, of SUT, (ii) shares of any other class of stock of SUT and (iii) shares of STI other than 645 shares of 6% Cumulative Preferred Stock of STI and those that Alpine is treated as owning by virtue of owning or being treated as owning shares of SUT. Alpine has no knowledge that, in the aggregate, any five or fewer individuals, estates or trusts own, or are treated as owning for purposes of determining whether any of Sellers and Buyer have a relationship described in Section 267(b) of the Code, more than (i) 45% of the voting power of the shares of Alpine or Buyer or (ii) 45% of the shares of Alpine or Buyer (as determined by reference to value). The representations set forth in this Section 7.10 are made at all times on the Closing Date.

7.11 *Investment Representation.*

Each of Alpine and Buyer understands that the offering and sale of the securities to be acquired pursuant to this Agreement (collectively, the "Designated Securities") is intended to be exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and any

applicable state securities or blue sky law. The Designated Securities are being acquired by Alpine and Buyer for their respective accounts and without a view to the public distribution of the Designated Securities or any interest therein. Each of Alpine and Buyer has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Designated Securities, and each of Alpine and Buyer is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Designated Securities. Each of Alpine and Buyer understands that it may not sell or dispose of any of the Designated Securities other than pursuant to a registered offering or in a transaction exempt from the registration requirements of the Securities Act and any applicable state securities or blue sky law.

ARTICLE 8

CONDITIONS TO CLOSING; CLOSING DELIVERIES

8.1 *Conditions to Each Party's Obligation to Effect the Closing.*

(a) The respective obligations of each party to effect the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of the following conditions:

(i) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, statute, executive order, judgment, decree, injunction or other order, or taken any other action, which is then in effect and has the effect of prohibiting or making illegal this Agreement or the transactions contemplated hereby;

(ii) If required, the waiting period (and any extension thereof) under the HSR Act with respect to the transactions contemplated hereby shall have expired or been terminated; and

(iii) The conditions set forth in the Commitment Letter shall have been satisfied or waived and the financing contemplated thereby shall have been effected.

(b) The obligation of Alpine and Buyer to effect the transactions contemplated hereby shall also be subject to the fulfillment at or prior to the Closing of the following conditions (any of which may be waived in writing by Alpine or Buyer):

(i) The representations and warranties of each Seller contained in this Agreement shall be true and correct when made and on and as of the Closing Date as if made on and as of such date (except for those representations and warranties that relate to a particular date, which representations and warranties shall continue to be true and correct as of such date), except where the failure

to be so true and correct would not result, either individually or in the aggregate, in a material adverse effect on the Business or the business of the DNE Group. Buyer shall have received a certificate signed on behalf of each Seller by an executive officer of such Seller to such effect;

(ii) Each Seller shall have performed or complied with, in all material respects, all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing, and Buyer shall have received a certificate signed on behalf of each Seller by an executive officer of such Seller to such effect;

(iii) Sellers shall have made the deliveries set forth in Section 8.2; and

(iv) There shall not have occurred a material adverse change in the business, condition (financial or otherwise), operations, properties, assets or liabilities of the Business or the DNE Group.

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(c) The respective obligations of Sellers to effect the transactions contemplated hereby shall also be subject to the fulfillment at or prior to the Closing of the following conditions (any of which may be waived in writing by Sellers):

(i) The representations and warranties of Alpine and Buyer contained in this Agreement shall be true and correct when made and on and as of the Closing Date as if made on and as of such date (except for those representations and warranties that relate to a particular date, which representations and warranties shall continue to be true and correct as of such date). Sellers shall have received a certificate signed on behalf of Alpine and Buyer by an executive officer of each of Alpine and Buyer to such effect;

(ii) Sellers shall have received an opinion, dated the Closing Date, from Proskauer Rose LLP regarding the effect of Sections 267 and 351 of the Code on the transactions contemplated hereby, in the form of *Exhibit C* hereto, which opinion shall be based on certificates in the form of *Exhibits D, E* and, if relevant, *F* hereto;

(iii) Each of Alpine and Buyer shall have performed or complied with, in all material respects, all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing, and Sellers shall have received a certificate signed on behalf of Alpine and Buyer by an executive officer of each of Alpine and Buyer to such effect; and

(iv) Alpine and Buyer shall have made the deliveries set forth in Section 8.3.

8.2 *Sellers' Deliveries.*

The applicable Sellers shall deliver, or cause to be delivered, the following documents to Buyer at or before the Closing, all of which shall be in form and substance reasonably acceptable to Buyer and its counsel:

(a)(1) A bill of sale transferring to Buyer all of Sellers' and their respective Affiliates' right, title and interest in and to the Purchased Assets in accordance with Section 1.1;

(a)(2) A special warranty deed in recordable form conveying fee simple title to each parcel of the Business Real Property to Buyer, free and clear of all Liens except Real Property Permitted Encumbrances;

(a)(3) An opinion, dated the Closing Date, from Morgan, Lewis & Bockius LLP in form and substance satisfactory to Sellers and Buyer;

(a)(4) Assignment of each Business Real Property Lease identified on *Schedule 1.1(b)* hereto, together with the consent of the landlord thereunder, to Buyer, in form and substance reasonably satisfactory to Sellers and Buyer;

(b) Instruments evidencing the assignment to Buyer of all of Sellers' and their respective Affiliates' right, title and interest in and to the Business Intellectual Property in form and substance reasonably satisfactory to Sellers and Buyer;

(c) An executed counterpart of the instrument evidencing Buyer's assumption of the Assumed Liabilities in accordance with Section 2.1;

(d) Consents of the applicable third party to the assignment to Buyer of the Regional Distribution Center Real Property Leases (as hereinafter defined) in form and substance reasonably satisfactory to Sellers and Buyer;

(e) An executed counterpart of the Supply and Transitional Services Agreement (the "Supply and Transitional Services Agreement") relating to the supply of certain products and certain services after the Closing Date, in form and substance reasonably satisfactory to Sellers and Buyer;

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(f) An executed counterpart of the non-exclusive Trademark License Agreement ("Trademark License Agreement") relating to, among other things, the Essex trademark, in form and substance reasonably satisfactory to Sellers and Buyer;

(g) An executed counterpart of the non-exclusive Amended and Restated Trademark License Agreement ("Amended and Restated Trademark License Agreement") relating to the Superior Cables trademark, in form and substance reasonably satisfactory to Sellers and Buyer;

(h) Certificates representing the DNE Shares, registered in the name of SUT and duly endorsed by SUT in blank for transfer or accompanied by appropriate stock powers in blank duly signed by SUT;

(i) Certificates representing the Superior Israel Shares, registered in the name of STI and duly endorsed by STI in blank for transfer or accompanied by appropriate stock powers in blank duly signed by STI;

(j) An executed counterpart of a shareholders agreement relating to Electrical Sub among Buyer, Electrical Sub and SUT, in form and substance reasonably satisfactory to Sellers and Buyer;

(k) A Security Release Agreement and applicable UCC-3 statements, in form and substance reasonably satisfactory to the Sellers and Buyer;

(l) An executed counterpart of the Termination or Assignment of Management Agreement, dated December , 1999, between SUT and Superior Cables Ltd., in form and substance reasonably satisfactory to Sellers and Buyer;

(m) A completed Form II (as defined in the Connecticut Transfer Act) executed by Sellers to the extent necessary and applicable to the real property located at 50 Barnes Park North, Wallingford, Connecticut (the "Wallingford Property");

(n) A completed disclosure document, in the form set forth in Section 7 of the Indiana Responsible Property Transfer Law, executed by Sellers in accordance with the Indiana Responsible Property Transfer Law, as applicable to the Business Real Property located in the State of Indiana;

(o) An executed counterpart of a non-exclusive, non-transferable, non-sublicensable patent license agreement in regard to the following patents: EP-1693A, EP-1731, EP-1693, EP-1809, EP-1841, EP-1844 and EP-1888, in form and substance reasonably satisfactory to Sellers and Buyer; and

(p) Each other document required to be delivered to Buyer hereunder or that Buyer may reasonably request in connection with the transactions contemplated hereby.

8.3 *Buyer's Deliveries.*

Alpine and Buyer shall deliver, or cause to be delivered, the following documents to Sellers at or before the Closing, all of which shall be in form and substance reasonably acceptable to Sellers and their counsel:

- (a) Immediately available funds by wire transfer in the amount of the Purchase Price;
- (b) The Warrant;
- (c) An opinion, dated the Closing Date, from Proskauer Rose LLP, counsel to Alpine and Buyer, in form and substance satisfactory to the Sellers and Buyer;
- (d) An executed counterpart of the instrument evidencing Buyer's assumption of the Assumed Liabilities in accordance with Section 2.1;

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- (e) An executed counterpart of the Supply and Transitional Services Agreement, in form and substance reasonably satisfactory to Sellers and Buyer;
- (f) An executed counterpart of the Trademark License Agreement, in form and substance reasonably satisfactory to Sellers and Buyer;
- (g) An executed counterpart of the Amended and Restated Trademark License Agreement, in form and substance reasonably satisfactory to Sellers and Buyer;
- (h) An executed counterpart of a shareholders agreement relating to Electrical Sub among Buyer, Electrical Sub and SUT, in form and substance reasonably satisfactory to Sellers and Buyer;
- (i) An executed counterpart of the Termination or Assignment of Management Agreement, dated December , 1999, between SUT and Superior Cables Ltd., in form and substance reasonably satisfactory to Sellers and Buyer;
- (j) A completed Form III or Form IV (as defined in the Connecticut Transfer Act) executed by Buyer as the Certifying Party (as defined in the Connecticut Transfer Act) to the extent necessary and applicable to the Wallingford Property;
- (k) An executed counterpart of a non-exclusive, non-transferable, non-sublicensable patent license agreement in regard to the following patents: EP-1693A, EP-1731, EP-1693, EP-1809, EP-1841, EP-1844 and EP-1888, in form and substance reasonably satisfactory to Sellers and Buyer; and
- (l) Each other document required to be delivered to Sellers hereunder or that any of the Sellers may reasonably request in connection with the transactions contemplated hereby.

ARTICLE 9

CLOSING

9.1 *Closing.*

Provided that the deliveries set forth in Article 8 are either made or waived, the consummation of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Proskauer Rose LLP, 1585 Broadway, New York, New York on such date, and at

such time, as the parties shall agree (the "Closing Date"). The transfers and deliveries described in Article 8 shall be mutually interdependent and regarded as occurring simultaneously; and no such transfer or delivery shall become effective until all the other transfers and deliveries provided for in Article 8 have also been consummated.

ARTICLE 10

COVENANTS

The covenants and agreements contained in this Article 10 shall be applicable, as the case may be, to Alpine, Buyer and each Seller hereunder (except that none of such covenants or agreements shall impose any liability or obligation on (i) STI with respect to any member of the DNE Group or (ii) Essex with respect to any member of the DNE Group or Superior Israel Group):

10.1 *Pre-Closing Covenants.*

10.1.1 *Conduct of Business.*

(a) During the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, Sellers covenant and agree that, unless Buyer shall otherwise consent in writing or unless otherwise expressly permitted hereunder, Sellers shall conduct the Business in the ordinary course of business and in a manner consistent with past practice, including using commercially reasonable efforts to keep available the services of the present employees of the Business and to preserve their present material relationships with customers, distributors and suppliers in connection with the Business. By way of amplification and not limitation, during the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, Sellers shall not, directly or indirectly, take or propose to take, or permit to be taken, any of the following actions without the prior written consent of Buyer, unless otherwise expressly permitted hereunder:

- (i) Transfer, assign, convey or liquidate any Purchased Assets or any portion of the Business, other than in the ordinary course of business;
- (ii) Suffer, permit or incur the imposition of any Lien upon any of the Purchased Assets or the Business, except for any Permitted Encumbrance or Real Property Permitted Encumbrance;
- (iii) Commit, suffer, permit or incur any default in liability or obligation which, individually or in the aggregate, would have a material adverse effect upon Buyer's conduct of the Business after the Closing;
- (iv) Make or agree to any change in the terms of any Business Real Property Lease or Business Contract which is not in the ordinary course of business;
- (v) Waive, cancel, compromise, sell or otherwise dispose of, for less than the face amount thereof, any claim or right relating to the Purchased Assets or the Business which is not in the ordinary course of business;
- (vi) Pay, agree to pay or incur any obligation for any payment of any contribution or other amount to, or with respect to, any employee benefit plan, or pay any bonus to, or grant any increase in the compensation of,

the officers or employees (unless made at times and in amounts consistent with the past practice of the Business) of the Business, or make any increase in the pension, retirement or other benefits of the officers or employees of the Business, except as required by law or the terms of any such plan;

(vii) Pay, agree to pay or incur any obligation for any payment of any indebtedness relating to the Purchased Assets or the Business, except indebtedness incurred in the ordinary course of business or other than as set forth on Schedule 10.1.1 hereto;

(viii) Materially write down or materially write up the value of any Inventory;

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(ix) Make any material change in any method of accounting or accounting practice or policy other than such changes required by United States generally accepted accounting principles consistently applied ("GAAP");

(x) incur any capital expense over \$10,000 and, in the event Buyer consents to the incurrence of such expense, and if the parties mutually agree, such expense shall be included on, and deemed a part of, *Schedule 3.1* hereto; or

(xi) Agree, whether in writing or otherwise, to take any of the actions set forth in this Section 10.1.1(a).

(b) During the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, SUT covenants and agrees that, unless Buyer shall otherwise consent in writing and unless otherwise expressly permitted hereunder, it shall cause each member of the DNE Group to conduct its business in the ordinary course of business and in a manner consistent with past practice, including using commercially reasonable efforts to keep available the services of its present employees and to preserve its present material relationships with customers, distributors and suppliers. By way of amplification and not limitation, during the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, SUT shall cause each member of the DNE Group not to, directly or indirectly, take or propose to take, or permit to be taken, any of the following actions without the prior written consent of Buyer, unless otherwise expressly permitted hereunder;

(i) Transfer, assign, convey or liquidate any assets, other than in the ordinary course of business;

(ii) Suffer, permit or incur the imposition of any Lien upon any of its assets, except for any Permitted Encumbrance or Real Property Permitted Encumbrance;

(iii) Commit, suffer, permit or incur any default in liability or obligation which, individually or in the aggregate, would have a material adverse effect upon Buyer's conduct of the business of the DNE Group after the Closing;

- (iv) Make or agree to any change in the terms of any of its material contracts which is not in the ordinary course of business;
- (v) Waive, cancel, compromise, sell or otherwise dispose of, for less than the face amount thereof, any claim or right which is not in the ordinary course of business;
- (vi) Pay, agree to pay or incur any obligation for any payment of any contribution or other amount to, or with respect to, any employee benefit plan, or pay any bonus to, or grant any increase in the compensation of, any of its officers or employees (unless made at times and in amounts consistent with past practice), or make any increase in the pension, retirement or other benefits of any of its officers or employees, except as required by law or the terms of any such plan;
- (vii) Pay, agree to pay or incur any obligation for any payment of any indebtedness, except indebtedness incurred in the ordinary course of business or other than as set forth on *Schedule 10.1.1*;
- (viii) Materially write down or materially write up the value of any inventory;
- (ix) Make any material change in any method of accounting or accounting practice or policy other than such changes required by GAAP;

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- (x) incur any capital expense over \$10,000 and, in the event Buyer consents to the incurrence of such expense, and if the parties mutually agree, such expense shall be included on, and deemed a part of, *Schedule 3.1* hereto;
 - (xi) Amend its Certificate of Incorporation or Bylaws or equivalent organizational documents;
 - (xii) Declare or pay any dividends or make any other distribution in cash, securities or property on its capital stock;
 - (xiii) Issue any additional shares of capital stock or issue, sell or grant any option or right to acquire, or otherwise dispose of, any of its authorized but unissued capital stock;
 - (xiv) Repurchase or redeem any shares of its capital stock; or
 - (xv) Agree, whether in writing or otherwise, to take any of the actions set forth in this Section 10.1.1(b).

(c) During the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, SUT and STI covenant and agree that, unless Buyer shall otherwise consent in writing

or unless otherwise expressly permitted hereunder, they shall cause each member of the Superior Israel Group to conduct its business in the ordinary course of business and in a manner consistent with past practice, including using commercially reasonable efforts to keep available the services of its present employees and to preserve its present material relationships with customers, distributors and suppliers. By way of amplification and not limitation, during the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, SUT and STI shall cause each member of the Superior Israel Group not to, directly or indirectly, take or propose to take, or permit to be taken, any of the following actions without the prior written consent of Buyer, unless otherwise expressly permitted hereunder.

- (i) Transfer, assign, convey or liquidate any assets, other than in the ordinary course of business;
- (ii) Suffer, permit or incur the imposition of any Lien upon any of its assets, except for any Permitted Encumbrance or Real Property Permitted Encumbrance;
- (iii) Commit, suffer, permit or incur any default in liability or obligation which, individually or in the aggregate, would have a material adverse effect upon Buyer's conduct of business of the Superior Israel Group after the Closing;
- (iv) Make or agree to any change in the terms of any of its material contracts which is not in the ordinary course of business;
- (v) Waive, cancel, compromise, sell or otherwise dispose of, for less than the face amount thereof, any claim or right which is not in the ordinary course of business;
- (vi) Pay, agree to pay or incur any obligation for any payment of any contribution or other amount to, or with respect to, any employee benefit plan, or pay any bonus to, or grant any increase in the compensation of, any of its officers or employees (unless made at times and in amounts consistent with past practice), or make any increase in the pension, retirement or other benefits of any of its officers or employees, except as required by law or the terms of any such plan;
- (vii) Pay, agree to pay or incur any obligation for any payment of any indebtedness, except indebtedness incurred in the ordinary course of business;

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- (viii) Materially write down or materially write up the value of any inventory;
 - (ix) Make any material change in any method of accounting or accounting practice or policy other than such changes required by GAAP;
 - (x) incur any capital expense over \$10,000 and, in the event Buyer consents to the incurrence of such expense, and if the parties mutually agree, such expense shall be included on, and deemed a part of, *Schedule 3.1*

hereto;

- (xi) Amend its Certificate of Incorporation or Bylaws or equivalent organizational documents;
- (xii) Declare or pay any dividends or make any other distribution in cash, securities or property on its capital stock;
- (xiii) Issue any additional shares of capital stock or issue, sell or grant any option or right to acquire, or otherwise dispose of, any of its authorized but unissued capital stock;
- (xiv) Repurchase or redeem any shares of its capital stock; or
- (xv) Agree, whether in writing or otherwise, to take any of the actions set forth in this Section 10.1.1(c).

(d) Notwithstanding the provisions of Section 10.1.1(b), (c) and (e) hereof, Sellers may, prior to the Closing, cause the DNE Group or the Superior Israel Group to distribute to STI or SUT, in satisfaction of payables of any member of the DNE Group or the Superior Israel Group in favor of SUT or STI, a note or other obligation of STI or SUT that is contributed to the DNE Group or the Superior Israel Group after the date hereof.

(e) During the period from the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement pursuant to Section 10.1.6 hereof, no payments shall be made by a Transferred Subsidiary under the Tax Sharing Agreement, except for a Transferred Subsidiary's allocable share of any tax payment actually made to a taxing authority.

10.1.2 *Access to Information.*

Upon reasonable notice at reasonable times during normal business hours with the purpose that an uninterrupted and efficient transfer of the Purchased Assets, the Business and the respective businesses of the DNE Group and the Superior Israel Group may be accomplished, Sellers shall afford to the officers, employees, accountants, counsel, proposed lenders and other representatives of Buyer access, during the period commencing on the date hereof and ending on the Closing Date, to all of the properties, personnel, books, contracts, commitments and records relating to the Business, the Purchased Assets, the DNE Group or the Superior Israel Group, and, during such period, Sellers shall furnish promptly to Buyer all information concerning, and shall make available to Buyer the appropriate individuals (including attorneys, accountants and other professionals) for discussion of, the Business, the Purchased Assets, the DNE Group and the Superior Israel Group as Buyer may reasonably request; *provided*, that the Sellers shall not be required to provide any such information or access to the extent that such information or access would cause any Seller or any of their respective Affiliates to be in breach of any confidentiality restrictions applicable to it. Buyer will, and will cause its officers, employees, accountants, counsel and other representatives to, hold any such information obtained pursuant to this Section 10.1.2 in confidence, except to the extent any such information (i) is or has become publicly available other than as a result of a breach of this Section 10.1.2 or (ii) is required to be disclosed by Law or Governmental Authority.

10.1.3 *Reasonable Efforts.*

On and subject to the terms and conditions set forth in this Agreement, each of the parties agrees to use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation, (a) the obtaining of all necessary actions or non-actions, waivers, consents and approvals from any Governmental Authority and the making of all necessary registrations and filings with and notices to, and the taking of all commercially reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authority, (b) the obtaining of all necessary consents, approvals and waivers from third parties, (c) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, and (d) the execution and delivery of any additional instruments necessary, proper or advisable to consummate the transactions contemplated by this Agreement; *provided, however,* that none of any Seller, Alpine, or Buyer shall be obligated with respect to such efforts (i) to expend any funds except the payment of the reasonable fees and expenses of any applicable attorneys, consultants or other advisors retained by it or (ii) to take any actions with respect to the Purchased Assets, the Business, the business of the DNE Group or the Superior Israel Group which, in its reasonable judgment, is materially adverse, including, but not limited to, agreeing to any modification of a contract term.

10.1.4 *Seller Disclosure Schedule and Supplemental Disclosure.*

(a) On or prior to the date hereof, Sellers have delivered to Buyer the Seller Disclosure Schedule setting forth, among other things, items of disclosure relating to any or all of the representations and warranties of Sellers; *provided,* that the mere inclusion of an item in the Seller Disclosure Schedule shall not be deemed an admission by any of the Sellers that such item represents a material exception or fact, event or circumstance or that such item would result in, either individually or in the aggregate, a material adverse effect on the Business or the business of the DNE Group or the Superior Israel Group, materially impair the ability of any Seller to perform its obligations hereunder or prevent the consummation by any Seller of the transactions contemplated hereby.

(b) Each party will promptly notify the other party in writing if it is in, or becomes aware of any fact or condition that causes or constitutes a, breach of any of its representations or warranties as of the date of this Agreement, or if it becomes aware of the existence or occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a breach of any of its representations or warranties had any such representation or warranty been made as of the time of the existence, occurrence or discovery of such fact or condition. The delivery of any notice pursuant to this Section 10.1.4 shall not limit or otherwise affect the remedies available hereunder to a party receiving such notice.

10.1.5 *Superior Proposal.*

Notwithstanding anything to the contrary in this Agreement, SUT, and its board of directors (the "Board") and a special committee comprised of the independent directors of the Board (the "Special Committee"), on behalf of or together with any of the Sellers or their respective Affiliates, as the case may be, shall be permitted to (1) engage in discussions and negotiations with, and provide information (including, without limitation, this Agreement and all Exhibits and Schedules hereto) to certain Persons (each, a "Prospective Purchaser"), determined together with Sellers' financial advisor, who may be interested in acquiring all or any portion of the Business, the DNE Shares and the Superior Israel Shares (collectively, the "Assets to be Sold") and (2) enter into definitive purchase and sale documentation with respect to all or any portion of the Assets to

be Sold with a Prospective Purchaser, but only if and to the extent that (A) in the case of clause (2), the Special Committee concludes in good faith that the offer or proposal made by such Prospective Purchaser with respect to the Assets to be Sold (an "Acquisition Proposal") constitutes a Superior Proposal and (B) prior to providing any information or data to a Prospective Purchaser or entering into any discussions or negotiations with a Prospective Purchaser, Sellers receive from such Prospective Purchaser an executed confidentiality agreement, in a form advised by outside counsel. SUT will notify Alpine, on a current basis, if any such proposals or offers are made by, or any such discussions or negotiations are entered into with, any Prospective Purchaser

indicating, in connection with such notice, the name of such Prospective Purchaser and the material terms and conditions of any proposals or offers and thereafter shall keep Alpine informed, on a current basis, of the status and terms of any such proposals or offers and the status of any such negotiations or discussions. "Superior Proposal" means an Acquisition Proposal made by a Prospective Purchaser on terms which the Special Committee in good faith concludes (following receipt of the advice of its financial advisor and outside legal counsel), taking into account, among other things, all terms and conditions of the proposal and all legal, financial, regulatory and other aspects of the proposal and the Prospective Purchaser making the proposal, (x) would, if consummated, result in a transaction that is more favorable, from a financial point of view, to SUT and its stockholders (other than Alpine) and creditors taken as a whole, than the transactions contemplated by this Agreement and (y) is reasonably likely to be completed.

10.1.6 Termination.

This Agreement may be terminated at any time prior to the Closing:

(a) By mutual written consent of Sellers, Alpine and Buyer;

(b) By Sellers if Alpine or Buyer shall have failed to perform or comply with any of its covenants or agreements contained in this Agreement such that any of the conditions set forth in Section 8.1(a) and (c) would not be satisfied, which failure to perform or comply has not been cured within 30 days following receipt by Alpine or Buyer of notice of such failure to perform or comply;

(c) By Buyer if any Seller shall have failed to perform or comply with any of its covenants or agreements contained in this Agreement such that any of the conditions set forth in Section 8.1(a) and (b) would not be satisfied, which failure to perform or comply has not been cured within 30 days following receipt by such Seller of notice of such failure to perform or comply;

(d) By either Sellers or Buyer if (i) the Closing has not been effected on or prior to the close of business on December 15, 2002, *provided, however*, that the right to terminate this Agreement pursuant to this clause shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to have occurred on or prior to the aforesaid date, or (ii) any Governmental Authority shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(e) (i) By Sellers if there has been (x) a material breach by Alpine or Buyer of any of its representations or warranties that is not qualified as to materiality or (y) a breach by Alpine or Buyer of any of its representations or warranties that is qualified as to materiality, in each case, which would materially impair the ability of Alpine or Buyer to perform its obligations under this Agreement or prevent the consummation by Alpine or Buyer of the transactions contemplated by this Agreement, which breach has not been cured within 30 days following receipt by Alpine or Buyer of notice of the breach, or (ii) by Alpine or Buyer if there has

been (x) a material breach by any Seller of any of its representations or warranties that is not qualified as to materiality or (y) a breach by any Seller of any of its representations or warranties that is qualified as to materiality, in each case, which would result in, individually or in the aggregate, a material adverse effect on the Business or the business of the DNE Group, which breach has not been cured within 30 days following receipt by Sellers of notice of the breach;

(f) By Sellers simultaneously with their execution of a definitive purchase and sale agreement (but specifically excluding a non-binding letter of intent) with respect to a Superior Proposal in accordance with Section 10.1.5;

(g) By Alpine or Buyer if the Closing has not occurred on or prior to the close of business on November 30, 2002, unless Sellers have irrevocably waived in writing their right to enter into definitive purchase and sale documentation with respect to a Superior Proposal in accordance with Section 10.1.5 and to terminate this Agreement pursuant to Section 10.1.6(f).

10.1.7 *Effect of Termination.*

(a) In the event of termination of this Agreement by either Sellers or Buyer, as provided in Section 10.1.6, this Agreement shall forthwith become null and void and there shall be no liability hereunder on the part of Alpine, Buyer or any of the Sellers or their respective shareholders, officers, employees, directors, agents or Affiliates (except as set forth in this Section 10.1.7, Section 10.2.4 and Section 10.2.5, which shall survive the termination); *provided, however*, that nothing contained in this Section 10.1.7 shall relieve any party hereto from any liability for any breach of its obligations under this Agreement.

(b) If this Agreement is terminated pursuant to Section 10.1.6(f) or (g), SUT shall, within two business days after the date of such termination, pay to Alpine or Buyer, by wire transfer of immediately available funds to an account designated in writing by Alpine or Buyer, up to \$1.5 million of actual, reasonable documented out-of-pocket expenses incurred by Alpine or Buyer in connection with the transactions contemplated hereby, subject to offset for amounts paid or previously paid by or on behalf of SUT pursuant to Section 10.2.19.

10.1.8 *Other Business Real Property Liens.*

Prior to Closing, Sellers shall take any and all actions as may be necessary to cure or remove (or otherwise provide Buyer with reasonable evidence of payment of) any Liens, which are monetary in nature, other than Real Property Permitted Encumbrances, affecting the Business Real Property.

10.2 *Other Covenants.*

10.2.1 *Employee and Related Matters.*

(a) *Employees.* Buyer or an Affiliate thereof shall make an offer of employment, effective as of the Closing Date, to all employees of the Business set forth on *Schedule 10.2.1(a)*, except for employees of the Business who terminated employment prior to the Closing Date or who became eligible for long-term disability benefits prior to the Closing Date, and shall retain on the Closing Date substantially all employees engaged in the respective businesses of the DNE Group and the Superior Israel Group, in each case on terms and conditions which, except as set forth in this Section 10.2.1, are substantially comparable, in the aggregate, to those provided to such employees by Sellers. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer or its Affiliates from terminating the employment of any employee at any time after the Closing Date for any reason (or no reason). Employees who are retained or who accept Buyer's offer of employment and commence working for Buyer or an Affiliate thereof immediately following the Closing Date are hereinafter referred to as "Transferred Employees." Any Transferred Employee

on short-term disability as of the Closing Date that would have become eligible for long-term disability benefits under the Sellers' long-term disability plan but for the consummation of the transactions contemplated by this Agreement shall be covered by the Sellers' long-term disability plan and Buyer shall have no obligation to provide such coverage.

(b) *Defined Contribution Plans.*

(i) *Multiple Business Plans.* On the Closing Date or as soon as practicable thereafter (but in no event later than 180 days following the Closing Date), Buyer shall permit any Transferred Employee who has an account balance (a "Participant") under any tax-qualified defined contribution plan established or maintained by the Sellers or its Affiliates on

behalf of employees of the Business (the "Business Employees") as well as other employees of the Sellers and its Affiliates (the "Seller 401(k) Plans") to roll over (whether by direct or indirect rollover, as selected by such Participant) his or her "eligible rollover distribution" (as defined under Section 402(c)(4) of the Code) in the form of cash, a promissory note (as described below) or such other property as reasonably acceptable to Buyer that relates solely to investment vehicles available under the Buyer 401(k) Plan (as defined hereinafter) or any combination thereof from the Seller 401(k) Plans to a retirement plan established by Buyer or its Affiliates that is intended to qualify under Section 401(a) of the Code and that contains a cash or deferred arrangement under Section 401(k) of the Code (the "Buyer 401(k) Plan"). The account balances of Business Employees who participate in the Seller 401(k) Plans shall be fully vested as of the Closing Date and the Seller shall take any actions necessary to ensure that such account balances are distributable from the Seller 401(k) Plans on and after the Closing. The Sellers and the Seller 401(k) Plans shall not place any Participant's plan loan into default or declare a default with respect to any plan loan so long as such Participant transfers his or her account balance under the Seller 401(k) Plans, together with the promissory note evidencing the plan loan and the applicable loan documentation, to the Buyer 401(k) Plan through a direct rollover as soon as practicable after the Closing Date. Such loan shall be assumed and continued by the Buyer 401(k) Plan in a manner substantially similar to the Seller 401(k) Plans. Sellers shall amend the Seller 401(k) Plans to the extent necessary in order to effectuate the transactions contemplated under this Section 10.2.1(b).

(ii) *Stand-Alone Plans.* As a result of Buyer's purchase of the DNE Shares contemplated by this Agreement, the DNE Technologies, Inc. Savings Plan (the "DNE Plan") shall continue in effect after the Closing Date as a plan sponsored by Buyer or one of its Affiliates and the account balances of employees of the DNE Group ("DNE Employees" and, together with Business Employees, "Affected Employees") shall not be distributable from the DNE Plan.

(c) *Defined Benefit Plans.* With respect to each of the Retirement Income Plan for Salaried Employees of Essex Group, Inc. (the "Salaried Plan") and the Retirement Income Plan for Hourly Employees of Essex Group, Inc. (the "Hourly Plan", together with the Salaried Plan, the "Seller Pension Plans"), the parties agree as follows:

(i) *Hourly Plan.* (A) Sellers shall retain all liabilities and obligations in respect of benefits accrued by employees of the Business who participate in the Hourly Plan ("Covered Employees"). Benefit accruals in respect of Covered Employees under the Hourly Plan shall cease as of the Closing Date and the Covered Employees participating therein shall be considered to have terminated employment for purposes of such plan. Sellers shall fully vest the accrued benefits of the Covered Employees under the Hourly Plan as of the Closing Date. No assets under the Hourly Plan shall be transferred to Buyer or any of its Affiliates or to any plan of Buyer or its Affiliates.

(B) Buyer or an Affiliate thereof shall establish a retirement plan for Transferred Employees who participate in the Hourly Plan that is intended to qualify under

Section 401(a) of the Code that contains a benefit formula that is the same as under the Hourly Plan (the "Buyer Hourly Plan"). Benefit accruals in respect of such employees under the Buyer Hourly Plan shall commence as of the Closing Date and shall only take into account service performed and compensation earned on and after the Closing Date; provided, that service performed prior to the Closing Date for Sellers and their Affiliates shall be taken into account for purposes of eligibility to participate and vesting credit (but not for purposes of benefit accrual) under the Buyer Hourly Plan.

(ii) *Salaried Plan.* Buyer shall establish a tax-qualified defined contribution retirement plan (which may be a component of the Buyer 401(k) Plan) for Transferred Employees who participate in the Salaried Plan that provides for an employer contribution in lieu of the benefit provided to such employees under the Salaried Plan.

(d) *Other Liabilities.* Without limiting the scope of Section 10.2.1(a), Buyer shall cause each Transferred Employee (and his or her eligible dependents) to be covered following on and after the Closing Date by a group health plan (within the meaning of Section 5000(b)(1) of the Code) that (i) does not limit or exclude coverage on the basis of any pre-existing condition of such Transferred Employee or dependent, and (ii) provides each Transferred Employee full credit, for the year during which the Closing Date occurs, with any deductible already incurred by the Transferred Employee under any welfare benefit arrangement sponsored, maintained or contributed to by Sellers or any Seller ERISA Affiliate (a "Seller Welfare Arrangement") providing group health benefits to such Transferred Employee or dependent and with any other out-of-pocket expenses that count against any maximum out-of-pocket expense provision under such Seller Welfare Arrangement or Buyer's Welfare Plan. Notwithstanding anything contained herein to the contrary, (i) Sellers shall remain responsible for all claims incurred or made by Transferred Employees prior to the Closing Date under any Business Benefit Plan or state workers' compensation statute, or, with respect to Transferred Employees employed in the Business, which arise out of or relate to (A) any event, action or omission occurring prior to the Closing Date or (B) such employee's employment (including the termination thereof) prior to the Closing Date and (ii) Buyer shall be responsible for all claims incurred or made by Transferred Employees on or after the Closing Date under any Buyer Benefit Plan or state workers' compensation statute, or, with respect to Transferred Employees employed in the Business, which arise out of or relate to (A) any event, action or omission occurring prior to the Closing Date or (B) such employee's employment (including the termination thereof) prior to the Closing Date. For purposes of clarity, a medical/dental claim shall be considered incurred when the medical/dental services are rendered or medical/dental supplies are provided, and not when the condition arose. A disability or workers' compensation claim, or any other employment-related claim arising out of or relating to (A) any event, action or omission occurring prior to the Closing Date or (B) such employee's employment (including the termination thereof) prior to the Closing Date, shall be considered incurred or made prior to the Closing Date if the injury or condition occurred prior to the Closing Date.

(e) *Accrued Bonuses and Vacation.* Buyer shall assume and be liable for any accrued but unpaid bonuses payable to any Transferred Employee on or after the Closing Date. With respect to any accrued but unpaid vacation time which any Transferred Employee is eligible to take pursuant to the vacation policy applicable to such Transferred Employee immediately prior to the Closing Date, Buyer shall allow such Transferred Employee to use such accrued vacation (in addition to any vacation accrued pursuant to vacation policies established by Buyer), and shall pay the Transferred Employee the value of any unused vacation upon his termination of employment.

(f) *Employment/Change of Control Agreements.* Effective as of the Closing Date, Buyer and Sellers shall take all actions necessary (including, without limitation, obtaining consents of the affected employees) to cause Buyer to be substituted for SUT (or, as applicable, an Affiliate)

under the employment and change of control agreements set forth on Schedule 10.2.1(f), and Buyer shall assume and be liable for any and all liabilities under such agreements.

(g) *Benefit Plan Transition Services.* If requested by Buyer, Sellers shall, pursuant to the terms of the Supply and Transitional Services Agreement, for up to 90 days following the Closing Date, administer the payroll of Buyer with respect to the Transferred Employees, and extend coverage under the Seller 401(k) Plans and the Seller Welfare Arrangements to the Transferred Employees; *provided*, that in the event Buyer makes such a request, Buyer, and not Sellers, shall be deemed the sponsoring employer of the Seller Welfare Arrangements with respect to the coverage of Transferred Employees thereunder; and provided further, that in no event shall Sellers retain any liability (including, without limitation, liability under the Consolidated Omnibus Budget Reconciliation Act of 1985) to such Transferred Employees under the Seller Welfare Arrangements after the termination of Sellers' obligations with respect thereto under the Supply and Transitional Services Agreement, except as otherwise provided therein.

(h) *Cooperation.* Sellers and Buyer shall cooperate with each other (and cause the trustees of the Seller 401(k) Plans, the Seller Pension Plans, the Buyer 401(k) Plan and the Buyer Hourly Plan to cooperate with each other) with respect to the transactions contemplated by this Section 10.2.1.

(i) *No Third-Party Rights.* Nothing in this Article 10, express or implied, shall confer upon any Transferred Employee or other Person (other than the parties hereto and their respective successors and permitted assigns) or legal representative thereof any rights or remedies, including any rights to compensation or benefits of any nature or kind whatsoever.

10.2.2 *Tax Cooperation.*

Buyer and Sellers agree to retain and provide each other, upon reasonable request, as promptly as practicable, with access to such working papers and information relating to the Purchased Assets, the Business, the DNE Group or the Superior Israel Group, and such assistance, as is reasonably necessary for the preparation and filing of all Tax returns, the making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax return; *provided, however*, that, except as otherwise expressly provided in Section 10.2.10, nothing contained in this Section 10.2.2 shall require Buyer or Sellers to retain any documents longer than they would otherwise have been retained in the ordinary course of business but for the transactions contemplated by this Agreement. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding related to Taxes involving the Purchased Assets, the Business, any member of the DNE Group, or any member of the Superior Israel Group or any consolidated, combined, unitary or similar tax return group of which any Transferred Subsidiary is or was a member, and each shall execute and deliver such documents as are reasonably necessary to carry out the intent of this Section 10.2.2.

10.2.3 *Payment of Certain Taxes; Tax Returns.*

(a) All excise, sales, value added, gross receipts, use, registration, stamp, transfer (including Indiana's gross income tax) and similar Taxes, levies, charges and fees (including all real estate transfer taxes) incurred in connection with this Agreement and the transactions contemplated hereby will be paid by Sellers to the extent of the first \$75,000 (in the aggregate) of such Taxes and any balance shall be paid 50% by Sellers and 50% by Buyer. Sellers agree to file all necessary documentation with respect to all such Taxes; *provided, however*, that Buyer shall be given the opportunity to review that documentation and to participate in any proceeding relating to such Taxes. Buyer and Sellers shall each provide the other with such assistance as may be reasonably requested in connection with the preparation and filing of any necessary documentation with respect to such Taxes. Except as otherwise provided in this Section 10.2.3(a), Sellers shall be solely

responsible for and shall pay all, and Buyer shall have no liability for any, income, franchise, gains or other similar Tax incurred in connection with this Agreement and the transactions contemplated hereby based on the income or gains of Sellers.

(b) Except as otherwise expressly provided in Section 10.2.3(a), as between Sellers and Buyer, (i) Buyer shall be responsible for all Non-Income Taxes imposed with respect to the Business or the Purchased Assets, (ii) Buyer shall be responsible for all Non-Consolidated Income Taxes of the Transferred Subsidiaries for periods beginning on or after January 1, 2002 and for periods following the Closing Date, (iii) Sellers shall be responsible for all Non-Consolidated Income Taxes of the Transferred Subsidiaries other than those provided for in clause (ii) of this Section 10.2.3(b), (iv) Sellers shall be responsible for all Consolidated Income Taxes of the Transferred Subsidiaries for all taxable periods, (v) Sellers shall be responsible for all Non-Consolidated Income Taxes imposed with respect to the Business and the Purchased Assets for all periods through the Closing Date, and (vi) Buyer shall be responsible for all Non-Income Taxes of the Transferred Subsidiaries. For purposes of this Agreement, "Non-Income Taxes" shall mean Taxes other than Taxes imposed on net income, gains or net revenues, "Income Taxes" shall mean Taxes imposed on net income, gains or net revenues, "Non-Consolidated Income Taxes" shall mean Income Taxes other than Consolidated Income Taxes, "Consolidated Income Taxes" shall mean Income Taxes filed on a consolidated, combined, unitary or similar basis with SUT or an SUT subsidiary (other than a Transferred Subsidiary) and "Transferred Subsidiaries" shall mean any member of the DNE Group and any member of the Superior Israel Group.

(c) Sellers shall be responsible for the timely filing of all income tax returns required by law to be filed in respect of the Purchased Assets or the Business for all periods on or before the Closing Date. Buyer shall be responsible for the timely filing of all income tax returns required by law to be filed in respect of the Purchased Assets or the Business for all periods after the Closing Date. Sellers shall be responsible for the timely filing of all Tax returns required by law to be filed for any consolidated, combined, unitary or similar tax return group that includes (i) the DNE Group or the Superior Israel Group and (ii) SUT or a Subsidiary of SUT (other than a Transferred Subsidiary) with respect to periods ending on or before, or including, the Closing Date. Buyer shall be responsible for filing all Tax returns relating to the Business, the Purchased Assets, the DNE Group (or a member thereof) or the Superior Israel Group (or a member thereof) that are due after the Closing Date other than those for which the Sellers are made responsible pursuant to this Section 10.2.3(c). Where Buyer is responsible for preparing a return on which Taxes for which any of Sellers are responsible under Section 10.2.3 are reported, Buyer shall cause that return to be prepared in a manner consistent with past returns and shall provide Seller with a draft of the portion of such return relating to Taxes for which Sellers are responsible at least 10 business days prior to filing such return (provided the due date for such return is at least 10 business days after the Closing Date). Where Sellers are responsible for preparing a return on which Taxes for which Buyer is responsible under Section 10.2.3 are reported, Sellers shall cause that return to be prepared in a manner consistent with past returns and shall provide Buyer with a draft of the portion of such return relating to the Purchased Assets, the Business or the Transferred Subsidiaries at least 10 business days prior to filing such return (provided the due date for such return is at least 10 business days after the Closing Date). Neither Sellers nor Buyer shall unreasonably reject any comments the other may have with respect to a draft return or portion thereof provided pursuant to the preceding two sentences.

(d) If Sellers receive notice of a dispute or other proceeding involving Taxes for which Buyer is responsible under Section 10.2.3 or Section 11.2 hereof, Sellers shall provide Buyer with reasonably prompt notice of such dispute or other proceeding and shall provide Buyer with a reasonable opportunity to participate in such dispute or proceeding. Sellers may not settle such a dispute or proceeding without the prior consent of Buyer, not to be unreasonably withheld. If

Buyer or any Transferred Subsidiary receives notice of a dispute or other proceeding involving Taxes for which Sellers are responsible under Section 10.2.3 or Section 11.1 hereof, Buyer shall provide Sellers with reasonably prompt notice of such dispute or other proceeding and shall provide Sellers with a reasonable opportunity to participate in such dispute or proceeding. Buyer may not settle such a dispute or proceeding without the prior consent of Sellers, not to be unreasonably withheld. Notwithstanding anything to the contrary in this Agreement, a party may settle a dispute involving a Tax liability for which it is responsible without obtaining the consent of any other party if the settlement involves only a concession of an amount of Tax liability to be paid by the settling party.

(e) Buyer shall be entitled to all refunds of Non-Consolidated Income Taxes of the Transferred Subsidiaries for periods beginning on or after January 1, 2002. Sellers shall be entitled to all refunds of Non-Consolidated Income Taxes of the Transferred Subsidiaries for periods prior to those described in the preceding sentence. Sellers shall be entitled to all refunds of Consolidated Income Taxes of the Transferred Subsidiaries for all periods. If Alpine or Buyer receives (whether in the form of a payment, credit or offset against Tax) a refund to which Sellers are entitled under this Section 10.2.3(e), Alpine or Buyer shall promptly pay to Sellers the amount of such refund. If Seller receives (whether in the form of a payment, credit or offset against Tax) a refund to which Buyer is entitled under this Section 10.2.3(e), Sellers shall promptly pay Buyer the amount of such refund.

10.2.4 *Publicity.*

Except as otherwise provided herein, all public announcements relating to this Agreement or the transactions contemplated hereby will be made only as agreed upon by Sellers and Buyer or as required by law or regulation of a stock exchange. If such a public notice is required by law or stock exchange regulation, the disclosing party will use its commercially reasonable efforts to give the others prior written notice of the disclosure to be made.

10.2.5 *Expenses.*

Except to the extent otherwise specifically provided in this Agreement, Alpine and Buyer shall pay all of the expenses incident to the transactions contemplated by this Agreement which are incurred by Alpine and Buyer or their respective representatives, and Sellers shall pay all of the expenses incident to the transactions contemplated by this Agreement which are incurred by Sellers or their representatives.

10.2.6 *No Assignment.*

No assignment by any party of this Agreement or any right or obligation hereunder, in whole or in part, may be made without the prior written consent of the other party, and any assignment attempted without that consent will be void and of no effect; *provided, however*, that Buyer may assign its rights and obligations under Article 11 hereof to any successor to, or acquirer or transferee of, the Business, the Purchased Assets, the DNE Group or the Superior Israel Group; and *provided*, further, that, no such assignment shall relieve Alpine or Buyer of any of its respective obligations hereunder.

10.2.7 *Further Assurances.*

Each party hereto agrees that, as requested by the other party after the Closing, it will do all such further acts as may be required to effectuate the transactions contemplated hereby and to vest in Buyer title to the Purchased Assets, the DNE Shares and the Superior Israel Shares. To the extent that the assignment of any lease, contract, commitment or right pertaining to the Business shall require the consent or waiver of other parties thereto, which consent or waiver has not been obtained prior to the Closing, Sellers shall cooperate with Buyer to obtain such consent.

Notwithstanding the foregoing, if a consent is not obtained for any Business Real Property Lease, such Business Real Property Lease shall not be deemed assigned under this Agreement, and Buyer shall not have any liabilities or obligations thereunder until such consent is obtained. Without limiting the foregoing, from and after the Closing, (i) Sellers shall do all things necessary, proper or advisable under applicable Laws as reasonably requested by Buyer to put Buyer in effective possession, ownership and control of the Purchased Assets and Buyer shall cooperate with Sellers for that purpose and (ii) Buyer shall do all things necessary, proper or advisable under applicable Laws as reasonably requested by Sellers to put Sellers (or such other Person as Sellers shall indicate) in effective possession, ownership and control of the Retained Assets and Sellers shall cooperate with Buyer for that purpose.

10.2.8 *Permit Transfer, Assignment or Reissuances.*

Sellers shall cooperate with Buyer in the transfer, assignment or securing of the permits, licenses, registrations, franchises and other authorizations and approvals set forth on Schedule 1.1(i) (the "Permits") and in the provision of any required notice, to the extent that any such Permits are required under applicable Environmental Laws or other Laws to be transferred, assigned or reissued, or notification is required to be provided, to facilitate the transactions contemplated by this Agreement.

10.2.9 *Mail and Other Communications.*

After the Closing, Sellers shall promptly remit to Buyer any checks, cash, payments, mail or other communications relating to the Business, the Purchased Assets or the Assumed Liabilities that are received by Sellers after the Closing Date, unless the same also relates to the Retained Assets or the Retained Liabilities, in which case Sellers shall send copies thereof. After the Closing, Buyer shall promptly remit to Sellers any checks, cash, payments, mail or other communications relating to the Retained Assets or the Retained Liabilities that are received by Buyer after the Closing Date, unless the same also relates to the Purchased Assets or the Assumed Liabilities.

10.2.10 *Access to Records.*

In connection with any matter, including, without limitation, any Tax or litigation matter related to the Business, the DNE Group (or any member thereof), the Superior Israel Group (or any member thereof) or any consolidated, combined, unitary or similar tax return group including any member of the DNE Group or the Superior Israel Group as a member with respect to any period prior to, or any period including, the Closing Date, each party shall, upon the request and at the expense of the other party, permit the other party and its representatives reasonable access at all reasonable times during normal business hours to the applicable books and records of, and including, the Business, the DNE Group or the Superior Israel Group. No party shall dispose of such books and records during the six-year period beginning with the Closing Date without the other party's consent, which shall not be unreasonably withheld. Following the expiration of such six-year period, each party may dispose of such books and records at any time upon giving 30 days' prior written notice to the other party, unless the other party agrees to take possession of such books and records within 30 days at no expense to the disposing party.

10.2.11 *Credit Support Arrangements.*

Alpine and Buyer acknowledge that Sellers have entered into arrangements in which guarantees, letters of credit or other credit arrangements, including surety and performance bonds, were issued by or for the account of Sellers to support or facilitate business transactions by the Business, the DNE Group or the Superior Israel Group. Such arrangements are referred to herein as the "Credit Support Arrangements." Each of Alpine and Buyer shall use its commercially reasonable efforts to, as promptly as practicable, (i) obtain replacement Credit Support

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Arrangements or (ii) repay, or cause the repayment of, all debt and other obligations to which such Credit Support Arrangements relate (and cause the cancellation of such Credit Support Arrangements) or arrange for Alpine, Buyer or one of their respective Affiliates to be substituted as the obligor thereof, obtaining from the creditor a full release of the applicable Seller or their respective Affiliates, (the foregoing arrangements in clauses (i) and (ii) are collectively referred to as "Replacement Credit Support Arrangements"). Sellers shall cooperate fully with Buyer in connection with the foregoing. Notwithstanding the provisions of Article 11, Alpine shall indemnify, defend and hold harmless Sellers from and against all Losses (as defined herein) incurred by any of the Sellers or any of their respective Affiliates following the Closing as a result of Alpine or Buyer's inability to enter into Replacement Credit Support Arrangements by the Closing Date, including, without limitation, their expenses in maintaining any such Credit Support Arrangement whether or not any such Credit Support Arrangement is drawn upon, and shall in any event promptly reimburse the respective Seller or any of its Affiliates to the extent any Credit Support Arrangement is called upon and such entity makes any payment thereunder or is obligated to reimburse the party issuing the Credit Support Arrangement or to the extent that the beneficiary under any Credit Support Arrangement refuses to accept such substitute letter of credit or other guarantee proffered by Buyer by the Closing Date. In no event shall Alpine and Buyer be liable to Sellers for any nonperformance by any Seller with respect to any obligation under any Credit Support Arrangement prior to the Closing.

10.2.12 *Non-Competition.*

(a) For a period of four years after the Closing Date, none of Alpine, Buyer or any of their respective Subsidiaries (other than Superior Cables Ltd.) (each, a "Buyer Restricted Party" and, collectively, the "Buyer Restricted Parties") shall, directly or indirectly, anywhere in the world, engage in any business conducted as of the date hereof by SUT or any of its Subsidiaries, other than the Business and the respective businesses of the DNE Group, the Superior Israel Group and Superior Cables Ltd. as currently conducted ("Buyer Competitive Activity"); *provided, however*, that it shall not be a violation of this Section 10.2.12(a) for a Buyer Restricted Party to (i) own any debt securities or other debt obligations (other than convertible debt) of any Person, (ii) invest in, own an interest in or acquire all or a majority of the stock or assets of any Person that is not "engaged primarily in a Buyer Competitive Activity" (as defined below), (iii) invest in securities representing less than five percent (5%) of the outstanding capital stock of any Person, the securities of which are publicly traded or listed on any securities exchange or automated quotation system, or (iv) through the Business, sell the Excepted Products (as defined below) in a manner consistent with past practice on the terms and subject to the conditions of the Supply and Transitional Services Agreement. For purposes of this Section 10.2.12(a), "engaged

primarily in a Buyer Competitive Activity" shall mean that at least 30% of the consolidated net revenue derived during the last complete fiscal year of the acquired Person is derived from a Buyer Competitive Activity. "Excepted Products" means any Private Label Premises Product (to be defined in the Supply and Transitional Services Agreement) manufactured by SUT or any of its Subsidiaries as currently manufactured at Closing.

(b) For a period of seven years after the Closing Date, none of Sellers or any of their respective Subsidiaries (each, a "Seller Restricted Party" and, collectively, the "Seller Restricted Parties") shall, directly or indirectly, anywhere in the world, engage in any business that is competitive with the Business, the business of the DNE Group or (with respect to Israel only) the business of the Superior Israel Group, in each case as conducted on the date hereof ("Seller Competitive Activity"); provided, however, that it shall not be a violation of this Section 10.2.12(b) for a Seller Restricted Party to (i) own any debt securities or other debt obligations (other than convertible debt) of any Person, (ii) invest in, own an interest in or acquire all or a majority of the stock or assets of any Person that is not "engaged primarily in a Seller Competitive Activity" (as

defined below), or (iii) invest in securities representing less than five percent (5%) of the outstanding capital stock of any Person, the securities of which are publicly traded or listed on any securities exchange or automated quotation system. For purposes of this Section 10.2.12(b), "engaged primarily in a Seller Competitive Activity" shall mean that at least 30% of the consolidated net revenue derived during the last complete fiscal year of the acquired Person is derived from a Seller Competitive Activity.

(c) The parties hereto agree that the covenants set forth in this Section 10.2.12 shall be enforced to the fullest extent permissible under applicable law. If all or any part of this Section 10.2.12 is held invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect. Each of Alpine and Buyer agrees that in the event of a breach or threatened breach by it or any of its Subsidiaries of the provisions of this Section 10.2.12, money damages would not be an adequate remedy and that the other party shall be entitled to seek temporary, preliminary or permanent injunctive relief without the necessity of posting a bond. If any part of this Section 10.2.12 is held to be excessively broad as to duration, scope, activity or subject, such part will be construed by limiting and reducing it so as to be enforceable to the maximum extent compatible with applicable law.

10.2.13 *Environmental Transfer Act Compliance.*

(a) Sellers shall use reasonable efforts to investigate the Wallingford Property prior to the Closing ("the Pre-Closing Investigation") to determine whether it is appropriate to prepare and submit a Form II (as defined under the Connecticut Transfer Act) to Buyer and the Connecticut Department of Environmental Protection ("CTDEP") with respect to the Wallingford Property. Sellers shall be responsible for the cost of the Pre-Closing Investigation up to an amount not to exceed \$10,000 and Buyer shall be responsible for any costs associated with the Pre-Closing Investigation that exceed \$10,000. In the event that Sellers determine that a Form II (as defined under the Connecticut Transfer Act) can be prepared and submitted to Buyer and the CTDEP with respect to the Wallingford Property, Sellers shall be responsible for: (i) preparing the Form II and submitting the same to Buyer and the CTDEP, and (iii) paying the filing fees associated with filing the Form II with the CTDEP. In the event that Sellers or the CTDEP determine that a Form III or Form IV is required to be submitted to Buyer and the CTDEP with respect to the Wallingford Property, Sellers shall have sole responsibility for paying the initial filing fee associated with the Form III or Form IV, and Buyer shall have the responsibility for: (i) preparing the Form III or Form IV (as the case may be), including but not limited to, executing the Form III or Form IV as the Certifying Party (as defined under the Connecticut Transfer Act), (ii) any and all Losses (as defined herein) associated with any investigation or remediation required following the completion of, and in addition to, the Pre-Closing Investigation to comply with the Connecticut Transfer Act as the Certifying Party; and (iii) any required filing fees beyond the initial filing fee.

(b) Sellers shall be responsible for completing all forms required under the Indiana Responsible Property Transfer Law and shall be responsible for filing such forms with applicable Governmental Authorities and for paying any and all fees associated with compliance with the Indiana Responsible Property Transfer Law.

10.2.14 *Insurance.*

Effective as of 12:01 AM on the Closing Date, the Purchased Assets, the Assumed Liabilities, the DNE Group and the Superior Israel Group shall cease to be insured by the Sellers' or their respective Affiliates' insurance policies; *provided, however*, that with respect to insurance coverage written on an "occurrence basis," to the extent the Purchased Assets and the Assumed Liabilities are insured under such policies, Buyer shall have rights under such policies for Assumed Liabilities to the extent the events giving rise to a claim under such policies occurred prior to 12 midnight on

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the Closing Date. Sellers agree to cooperate with Buyer at Buyer's expense (i) in asserting and prosecuting claims under Sellers' insurance policies in connection with insurable events that occurred prior to 12 midnight on the Closing Date, and (ii) by executing appropriate assignments to the extent permitted by law, and Sellers shall remit any recoveries promptly to Buyer. Sellers shall not settle any claims to the extent relating to Assumed Liabilities without written consent of Buyer; *provided, however*, Buyer shall be responsible for any and all Losses associated with asserting and prosecuting claims under Sellers' insurance policies. With respect to events or circumstances covered by insurance coverage written on an "occurrence basis," the Sellers and their respective Affiliates will have no liability for occurrences that take place after 12 midnight on the Closing Date. With respect to events or circumstances covered by insurance coverage written on a "claims made basis," the Sellers and their respective Affiliates will have no liability for claims made after 12:01 AM on the Closing Date.

10.2.15 *Section 338 Elections.*

Buyer shall not make any election under Section 338 of the Code (or any similar election under state, local or other tax law) with respect to the acquisition of the DNE Shares, the Texas SUT Shares or the Superior Cables Holding Shares.

10.2.16 *Tax Treatment.*

Buyer and Sellers each agree to treat the transfer of the Business, the Purchased Assets, the DNE Shares and the Superior Israel Shares for federal income tax purposes as a fully taxable transaction that is not subject to the provisions of Section 267 of the Code.

10.2.17 *Covenants Regarding Electrical Sub.*

Buyer covenants that (i) Buyer shall transfer the Purchased Assets to Electrical Sub on the Closing Date, (ii) Electrical Sub shall, in connection with such transfer, assume the Assumed Liabilities on the Closing Date, and (iii) on the Closing Date, Electrical Sub shall have not less than an amount of liabilities equal to (x) \$51,000,000 *plus* (y) any applicable amount referred to in Section 3.1(b) *minus* (z) any applicable amount referred to in Section 3.1(c), other than the Assumed Liabilities. Buyer shall not transfer cash or property to Electrical Sub other than the Purchased Assets, unless such cash or property is transferred in return for shares or debt obligations of Electrical Sub with an initial value approximately equal to the cash or property transferred.

10.2.18 *Tax Sharing Agreement.*

The Tax Sharing Agreement, dated October 4, 1996, shall be terminated with respect to all members of the DNE Group and the Superior Israel Group on or prior to the Closing Date and neither any such member nor SUT will have any liabilities or obligations whatsoever thereunder to SUT or any such member, respectively.

10.2.19 *Certain Expenses.*

Prior to the execution and delivery of this Agreement, SUT has paid or caused to be paid to persons designated by Alpine or Buyer an aggregate of \$400,000 representing actual, reasonable, documented out-of-pocket expenses incurred by Alpine or Buyer in connection with the transactions contemplated hereby. At the request of Alpine or Buyer from time to time prior to the Closing, SUT shall pay to such other persons as may be designated by Alpine or Buyer such additional actual, reasonable, documented out-of-pocket expenses incurred by Alpine or Buyer in connection with the transactions contemplated hereby, not to exceed \$750,000 in the aggregate including any amounts previously paid. If the Closing occurs, Alpine shall reimburse all of such amounts to SUT at the Closing. In the event that this Agreement is terminated by the Sellers in accordance with the provisions of Section 10.1.6(b) or (e), then Alpine shall reimburse SUT for all of such amounts within two business days after such termination. In all other circumstances SUT shall remain responsible for all such amounts. In any event, any such amounts shall be offset against any amounts payable to Alpine or Buyer pursuant to Section 10.1.7(b).

10.2.20 *Intercompany Accounts.*

Prior to the Closing, (i) any liabilities, including short-term and long-term liabilities, and accounts receivable and long-term receivables due to any Seller or any of Sellers' respective Affiliates (other than the Business, the DNE Group or the Superior Israel Group) from the Business, the DNE Group or the Superior Israel Group shall be capitalized or canceled or satisfied in the manner set forth in Section 10.1.1(d) and (ii) any liabilities, including short-term and long-term liabilities, and accounts receivable and long-term receivables due to the Business, the DNE Group or the Superior Israel Group from any Seller or any of Sellers' respective Affiliates (other than the Business, the DNE Group or the Superior Israel Group) shall be paid or settled; *provided, however*, that in the case of clause (ii) of this Section 10.2.20, any liabilities or receivables arising out of any Tax sharing arrangement with Sellers or any of Sellers' respective Affiliates shall be canceled rather than settled.

ARTICLE 11

INDEMNIFICATION

11.1 *Indemnification By Sellers.*

After the Closing, each Seller, jointly and severally, shall, subject to the provisions of this Article 11, indemnify, defend and hold harmless Alpine, Buyer and their respective officers, directors, employees, agents and Affiliates (each, a "Seller Indemnified Party") from and against all Losses directly or indirectly incurred by any such Seller Indemnified Party arising out of or based on any (i) inaccuracy in or breach of any representation or warranty of such Seller in this Agreement, (ii) breach of any covenant or agreement made by such Seller in or pursuant to this Agreement, (iii) of the Retained Liabilities, (iv) Taxes for which any Seller is allocated responsibility under Section 10.2.3 hereof (except to the extent that such Taxes were paid or estimated payments in respect of such Taxes were made prior to the Closing Date) or (v) any liability for Taxes imposed on a Transferred Subsidiary under Treasury Regulations Section 1.1502-6 or any equivalent provision of state, local or foreign law with respect to a consolidated, combined, unitary or similar group of which SUT or any of its Subsidiaries (other than a Transferred Subsidiary) was the common parent. "Losses" as used in this Agreement means any and all liabilities, obligations, losses, assessments, damages, deficiencies, demands, claims, actions, causes of action, costs and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses and any amounts paid in investigation, defense or settlement of any of the foregoing), of any kind, manner or nature whatsoever, whether or not arising out of third-party claims.

11.2 *Indemnification By Alpine and Buyer.*

After the Closing, Alpine and Buyer shall, jointly and severally, subject to the provisions of this Article 11, indemnify, defend and hold harmless each of the Sellers and their respective officers, directors, employees, agents and Affiliates (collectively, the "Alpine Indemnified Parties") from and against all Losses directly or indirectly incurred by any of Alpine Indemnified Parties arising out of or based on any (i) inaccuracy in or breach of any representation or warranty of Buyer or Alpine, as applicable in this Agreement, (ii) breach of any covenant or agreement made by Buyer or Alpine, as applicable in or pursuant to this Agreement, (iii) of the Assumed Liabilities, (iv) operations of the Business after the Closing Date, (v) failure by Buyer or any of its Affiliates to comply with the Workers Adjustment and Retraining

Notification Act, as amended, with respect to the employees of the Business and the business of the DNE Group and the Superior Israel Group, (vi) termination by Buyer or its Affiliates of the employment of any Transferred Employee at any time after the Closing Date, including, without limitation, any severance costs and related employment tax obligations which any of Sellers may incur as the result of such termination, (vii) the failure to obtain any consent from any Person who is party to a Business Contract or Business Real Property Lease or contract or other

agreement relating to the DNE Group or the Superior Israel Group and not set forth on *Schedule 4.4, 5.4 or 6.4* or (viii) Taxes for which Buyer is designated as responsible pursuant to Section 10.2.3.

11.3 *Limitations on Indemnification by Sellers.*

The indemnification of the Seller Indemnified Parties provided for in Section 11.1 shall be limited in certain respects as follows:

(a) Any claim for indemnification relating to any inaccuracy in or breach of any representation or warranty by any Seller shall be made to such Seller prior to the date that is 18 months after the date hereof, except that there shall be no limits on the time for making a claim for indemnification relating to the representations and warranties contained in Sections 4.1, 4.2, 4.8, 5.2, 5.3, 6.2 and 6.3; *provided, however*, that if written notice of a claim is made prior to the expiration of the applicable representation or warranty, then the relevant representation or warranty shall survive as to such claim until the claim has finally been resolved.

(b) The Seller Indemnified Parties shall be entitled to indemnification for matters described in Section 11.1(i) and (ii) only to the extent that the aggregate amount of all the Seller Indemnified Parties' claims for indemnification under Section 11.1(i) and (ii), as finally resolved, exceeds \$25,000.

(c) The maximum aggregate liability of Sellers for indemnification under Section 11.1(i) and (ii) herein shall in no event exceed the Purchase Price.

(d) The Seller Indemnified Parties' right to indemnification shall be reduced to the extent the subject matter of the claim is covered by and actually paid pursuant to an insurance policy, a warranty or indemnification from a third party.

11.4 *Limitations on Indemnification by Alpine and Buyer.*

The indemnification of the Alpine Indemnified Parties provided for in Section 11.2 shall be limited in certain respects as follows:

(a) Any claim for indemnification relating to any inaccuracy in or breach of any representation or warranty by Alpine or Buyer, as applicable shall be made to Alpine or Buyer, prior to the date that is 18 months after the date hereof, except that there shall be no limits on the time for making a claim for indemnification relating to the representations and warranties contained in Sections 7.1, 7.2, 7.8, 7.9, 7.10 and 7.11; *provided, however*, that if written notice of a claim is made prior to the expiration of the applicable representation or warranty, then the relevant representation or warranty shall survive as to such claim until the claim has finally been resolved.

(b) The Alpine Indemnified Parties shall be entitled to indemnification for matters described in Section 11.2(i) and (ii) only to the extent that the aggregate amount of all the Alpine Indemnified Parties' claims for indemnification under Section 11.2(i) and (ii), as finally resolved, exceeds \$25,000.

(c) The maximum aggregate liability of Alpine and Buyer for indemnification under Section 11.2(i) and (ii) shall in no event exceed the Purchase Price.

(d) The Alpine Indemnified Parties' right to indemnification shall be reduced to the extent the subject matter of the claim is covered by and actually paid pursuant to an insurance policy, a warranty or indemnification from a third party.

11.5 *Notice of Claim.*

(a) Promptly after acquiring knowledge of any Losses for which any of the Seller Indemnified Parties is entitled to indemnification pursuant to this Article 11, Alpine or Buyer shall give written

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notice thereof to Sellers setting forth with reasonable particularity the underlying facts (either actually known or in good faith believed by Alpine or Buyer to exist) sufficient to establish a claim for indemnification under this Article 11 and setting forth a good faith estimate, if known, of the Losses incurred or to be incurred relating thereto; and including copies of all written documentation and summarizing all oral information actually known or in good faith believed by Alpine or Buyer to exist relating to the circumstances or events underlying the indemnification claim; and

(b) Promptly after acquiring knowledge of any Losses for which any of the Alpine Indemnified Parties is entitled to indemnification pursuant to this Article 11, Sellers shall give written notice thereof to Alpine and Buyer setting forth with reasonable particularity the underlying facts (either actually known or in good faith believed by Sellers to exist) sufficient to establish a claim for indemnification under this Article 11 and setting forth a good faith estimate, if known, of the Losses incurred or to be incurred relating thereto; and including copies of all written documentation and summarizing all oral information actually known or in good faith believed by Sellers to exist relating to the circumstances or events underlying the indemnification claim.

11.6 *Third Party Claims.*

(a) *Notice.* If any legal proceedings shall be instituted or any claim is asserted by any third party in respect of which any Seller Indemnified Parties, on the one hand, or any Alpine Indemnified Parties, on the other hand, may be entitled to indemnity hereunder (a "Third Party Claim"), such party shall give the other party prompt notice as provided in Section 12.1.

(b) *Control.* With the consent of the party giving the original notice, not to be unreasonably withheld, the other party may assume control of the defense of a Third Party Claim, with counsel reasonably satisfactory to the party giving the original notice. If the other party does not so assume control within a reasonable period of time, the defense of the Third Party Claim will be controlled by the party giving the original notice without any prejudice to the right of the other party to dispute the claim for indemnification hereunder.

(c) *Settlement.* Except for the settlement of a Third Party Claim that includes as an unconditional term thereof the giving by the claimant to the indemnitee of an unconditional release from all liability in respect of the Third Party Claim, no Third Party Claim may be settled without the prior written consent of the indemnitee.

(d) *Cooperation.* Each party shall make available to the other all records and other materials reasonably required to contest any Third Party Claim and shall cooperate fully with the other in the defense of all such claims. Information disclosed by one party to the other shall be kept confidential. The party not in control of the Third Party Claim shall have the right to be represented by counsel of its own choice and at its own expense. The party in control shall keep the other informed on a current basis of all material developments in connection with any Third Party Claim.

(e) *Tax Proceedings.* Notwithstanding this Section 11.6, the control and settlement of proceedings or disputes involving Taxes for which Buyer or Seller is responsible under Section 10.2.3 shall be governed by Sections 10.2.2 and 10.2.3(d) hereof.

11.7 *Exclusive Remedy.*

Except as otherwise provided in Section 11.6(e), after the Closing, with respect to any breach of or inaccuracy in any representation or warranty or nonfulfillment of any covenant for which a right to claim indemnification is provided in this Article 11, a claim or an action under and pursuant to the terms, conditions and limitations of this Article 11 shall be the sole and exclusive right and remedy of a party seeking indemnification. The provisions of this Section 11.7 shall not preclude the prosecution of any action or proceeding based on fraud or willful misconduct.

ARTICLE 12

MISCELLANEOUS

12.1 *Notices.*

All notices shall be in writing delivered as follows:

(a) If to any Seller, to: c/o Superior TeleCom Inc.
One Meadowlands Plaza, Suite 200
East Rutherford, NJ 07073
Attention: President
Facsimile: (201) 549-4428

With a copy to: Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
Attention: Howard L. Shecter
Facsimile: (212) 309-6001

(b) If to Alpine or Buyer, to: c/o The Alpine Group, Inc.
One Meadowlands Plaza, Suite 200
East Rutherford, NJ 07073
Attention: Chairman
Facsimile: (201) 549-4428

With a copy to: Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Attention: Ronald R. Papa
Facsimile: (212) 969-2900

or to such other address as may have been designated in a prior notice. Notices may be sent by (a) overnight courier, (b) confirmed facsimile transmission or (c) registered or certified mail, postage prepaid, return receipt requested; and shall be deemed to have been given (a) in the case of overnight courier, the next business day after the date sent, (b) in the case of facsimile transmission, on the date of confirmation of such transmission, and (c) in the case of mailing, three business days after being mailed.

12.2 *Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, except as expressly provided in Article 11, is intended or shall be construed to confer on any Person other than the parties any rights or benefits hereunder.

12.3 *Headings.*

The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

12.4 *Exhibits and Schedules.*

The Exhibits and Schedules referred to in this Agreement shall be deemed to be a part of this Agreement.

12.5 *Counterparts.*

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. This Agreement shall be effective upon execution and delivery of either manually signed or facsimile signed signature pages.

12.6 *Bulk Sales Law.*

Buyer hereby waives compliance by Sellers with the obligations imposed on vendors under any bulk sales, transfer or other similar laws as a result of the transactions contemplated by this Agreement.

12.7 *Governing Law.*

This Agreement shall be governed by and construed under Delaware law, without regard to conflict of laws principles, except for those provisions relating to the conveyance and assignment of title to the Business Real Property, which shall be governed by and construed under the laws of the state in which such Business Real Property is located.

12.8 *Waivers.*

Compliance with the provisions of this Agreement may be waived only by a written instrument specifically referring to this Agreement and signed by the party waiving compliance. No course of dealing, nor any failure or delay in exercising any right, shall be construed as a waiver, and no single or partial exercise of a right shall preclude any other or further exercise of that or any other right.

12.9 *Pronouns.*

The use of a particular pronoun herein shall not be restrictive as to gender or number but shall be interpreted in all cases as the context may require.

12.10 *Time Periods.*

Any action required hereunder to be taken within a certain number of days shall be taken within that number of calendar days unless otherwise expressly provided; *provided, however*, that if the last day for taking such action falls on a weekend or a holiday, the period during which such action may be taken shall be automatically extended to the next business day.

12.11 *No Strict Construction.*

The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party. The words "include," "includes" and "including" shall mean "include, without limitation," "includes, without limitation," and "including, without limitation," respectively.

12.12 *Modification.*

No supplement, modification or amendment of this Agreement shall be binding unless made in a written instrument which is signed by all of the parties and which specifically refers to this Agreement.

12.13 *Entire Agreement.*

This Agreement and the Exhibits, Schedules, agreements, documents and instruments referred to in this Agreement or delivered hereunder are the exclusive statement of the agreement among the parties concerning the subject matter hereof and supercedes all prior agreements relating to the subject matter hereof including, without limitation, the Letter of Intent, dated August 30, 2002, among certain of the parties hereto.

12.14 *Certain Definitions.*

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities and Exchange Act of 1934, as amended, but, with respect to Sellers, shall not include Alpine and, with respect to Alpine or Buyer, shall not include SUT or any of its Subsidiaries.

"Assumed Environmental Liabilities" means any Environmental Liabilities arising out of or relating to: (i) the Business Real Property and the Business Leased Real Property and the operations conducted thereat; (ii) any Releases of Hazardous Substances to or from the Business Real Property and the Business Leased Real Property or exposure to Hazardous Substances present at or Released from such properties; (iii) the off-site transportation, treatment, storage, handling or disposal of any Hazardous Substances generated by, at or from the Business Real Property or the Business Leased Real Property; (iv) matters disclosed on *Schedule 2.1(a)* hereto; and (v) compliance with the Connecticut Transfer Act as set forth in Section 10.2.13(a).

"Business Benefit Plans" means all "employee benefit plans" within the meaning of Section 3(3) of ERISA and any other employee plans, agreements, programs, practices, policies, trusts or arrangements (whether written or unwritten, funded or unfunded, insured or self-insured, domestic or foreign (other than any schemes or arrangements mandated by a government outside of the United States)) (1) established, maintained, sponsored or contributed to (or with respect to which any obligation to contribute has been undertaken) within the last six complete calendar years by any Seller or any Seller ERISA Affiliate, on behalf of any employee, director or shareholder of the Business (whether current, former or retired) or their beneficiaries and (2) with respect to which any Seller or any Seller ERISA Affiliate has or has had any obligation on behalf of any such employee, director, shareholder or beneficiary.

"Buyer Welfare Plan" means any "welfare plan" (within the meaning of Section 3(1) of ERISA) or any other plan, program or arrangement providing medical/dental, life, disability, accidental death and dismemberment or similar welfare benefits and which is sponsored, maintained or contributed to by Buyer for the benefit of Transferred Employees on or after the Closing Date.

"Environmental Laws" means all foreign, federal, state and local laws, statutes, rules, regulations, common law ordinances and directives, agreements, decrees or consent decrees with or by Governmental Authorities relating to the protection of worker health and safety, human health and the environment and the Release, treatment, storage, transportation, disposal and exposure to Hazardous Substances and any permits, licenses, authorizations or approvals issued thereunder.

"Environmental Liabilities" means any claims, judgments, damages (including punitive and consequential damages), losses, penalties, fines, liabilities, obligations, Liens, violations, costs and expenses (including attorneys' fees, consultants' fees and engineering fees) incurred directly or indirectly as a result of or relating to (i) the existence, Release or threatened Release of, or exposure to, Hazardous Substances in, on, under, at or emanating from any real property presently or formerly owned, leased, operated or managed in connection with the Business, (ii) any non-compliance with, or violation of, or liability imposed by, any

Environmental Law or (iii) the off-site transportation, treatment, storage or disposal of Hazardous Substances generated by or at any real property presently or formerly owned, leased, operated or managed in connection with the Business.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Hazardous Substances" means any petroleum, petroleum products, petroleum-derived substances, radioactive materials, hazardous wastes, polychlorinated biphenyls, lead-based paint, radon, urea formaldehyde, asbestos or any materials containing asbestos, pesticides, and any chemicals, materials, substances, pollutants, contaminants or toxins regulated under any Environmental Law, or defined as or included in the definition of "hazardous substances," "hazardous wastes,"

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"extremely hazardous substances," "hazardous constituents," "toxic substances," "pollutants," "contaminants," or any similar denomination intended to classify or regulate chemicals, materials, or substances by reason of their toxicity, carcinogenicity, ignitability, corrosivity, or reactivity or other characteristics under any Environmental Law.

"Person" means any individual, corporation, limited liability company, partnership, association or any other entity or organization.

"Regional Distribution Center Real Property Leases" means each of: (a) Standard Industrial/Commercial Multi-Tenant Lease between Flagship Properties, LLC and Essex Group, Inc., dated as of May 14, 2001, (b) Lease by and between Greenwalt Development, Inc. and Essex Group, Inc., dated as of June 16, 1998, as amended on October 29, 1998 and February 24, 1999, (c) Standard Industrial/Commercial Single-Tenant Lease between HAS Investments, Inc. and Essex Group, Inc., dated as of December 10, 1998 and (d) Lease by and between Greenwalt Development, Inc. and Essex Group, Inc., dated as of February 11, 1998, as amended.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance.

"Seller ERISA Affiliate" means any entity that would be deemed a "single employer" with any Seller under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA, other than Alpine.

"Subsidiary" of a Person means any corporation or other legal entity of which that Person (either alone or together with other Subsidiaries of that Person) owns, directly or indirectly, more than 50% of the stock or other equity interests that are ordinarily and generally, in the absence of contingencies or understandings, entitled to vote for the election of a majority of the members of the board of directors or governing body of such entity; *provided, however*, that, for purposes of this Agreement, none of SUT or any of its Subsidiaries shall be deemed to be Subsidiaries of Alpine and Superior Cables Ltd. shall not be deemed a Subsidiary of SUT.

"Tax" or "Taxes" means any net income tax, alternative or add-on minimum tax, franchise, gross income, adjusted gross income or gross receipts tax, payroll tax, real or personal property tax, or sales or use tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax.

[Signature Page Follows]

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IN WITNESS WHEREOF, a duly authorized officer of each of the parties hereto has executed this Agreement as of the date first above written.

SUPERIOR TELECOM INC.

By: /s/ STEPHEN C. KNUP

Its: *President and Chief Operating Officer*

SUPERIOR TELECOMMUNICATIONS INC.

By: /s/ STEPHEN C. KNUP

Its: *President and Chief Operating Officer*

ESSEX INTERNATIONAL INC.

By: /s/ STEPHEN C. KNUP

Its: *President and Chief Operating Officer*

ESSEX GROUP, INC.

By: /s/ STEPHEN C. KNUP

Its: *President and Chief Operating Officer*

THE ALPINE GROUP, INC.

By: /s/ STEVEN S. ELBAUM

Its: *Chairman and Chief Executive Officer*

ALPINE HOLDCO INC.

By: /s/ STEVEN S. ELBAUM

Its: *Chairman and Chief Executive Officer*

QuickLinks

[Exhibit 10.2](#)

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SETTLEMENT AGREEMENT

AGREEMENT (this "Agreement") made as of the 13th day of September 2002, by and among Superior TeleCom Inc., a Delaware corporation (the "Parent"), Superior Telecommunications Inc., a Delaware corporation and wholly-owned subsidiary of the Parent (the "Company," and together with the Parent and its affiliated companies, the "Employer"), and Steven S. Elbaum ("Elbaum").

WITNESSETH

WHEREAS, Elbaum currently serves as Chief Executive Officer and Chairman of the Board of Directors of the Parent (the "Parent Board") and the Company, pursuant to the Amended and Restated Executive Employment Agreement, dated as of the 1st of January, 2001, between the Parent, the Company and Elbaum (the "Employment Agreement");

WHEREAS, it is a condition precedent to the effectiveness of Amendment Number Nine, dated as of September 13, 2002 ("Amendment Number Nine"), to the Amended and Restated Credit Agreement, dated as of November 27, 1998, as amended, among the Parent, the Company, certain other affiliates of the Parent, the lenders party thereto and Deutsche Bank Trust Company Americas (f/k/a Bankers Trust Company), as Administrative Agent, that the Parent, the Company and Elbaum enter into this Agreement;

WHEREAS, Elbaum is entitled to certain payments and benefits under the terms of the Employment Agreement in connection with the termination of his employment, and has agreed, in connection with Amendment Number Nine and this Agreement, to remain employed by the Parent until the date specified herein, to agree to the terms of a covenant not to compete as specified herein, and to accept the reduced payments and benefits set forth in this Agreement in full satisfaction of the Parent's and the Company's compensation and benefits obligations under the Employment Agreement;

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

1. *Resignations and Severance Benefits.*

(a) Effective upon the earlier of (i) December 31, 2002 and (ii) the appointment of a successor Chief Executive Officer of the Parent (the "Succession Date"), Elbaum shall resign from his position as Chief Executive Officer of the Parent, from employment with the Employer and from all executive offices, trusteeships with, or relating to, the Employer that Elbaum held prior to the Succession Date. Effective on the Succession Date, the Employment Agreement shall be automatically null and void and shall be of no further force or effect, except as provided for herein. Prior to the Succession Date, the Employment Agreement shall remain in full force and effect and this Agreement shall be of no force or effect in the event that Elbaum becomes entitled to payments or benefits under Section 9 of the Employment Agreement.

(b) On the Succession Date, the Employer shall pay to Elbaum a lump sum cash payment in the amount of \$750,000, less applicable withholding and other payroll deductions. In the event that the Parent, the Company or any of their subsidiaries enters into a definitive agreement with an individual, entity or group (as defined in Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934) (a "Person"), other than The Alpine Group, Inc. or its affiliates, to acquire certain assets and securities of the Employer, as described in the Letter of Intent dated as of August 30, 2002, the Employer shall pay to Elbaum an additional lump sum cash payment in the amount of \$750,000, less applicable withholding and other payroll deductions (the "Additional Payment"). The Additional Payment shall be paid to Elbaum upon the later of the Succession Date or the date that the definitive agreement described in the preceding sentence is executed.

(c) Parent shall treat Elbaum's resignation under this Agreement as a termination by Elbaum for "Good Reason" (as defined under the Employment Agreement) solely for purposes of the accelerated vesting provisions contained in Sections 6(c) and 7(a) thereof so that all options to purchase shares of the Parent's common stock (the "Common Stock") and all shares of restricted Common Stock held by Elbaum as of the Succession Date shall be fully vested and exercisable as of the Succession Date. In addition, notwithstanding anything to the contrary in the Employment Agreement or in any stock option agreement, in recognition of Elbaum's continuation as Chairman of the Parent Board, Elbaum's resignation shall not be treated as a termination of employment under the stock option agreements and Elbaum will not be deemed to have a termination event until such time that he ceases being a director of the Parent. Upon Elbaum's ceasing to be a director, Elbaum (or his estate or heirs, as the case may be) will be entitled to exercise the stock options granted prior to the Succession Date for a period of two years following the date he ceases being a director of the Parent or, if greater, the time prescribed by the applicable stock option agreements. Notwithstanding the foregoing, in no event may an option be exercisable beyond the stated term of such option. Elbaum hereby acknowledges that unless he exercises an option intended to be an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), within three months of the Succession Date, and otherwise to satisfy the applicable holding periods, such option will be treated as a non-qualified stock option.

(d) Elbaum shall be entitled to any accrued vacation in accordance with Company policy, reimbursement for any unreimbursed business or medical expenses incurred through the Succession Date in accordance with Company policy, vested accrued benefits, if any, under and in accordance with the terms of any tax-qualified retirement plan and continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(e) Elbaum hereby agrees and acknowledges that the foregoing compensation and benefits are in full discharge of any and all liabilities and obligations of the Employer to him (or his beneficiaries) under the terms of the Employment Agreement (other than any liabilities and obligations which specifically survive Elbaum's termination of employment as provided herein) and that the foregoing compensation and benefits represent adequate consideration for the rights waived under the terms of the Employment Agreement.

2. *Retention.* Notwithstanding Elbaum's resignations in Section 1(a) hereof, Elbaum shall continue to serve as Chairman of the Parent Board and will continue to serve on all committees of the Parent Board on the same terms and conditions following the Succession Date as those he served under prior to such date. Elbaum will have all of the rights and responsibilities assigned to the Chairman of the Parent Board as described in the Parent's By-laws. The Parent agrees that it will continue to nominate Elbaum for reelection to the Parent Board following the Succession Date. Effective on the Succession Date, Elbaum will be eligible for all payments, benefits and perquisites at a level not less than those made available to the Parent's other non-employee directors and commensurate with his position as Chairman of the Parent Board, as approved by the Parent Board.

3. *Non-Compete.* In the event that the acquisition of certain assets and securities of the Employer by The Alpine Group, Inc. or an affiliate thereof, as contemplated in the Letter of Intent dated as of August 30, 2002, is consummated, then Elbaum agrees that for a period of four years after the Succession Date, Elbaum shall not, directly or indirectly, anywhere in the world, engage in any business conducted as of the date hereof by Parent or any of its subsidiaries, other than the Parent's electrical wire business, which is engaged in the manufacture and sale of building and industrial wire products, and the Parent's copper continuous casting business (which is engaged in the production of copper rod and the processing of copper scrap) (collectively the "Electrical Business") and the respective businesses of DNE Systems Inc. and its subsidiaries, Texas SUT Inc. and its subsidiaries, and Superior Cables Holding (1997) Ltd. and its subsidiaries ("Competitive Activity"); provided, however, that it shall not be a violation of this Section 3 for Elbaum or his affiliates to (i) own any debt

securities or other debt obligations (other than convertible debt) of any Person, (ii) invest in securities representing less than five percent (5%) of the outstanding capital stock of any Person, the securities of which are publicly traded or listed on any securities exchange or automated quotation system, (iii) through the Electrical Business, sell the Excepted Products (as defined below) in a manner consistent with past practice, or (iv) be employed by, provide services to or otherwise engage in business activities with any affiliate, division or business unit of an entity that engages in Competitive Activity, provided that such affiliate, division or business unit does not engage in Competitive Activity and does not provide significant non-administrative support services to the entity that engages in Competitive Activity. Notwithstanding anything

herein to the contrary, Elbaum and his affiliates shall not be deemed to be engaged in Competitive Activity solely by virtue of the fact that (i) he is an affiliate of The Alpine Group, Inc. ("AGI"), or is employed by AGI or otherwise provides services to AGI, and (ii) AGI or any of its affiliates invests in, owns an interest in or acquires all or a majority of the stock or assets of any Person that is not "engaged primarily in a Competitive Activity" (as defined herein). For purposes of this Section, "engaged primarily in a Competitive Activity" shall mean that at least 30% of the consolidated net revenue derived during the last complete fiscal year of the acquired Person is derived from a Competitive Activity. "Excepted Products" means the premises wire products manufactured by Parent or any of its subsidiaries.

4. *Survival.* The provisions in the Employment Agreement which are intended to survive termination of employment, including but not limited to those contained in Sections 10 and 22 of the Employment Agreement, shall survive and continue in full force and effect.

5. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state of New York.

6. *Amendment and Waiver.* This Agreement may not be amended or modified or any right or remedy herein waived except by a writing signed by the Parent, the Company and Elbaum.

7. *Severability.* Should any provision of this Agreement be held by a court of competent jurisdiction to be unenforceable or prohibited by an applicable law, this Agreement shall be considered divisible as to such provision, which shall be inoperative, and the remainder of this Agreement shall be valid and binding as though such provision were not included herein.

8. *Successors and Assigns.* This Agreement shall be binding upon and to the benefit of the Employer and Elbaum and their respective heirs, executors, administrators, successors and assigns.

9. *Headings.* Headings as to the contents of particular Sections of this Agreement are provided for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular Sections to which they refer.

10. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior agreements, understandings, negotiations, whether written or oral, pertaining to the subject matter hereof (other than the provisions in the Employment Agreement which are intended to survive termination of employment and any award agreement which continue in full force and effect).

11. *Withholding.* The Employer may withhold from any and all amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

SUPERIOR TELECOM INC.

By: /s/ STEPHEN C. KNUP
Name: Stephen C. Knup
Title: President and Chief Operating Officer

SUPERIOR TELECOMMUNICATIONS INC.

By: /s/ STEPHEN C. KNUP
Name: Stephen C. Knup
Title: President and Chief Operating Officer

STEVEN S. ELBAUM

QuickLinks

[Exhibit 10.3](#)

RECEIVABLES SALE AGREEMENT

Dated as of November 6, 2002

by and among

EACH OF THE ENTITIES PARTY HERETO FROM TIME TO TIME
AS ORIGINATORS

SUPERIOR TELECOMMUNICATIONS INC.

and

SUPERIOR ESSEX FUNDING LLC

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THIS RECEIVABLES SALE AGREEMENT (as amended, supplemented or otherwise modified and in effect from time to time, this "Agreement") is entered into as of November 6, 2002, by and among each of the persons signatory hereto from time to time as Originators, each an "Originator" and, collectively, the "Originators"), SUPERIOR TELECOMMUNICATIONS INC., a Delaware corporation ("Superior"), and SUPERIOR ESSEX FUNDING LLC, a Delaware limited liability company ("Buyer").

RECITALS

- A. The Buyer is an indirect Subsidiary of Superior.
- B. Buyer has been formed for the sole purpose of purchasing all Receivables originated by each Originator and to finance such Receivables under the Funding Agreement.
- C. Each Originator intends to sell, and Buyer intends to purchase, such Receivables, from time to time, as described herein.
- D. In addition, the Member may, from time to time, contribute capital to Buyer in the form of Contributed Receivables or cash.

AGREEMENT

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

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.01. *Definitions.* Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in *Annex X*.

Section 1.02. *Rules of Construction.* For purposes of this Agreement, the rules of construction set forth in *Annex X* shall govern. All Appendices hereto, or expressly identified to this Agreement, are incorporated herein by reference and, taken together with this Agreement, shall constitute but a single agreement.

ARTICLE II TRANSFERS OF RECEIVABLES

Section 2.01. *Agreement to Transfer.*

(a) *Receivables Transfers.* Subject to the terms and conditions hereof, each Originator agrees to sell (without recourse except to the limited extent specifically provided herein) or, in the case of the Member, sell or contribute, to Buyer on the Effective Date and on each Business Day thereafter (each such date, a "*Transfer Date*") all Receivables owned by it on each such Transfer Date, and Buyer agrees to purchase or acquire as a capital contribution all such Receivables on each such Transfer Date. All such Transfers by an Originator to Buyer shall collectively be evidenced by a certificate of assignment substantially in the form of Exhibit 2.01(a) (each, a "*Receivables Assignment*," and collectively, the "*Receivables Assignments*"), and each Originator and Buyer shall execute and deliver a Receivables Assignment on or before the Effective Date.

(b) *Determination of Sold Receivables.* On and as of each Transfer Date, (i) all Receivables then owned by each Originator (other than the Member) and not previously acquired by Buyer shall be identified for sale to Buyer, and (ii) to the extent Receivables then owned by the Member have not been contributed to Buyer in accordance with *Section 2.01(d)*, such Receivables shall be identified for sale to Buyer (each such Receivable identified for sale pursuant to *clauses (i) and (ii)* above,

individually, a "*Sold Receivable*" and, collectively, the "*Sold Receivables*"). The Sold Receivables will be identified by reference to the General Trial Balance of each Originator.

(c) *Payment of Purchase Price.* In consideration for each Sale of Sold Receivables hereunder, Buyer shall pay to the Originator thereof on the Transfer Date therefor the Sale Price therefor in Dollars in immediately available funds. All such payments by Buyer under this *Section 2.01(c)* shall be effected by means of a wire transfer on the day when due to such account or accounts as the Originators may designate from time to time. To the extent that the Sale Price of Sold Receivables exceeds the amount of cash then available to Buyer, the applicable Originator hereby agrees to make a subordinated loan (each, a "*Subordinated Loan*") to Buyer in an amount up to the amount of

such excess in satisfaction of the equivalent portion of the Sale Price not paid in cash; *provided*, that in no event shall the aggregate amount of all Subordinated Loans made at any time by all Originators exceed fifteen percent (15%) of the aggregate Outstanding Balance of Transferred Receivables at any time. The Subordinated Loans shall be evidenced by a subordinated promissory note substantially in the form of *Exhibit 2.01(c)* hereto (a "*Subordinated Note*") executed by Buyer and dated the Closing Date. The Subordinated Loans shall bear interest and be payable as provided in the Subordinated Note.

(d) *Determination of Contributed Receivables.* On each Transfer Date, the Member shall identify Receivables then owned by the Member which have not been previously acquired by Buyer, and shall, prior to the delivery of an Election Notice, contribute such Receivables as a capital contribution to the Buyer (each such contributed Receivable, individually, a "*Contributed Receivable*," and collectively, the "*Contributed Receivables*"), to the extent Buyer cannot pay the Sale Price therefor in cash or through Subordinated Loans pursuant to the foregoing *clauses (b) and (c)*. Notwithstanding the foregoing, the Member shall not be obligated to make additional contributions to Buyer at any time. If on any Transfer Date (i) the Member elects not to contribute Receivables to Buyer, or (ii) any Originator (other than the Member) does not sell all of its then owned Receivables to Buyer, such Originator shall deliver to Buyer not later than 5:00 p.m. (New York time) on the Business Day immediately preceding such Transfer Date a notice of election thereof (each such notice, an "*Election Notice*").

(e) *Ownership of Transferred Receivables.* On and after each Transfer Date and after giving effect to the Transfers to be made on each such date, Buyer shall own the Transferred Receivables and no Originator shall take any action inconsistent with such ownership nor shall any Originator claim any ownership interest in such Transferred Receivables.

(f) *Reconstruction of General Trial Balance.* If at any time any Originator fails to generate its General Trial Balance, Buyer shall have the right to reconstruct such General Trial Balance so that a determination of the Sold Receivables and Contributed Receivables can be made pursuant to *Section 2.01(b)*. Each Originator agrees to cooperate with such reconstruction, including by delivery to Buyer, upon Buyer's request, of copies of all Contracts and Records.

(g) *Servicing of Receivables.* So long as no Event of Servicer Termination shall have occurred and be continuing and no Successor Servicer has assumed the responsibilities and obligations of the Servicer pursuant to Section 11.02 of the Funding Agreement, the Servicer shall (i) conduct the servicing, administration and collection of the Transferred Receivables and shall take, or cause to be taken, all such actions as may be necessary or advisable to service, administer and collect the Transferred Receivables, all in accordance with (A) the terms of the Funding Agreement, (B) customary and prudent servicing procedures for trade receivables of a similar type and (C) all applicable laws, rules and regulations, and (ii) hold all Contracts and other documents and incidents relating to the Transferred Receivables in trust for the benefit of Buyer, as the owner thereof, and for the sole purpose of facilitating the servicing of the Transferred Receivables in accordance with the terms of the Funding Agreement.

Section 2.02. *Grant of Security Interest.* The parties hereto intend that each Transfer shall constitute a purchase and sale or capital contribution, as applicable, and not a loan. Notwithstanding

the foregoing, in addition to and not in derogation of any rights now or hereafter acquired by Buyer under *Section 2.01* hereof, the parties hereto intend that this Agreement shall constitute a security agreement under applicable law and if a court of competent jurisdiction determines that any transaction provided for herein constitutes a loan and not a sale or capital contribution, as applicable, that each Originator shall be deemed to have granted, and each Originator does hereby grant, to Buyer a continuing security interest in all of such Originator's right, title and interest in, to and under the Receivables whether now owned or hereafter acquired by such Originator to secure the obligations of such Originator to Buyer hereunder (including, if and to the extent that any Transfer is recharacterized as a transfer for security under applicable law, the repayment of a loan deemed to have been made by Buyer to the applicable Originator in the amount of the Sale Price with respect thereto).

Section 2.03. *Parent Agreement.* Superior hereby undertakes and agrees, to and for the benefit of Buyer, to cause the due and punctual performance and observance by each Originator of all of the terms, conditions, agreements and undertakings on the part of such

Originator to be performed or observed by it hereunder or under any other Related Document and, in connection therewith, shall execute and deliver to Buyer an agreement substantially in the form of *Exhibit 2.03* (the "*Parent Agreement*") to more fully evidence such undertaking.

Section 2.04. *Events Upon Certain Sale of Assets.* Buyer hereby consents to a sale of the assets described in Schedule 2.02 to the Funding Agreement, but only if (a) after giving effect to such sale, no Termination Event or Event of Servicer Termination shall have occurred and be continuing, (b) documentation acceptable to Buyer and the Administrative Agent shall have been delivered to Buyer and the Administrative Agent for execution by each of them and the applicable Originators, providing for the conveyance by Buyer without recourse, representation or warranty (and the release of Liens thereon in favor of the Administrative Agent) of all Transferred Receivables owned by Buyer which either were originated by a "DNE Company" (as defined below) or are otherwise subject to the sale described in such Schedule 2.02 (collectively, the "Reconveyed Receivables"), (c) the purchase price paid for the Reconveyed Receivables represents the fair market value of such Reconveyed Receivables, taking into consideration all relevant factors at the time of sale, and (d) such sale is completed (i) in accordance with all of the terms and conditions set forth in such Schedule 2.02 and (ii) on or before December 31, 2002. Upon the completion of such sale, (1) each of DNE Systems, Inc., DNE Manufacturing and Service Company and DNE Technologies, Inc. (collectively, the "DNE Companies") shall cease to be Originators hereunder (provided, that the rights and remedies pursuant to *Section 4.04*, the indemnification and payment provisions of *Article V*, and the provisions of *Sections 4.03(j)*, *7.04*, *7.12* and *7.14* with respect to the DNE Companies shall be continuing and shall survive any removal of the DNE Companies as Originators under this Agreement), (2) the Reconveyed Receivables shall cease to be Transferred Receivables hereunder for all purposes hereunder, and (3) receivables thereafter generated from the assets so sold shall not be Transferred Receivables hereunder for all purposes hereunder. Each Originator shall take such actions as may be necessary to ensure that proceeds of Reconveyed Receivables and receivables thereafter generated from the assets so sold shall not be paid into any Lockbox or Lockbox Account or otherwise commingled with the proceeds of Transferred Receivables or other assets of Buyer.

Section 2.05. *Originators Remain Liable.* It is expressly agreed by the Originators that, anything herein to the contrary notwithstanding, each Originator shall remain liable to the Obligor (and any other party to the related Contract) under any and all of the Receivables originated by it and under the Contracts therefor to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Buyer shall not have any obligation or liability to the Obligor or any other party to the related Contract under any such Receivables, or Contracts by reason of or arising out of this Agreement or the granting herein of a Lien thereon or the receipt by Buyer of any payment relating thereto pursuant hereto. The exercise by Buyer of any of its respective rights under this Agreement shall not release any Originator from any of its respective duties or obligations under any

such Receivables or Contracts. Buyer shall not be required or obligated in any manner to perform or fulfill any of the obligations of any Originator under or pursuant to any such Receivable or Contract, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any such Receivable or Contract, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

ARTICLE III CONDITIONS PRECEDENT

Section 3.01. *Conditions Precedent to Initial Transfer.* The initial Transfer hereunder shall be subject to satisfaction of each of the following conditions precedent (any one or more of which may be waived in writing by each of Buyer and the Administrative Agent):

(a) *Sale Agreement; Other Documents.* This Agreement or counterparts hereof shall have been duly executed by, and delivered to, Superior, each Originator and Buyer, and Buyer shall have received such information, documents, instruments, agreements and legal opinions as Buyer shall request in connection with the transactions contemplated by this Agreement, including all those identified in the Schedule of Documents, each in form and substance satisfactory to Buyer.

(b) *Governmental Approvals.* Buyer shall have received (i) satisfactory evidence that the Originators have obtained all required consents and approvals of all Persons, including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Related Documents and the consummation of the transactions contemplated hereby and thereby or (ii) an Officer's Certificate from each Originator in form and substance satisfactory to Buyer affirming that no such consents or approvals are required.

(c) *Compliance with Laws.* Each of Superior and each Originator shall be in compliance with all applicable foreign, federal, state, provincial and local laws and regulations, including, without limitation, those specifically referenced in *Section 4.02(f)*.

(d) *Funding Agreement Conditions.* Each of those conditions precedent set forth in *Sections 3.01* and *3.02* of the Funding Agreement shall have been satisfied or waived in writing as provided therein.

Section 3.02. Conditions Precedent to all Transfers. Each Transfer hereunder (including the initial Transfer) shall be subject to satisfaction of the following further conditions precedent as of the Transfer Date therefor:

(a) the representations and warranties of each of Superior and each Originator contained herein or in any other Related Document shall be true and correct as of such Transfer Date, both before and after giving effect to such Transfer and to the application of the Sale Price therefor, except to the extent that any such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted by this Agreement;

(b) (i) the Administrative Agent shall not have declared the Commitment Termination Date to have occurred following the occurrence of a Termination Event, and (ii) the Commitment Termination Date shall not have automatically occurred, in either event, in accordance with *Section 9.01* of the Funding Agreement;

(c) each Originator and member of the Parent Group shall be in compliance with each of its covenants and other agreements set forth herein or in any other Related Document; and

(d) each Originator shall have taken such other action, including delivery of approvals, consents, opinions, documents and instruments to Buyer as Buyer may reasonably request.

The acceptance by any Originator of the Sale Price for any Sold Receivables and the contribution to Buyer by the Member of any Contributed Receivables on any Transfer Date shall be deemed to constitute, as of any such Transfer Date, a representation and warranty by such Originator that the conditions precedent set forth in this *Section 3.02* have been satisfied. Upon any such acceptance or contribution, title to the Transferred Receivables sold or contributed on such Transfer Date shall be vested absolutely in Buyer, whether or not such conditions were in fact so satisfied.

ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.01. Representations and Warranties of the Originators. To induce Buyer to purchase the Sold Receivables and to acquire the Contributed Receivables, each Originator and Superior make the following representations and warranties to Buyer as of the Closing Date and, except to the extent otherwise expressly provided below, as of each Transfer Date, each of which shall survive the execution and delivery of this Agreement.

(a) *Corporate Existence; Compliance with Law.* Each of Superior and each Originator (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to so qualify could not reasonably be expected to result in a Material Adverse Effect; (iii) has the requisite corporate power and authority and the legal right to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates

under lease, and to conduct its business, in each case, as now, heretofore and proposed to be conducted; (iv) has all licenses, permits, consents or approvals from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct, except where the failure to do any of the foregoing could not reasonably be expected to result in a Material Adverse Effect; (v) is in compliance with its articles or certificate of incorporation and bylaws and (vi) subject to specific representations set forth herein regarding ERISA, Environmental Laws, tax laws and other laws, is in compliance with all applicable provisions of law, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

(b) *Jurisdiction of Organization; Executive Offices; Collateral Locations; Corporate or Other Names; FEIN.* As of the Closing Date, each of Superior and each Originator is a registered organization of the type and is organized under the laws of the State or province set forth in *Schedule 4.01(b)* (which is its only jurisdiction of organization) and Superior's or such Originator's organizational identification number (if any), the current location of Superior's or such Originator's chief executive office, principal place of business, other offices, the warehouses and premises within which any records relating to the Receivables is stored or located, and the locations of its records concerning the Receivables are set forth in *Schedule 4.01(b)* and none of such locations have changed within the past 12 months. During the prior five years, except as set forth in *Schedule 4.01(b)*, neither Superior nor any Originator has been known as or used any corporate, legal, fictitious or trade name. In addition, *Schedule 4.01(b)* lists the federal employer identification number of Superior and each Originator.

(c) *Corporate Power, Authorization, Enforceable Obligations.* The execution, delivery and performance by Superior and each Originator of this Agreement and the other Related Documents to which it is a party and the creation and perfection of all Transfers and Liens provided for herein and therein and, solely with respect to *clause (vii)* below, the exercise by Buyer, any Lender or the Administrative Agent of any of its rights and remedies under any Related Document to which it is a party: (i) are within such Person's corporate power; (ii) have been duly authorized by all necessary or proper corporate and shareholder action; (iii) do not contravene any provision of such Person's articles or certificate of incorporation or bylaws; (iv) do not violate any law or regulation, or any order or

decree of any court or Governmental Authority; (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Person is a party or by which such Person or any of its property is bound; (vi) do not result in the creation or imposition of any Adverse Claim upon any of the property of such Person; and (vii) do not require the consent or approval of any Governmental Authority or any other Person, except those referred to in *Section 3.01(b)* (other than consents or approvals solely relating to or required to be obtained by the Borrower, the Administrative Agent or any Lender, as to which neither Superior nor any Originator makes any representation), all of which will have been duly obtained, made or complied with prior to the Effective Date. On or prior to the Effective Date, each of the Related Documents shall have been duly executed and delivered by Superior and each Originator that is a party thereto and on the Closing Date each such Related Document shall then constitute a legal, valid and binding obligation of Superior and such Originator, as the case may be, enforceable against it in accordance with its terms.

(d) *No Litigation.* No Litigation is now pending or, to the knowledge of Superior or any Originator, threatened against Superior, the Parent, any Originator or any other Subsidiary of the Parent that (i) challenges Superior's or such Originator's right or power to enter into or perform any of its obligations under the Related Documents to which it is a party, or the validity or enforceability of any Related Document or any action taken thereunder, (ii) seeks to prevent the Transfer or pledge of any Receivable or the consummation of any of the transactions contemplated under this Agreement or the other Related Documents or (iii) has a reasonable risk of being determined adversely to Superior, the Parent, any Originator, or such Subsidiary, and that, if so determined, could reasonably be expected to have a Material Adverse Effect. Except as set forth on *Schedule 4.01(d)*, as of the Effective Date there is no Litigation pending or threatened that seeks damages in excess of \$1,000,000 or injunctive relief against, or alleges criminal misconduct by, Superior, the Parent, any Originator or any other Subsidiary of the Parent.

(e) *Solvency.* After giving effect to (i) the transactions contemplated by this Agreement and the other Related Documents and (ii) the payment and accrual of all transaction costs in connection with the foregoing, each Originator, the Parent and Superior is and will generally be

able to pay its debts as they come due. No event of a type described in *Section 9.01(d)* of the Funding Agreement has been commenced or threatened against Superior, the Parent, any Originator or any other Subsidiary of the Parent.

(f) *Material Adverse Effect.* Since June 30, 2002 (other than as disclosed in the Parent's filings on Form 10-Q with the Securities and Exchange Commission for the quarters ended March 31, 2002 and June 30, 2002, as otherwise disclosed in the financial projections provided to the Administrative Agent in the revised business plan delivered on September 9, 2002 (the "Supplemental Disclosure") or as a result of the transaction described in Schedule 2.02 to the Funding Agreement), (i) neither Superior nor any Originator has incurred any obligations, contingent or non-contingent liabilities, liabilities for Charges, long-term leases or unusual forward or long-term commitments that, alone or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (ii) no contract, lease or other agreement or instrument has been entered into by Superior of any Originator or has become binding upon Superior's or any Originator's assets and no law or regulation applicable to Superior or any Originator has been adopted that has had or could reasonably be expected to have a Material Adverse Effect, and (iii) neither Superior nor any Originator is in default and no third party is in default under any material contract, lease or other agreement or instrument to which Superior or such Originator is a party. Since June 30, 2002 (other than as disclosed in the Parent's filings on Form 10-Q with the Securities and Exchange Commission for the quarters ended March 31, 2002 and June 30, 2002 and in the Supplemental Disclosure), no event has occurred that alone or together with other events could reasonably be expected to have a Material Adverse Effect.

(g) *Ownership of Receivables; Liens.* Each Originator owns each Receivable originated or acquired by it free and clear of any Adverse Claim and, from and after each Transfer Date, Buyer will acquire valid and properly perfected title to and the sole record and beneficial ownership interest in each Transferred Receivable purchased or otherwise acquired on such date, free and clear of any Adverse Claim or restrictions on transferability. As of the Effective Date, none of the properties and assets of any Originator are subject to any Adverse Claims other than Permitted Encumbrances, and there are no facts, circumstances or conditions known to any Originator that could reasonably be expected to result in any Adverse Claims (including Adverse Claims arising under environmental laws) other than Permitted Encumbrances. Each Originator has received all assignments, bills of sale and other documents, and has duly effected all recordings, filings and other actions necessary to establish, protect and perfect such Originator's right, title and interest in and to the Receivables originated or acquired by it and its other properties and assets. Each Originator has rights in and full power to transfer its Receivables hereunder.

(h) *Ventures, Subsidiaries and Affiliates; Outstanding Stock and Debt.* Except as set forth in *Schedule 4.01(h)*, no Originator has any Subsidiaries, is engaged in any joint venture or partnership with any other Person or is an Affiliate of any Person. All of the issued and outstanding Stock of each Originator is directly or indirectly owned by Superior or Parent. Except in connection with the transaction described in Schedule 2.02 to the Funding Agreement, there are no outstanding rights to purchase options, warrants or similar rights or agreements pursuant to which Superior or any Originator may be required to issue, sell, repurchase or redeem any of its Stock or other equity securities or any Stock or other equity securities of its Subsidiaries. All outstanding Debt of each Originator as of the Effective Date is described on Schedule 4.01(h).

(i) *Taxes.* All material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed by the Parent, Superior, any Originator or any other member of the Parent Group have been filed with the appropriate Governmental Authority and all Charges have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof (or any such fine, penalty, interest, late charge or loss has been paid), excluding Charges or other amounts being contested in accordance with *Section 4.02(l)*. Proper and accurate amounts have been withheld by the Parent, Superior, each Originator and each such member from its respective employees for all periods in compliance in all material respects with all applicable federal, state, provincial, local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities. *Schedule 4.01(i)* sets forth as of the Closing Date (i) those taxable years for which the Parent's, Superior's, any Originator's or any such member's tax returns are currently being audited by the IRS or any other applicable Governmental Authority and (ii) any assessments or threatened assessments in connection with such audit or otherwise currently outstanding. Except as described on *Schedule 4.01(i)*, none of the Parent, Superior, any Originator or any such member has executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges. None of the Parent, Superior, any Originator or any such

member and their respective predecessors are liable for any Charges: (A) under any agreement (including any tax sharing agreements) or (B) to the best of Superior's and each Originator's knowledge, as a transferee.

(j) *Intellectual Property.* As of the Effective Date, Superior and each Originator owns or has rights to use all intellectual property necessary to continue to conduct its business as now or heretofore conducted by it or proposed to be conducted by it. Each of Superior and each Originator conducts its business and affairs without infringement of or interference with any intellectual property of any other Person. As of the Effective Date, except as set forth in *Schedule 4.01(j)*, neither Superior nor any Originator is aware of any infringement or claim of infringement by others of any material intellectual property of Superior or any Originator.

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(k) *Full Disclosure.* All information contained in this Agreement, any of the other Related Documents, or any written statement furnished by or on behalf of Superior or any Originator to Buyer, any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents (which shall not include any projections or pro forma financial information), in each case, taken as a whole, is true and accurate in every material respect, and none of this Agreement, any of the other Related Documents, or any written statement furnished by or on behalf of Superior or any Originator to Buyer, any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents, in each case, taken as a whole, is misleading as a result of the failure to include therein a material fact. All information contained in this Agreement, any of the other Related Documents, or any written statement furnished to Buyer, any Lender or the Administrative Agent has been prepared in good faith by management of Superior or the applicable Originator, as the case may be, with the exercise of reasonable diligence.

(l) *Notices to Obligors.* Each Originator has directed all Obligors of Transferred Receivables originated by it to remit all payments with respect to such Receivables for deposit in a Lockbox or Lockbox Account.

(m) *ERISA.*

(i) *Schedule 4.01(m)* lists all Plans and separately identifies all Pension Plans, including all Title IV Plans, Multiemployer Plans, ESOPs and Welfare Plans, including all Retiree Welfare Plans. Each Qualified Plan has been determined by the IRS to qualify under Section 401(a) of the IRC, the trusts created thereunder have been determined to be exempt from tax under the provisions of Section 501 of the IRC, and, except as set forth on *Schedule 4.01(m)*, nothing has occurred that could reasonably be expected to cause the loss of such qualification or tax-exempt status. Except as otherwise provided in *Schedule 4.01(m)*, (x) each Plan is in compliance with the applicable provisions of ERISA and the IRC, including the timely filing of all reports required under the IRC or ERISA, (y) none of the Parent, Superior, any Originator or any of their respective ERISA Affiliates has failed to make any contribution or pay any amount due as required by either Section 412 of the IRC or Section 302 of ERISA or the terms of any Plan, subject to such sections, and (z) none of the Parent, Superior, any Originator or any of their respective ERISA Affiliates has engaged in a "prohibited transaction," as defined in Section 4975 of the IRC, in connection with any Plan that could reasonably be expected to subject any Originator to a material tax on prohibited transactions imposed by Section 4975 of the IRC.

(ii) Except as set forth in *Schedule 4.01(m)*: (A) no Title IV Plan has any Unfunded Pension Liability; (B) no ERISA Event or event described in Section 4062(e) of ERISA with respect to any Title IV Plan has occurred within the past three years or is reasonably expected to occur; (C) there are no pending or, to the knowledge of Superior or any Originator, threatened claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any Person as fiduciary or sponsor of any Plan; (D) none of the Parent, Superior, any Originator or any of their respective ERISA Affiliates has incurred or reasonably expects to incur any liability as a result of a complete or partial withdrawal from a Multiemployer Plan; (E) within the last five years no Title IV Plan with Unfunded Pension Liabilities has been transferred outside of the "controlled group" (within the meaning of Section 4001(a)(14) of ERISA) of the Parent, Superior, any Originator or their respective ERISA Affiliates; (F) Stock of the Parent, Superior and all Originators and their respective ERISA Affiliates makes up, in the aggregate, no more than 10% of the assets of any Plan subject to Title I of ERISA, measured on the basis of fair market value as of the last

valuation date of any Plan; and (G) no liability under any Title IV Plan has been satisfied with the purchase of a contract from an insurance company that is not rated AAA by S&P or an equivalent rating by another nationally recognized rating agency.

(n) *Brokers.* No broker or finder acting on behalf of Superior or any Originator was employed or utilized in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby and neither Superior nor any Originator has any obligation to any Person in respect of any finder's or brokerage fees in connection herewith or therewith.

(o) *Margin Regulations.* Neither Superior nor any Originator is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulations T, U or X of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as "*Margin Stock*"). Neither Superior nor any Originator owns any Margin Stock, and no portion of the proceeds of the Sale Price from any Sale will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Debt that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any portion of such proceeds to be considered a "purpose credit" within the meaning of Regulations T, U or X of the Federal Reserve Board. Neither Superior nor any Originator will take or permit to be taken any action that might cause any Related Document to violate any regulation of the Federal Reserve Board.

(p) *Nonapplicability of Bulk Sales Laws.* No transaction contemplated by this Agreement or any of the other Related Documents requires compliance with any bulk sales act or similar law.

(q) *Securities Act and Investment Company Act Exemptions.* Each purchase of Transferred Receivables under this Agreement constitutes (i) a "current transaction" within the meaning of Section 3(a)(3) of the Securities Act and (ii) a purchase or other acquisition of notes, drafts, acceptances, open accounts receivable or other obligations representing part or all of the sales price of merchandise, insurance or services within the meaning of Section 3(c)(5) of the Investment Company Act.

(r) *Government Regulation.* Neither Superior nor any Originator is an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act. No Originator is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or any other federal or state statute that restricts or limits its ability to incur Debt or to perform its obligations hereunder or under any other Related Document. The purchase or acquisition of the Transferred Receivables by Buyer hereunder, the application of the Sale Price therefor and the consummation of the transactions contemplated by this Agreement and the other Related Documents will not violate any provision of any such statute or any rule, regulation or order issued by the Securities and Exchange Commission.

(s) *Books and Records; Minutes.* The bylaws or the certificate or articles of incorporation of Superior and each Originator, as the case may be, require it to maintain (i) books and records of account and (ii) minutes of the meetings and other proceedings of its Stockholders and board of directors (or an analogous governing body).

(t) *Deposit and Disbursement Accounts.* *Schedule 4.01(t)* lists all banks and other financial institutions at which each Originator maintains deposit accounts established for the receipt of collections on accounts receivable, including any Lockbox Accounts, and such schedule correctly identifies the name, address and telephone number of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

(u) *Representations and Warranties in Other Related Documents.* Each of the representations and warranties of Superior and each Originator, as applicable, contained in the Related Documents (other than this Agreement) is true and correct and Superior or such Originator, as the case may be, hereby makes each such representation and warranty to, and for the benefit of, the Lenders and the Administrative Agent as if the same were set forth in full herein. Each Originator consents to the

assignment of Buyer's rights with respect to all such representations and warranties to the Administrative Agent and the Lenders (and their respective successors and assigns) pursuant to the Funding Agreement.

(v) *Receivables.* With respect to each Transferred Receivable designated as an Eligible Receivable in any Borrowing Base Certificate delivered on or after the Transfer Date of such Transferred Receivable:

(i) such Receivable satisfies the criteria for an Eligible Receivable;

(ii) prior to its Transfer to Buyer such Receivable was owned by the Originator thereof free and clear of any Adverse Claim, and such Originator had the full right, power and authority to sell, contribute, assign, transfer and pledge its interest therein as contemplated under this Agreement and the other Related Documents and, upon such Transfer, Buyer will acquire valid and properly perfected title to and the sole record and beneficial ownership interest in such Receivable, free and clear of any Adverse Claim and, following such Transfer, such Receivable will not be subject to any Adverse Claim as a result of any action or inaction on the part of such Originator;

(iii) the Transfer of each such Receivable pursuant to this Agreement and the Receivables Assignment executed by the Originator thereof constitutes, as applicable, a valid sale, contribution, transfer, assignment, setover and conveyance to Buyer of all right, title and interest of such Originator in and to such Receivable; and

(iv) the Originator of such Receivable has no knowledge of any fact (including any defaults by the Obligor thereunder on any other Receivable) that would cause it or should have caused it to expect that any payments on such Receivable will not be paid in full when due or to expect any other Material Adverse Effect.

(w) *Fair Value.* With respect to each Transferred Receivable acquired by the Buyer hereunder (i) the consideration received from the Buyer in respect of such Transferred Receivable represents adequate valuable consideration and fair and reasonable value for such Transferred Receivable as of the applicable Transfer Date, and (ii) the lesser of the value and the fair market value of such consideration is not less than the fair market value of such Transferred Receivables, in each case, as of the applicable Transfer Date and, in respect of payment by way of the creation of, or an increase in the principal amount outstanding under, a Subordinated Note, (A) in all circumstances, and having regard to the terms and conditions of such Subordinated Note, the value and fair market value of such Subordinated Note (or, where the principal amount of the Subordinated Note is increased, the value and fair market value of such increase) is approximately equal to the face amount thereof (or the amount of such increase, as applicable) and (B) such Subordinated Note is not subject to any defense or any rights of set-off, including on account of any past or present debt.

The representations and warranties described in this *Section 4.01* shall survive the Transfer of the Transferred Receivables to Buyer, any subsequent assignment of the Transferred Receivables by Buyer, and the termination of this Agreement and the other Related Documents and shall continue until the indefeasible payment in full of all Transferred Receivables.

Section 4.02. Affirmative Covenants of Superior and Originators. Superior and each Originator covenants and agrees that, unless otherwise consented to by Buyer and the Administrative Agent, from and after the Effective Date and until the Termination Date:

(a) *Offices and Records.* Each of Superior and each Originator shall maintain its jurisdiction of organization, principal place of business and chief executive office and the office at which it keeps its Records at the respective locations specified in *Schedule 4.01(b)* or, upon 30 days' prior written notice to Buyer and the Administrative Agent, at such other location in a jurisdiction

where all action requested by Buyer, any Lender or the Administrative Agent pursuant to *Section 7.13* shall have been taken with respect to the Transferred Receivables. Each of Superior and each Originator shall at its own cost and expense, for not less than

three years from the date on which each Transferred Receivable was originated, or for such longer period as may be required by law, maintain adequate Records with respect to such Transferred Receivable, including records of all payments received, credits granted and merchandise returned with respect thereto. Upon the request of Buyer or the Administrative Agent, each Originator shall (i) mark each Contract (other than invoices) evidencing each Transferred Receivable with a legend, acceptable to Buyer and the Administrative Agent, evidencing that Buyer has purchased such Transferred Receivable and that the Administrative Agent, for the benefit of the Lenders, has a security interest in and lien thereon, and (ii) mark its master data processing records evidencing such Transferred Receivables with such a legend.

(b) *Access.* Each of Superior and each Originator shall, during normal business hours, from time to time upon one Business Day's prior notice and as frequently as Buyer, the Servicer or the Administrative Agent determines to be appropriate: (i) provide Buyer, the Servicer or the Administrative Agent and any of their respective officers, employees and agents access to its properties (including properties of Superior or such Originator, as the case may be, utilized in connection with the collection, processing or servicing of the Transferred Receivables), facilities, advisors and employees (including officers) of Superior and each Originator, (ii) permit Buyer, the Servicer or the Administrative Agent and any of their respective officers, employees and agents, to inspect, audit and make extracts from Superior's or such Originator's books and records, including all Records maintained by Superior or such Originator, (iii) permit Buyer, the Servicer or the Administrative Agent and their respective officers, employees and agents, to inspect, review and evaluate the Transferred Receivables of such Originator, and (iv) permit Buyer, the Servicer or the Administrative Agent and their respective officers, employees and agents to discuss matters relating to the Transferred Receivables or Superior's or such Originator's performance under this Agreement or the affairs, finances and accounts of Superior or such Originator with any of its officers, directors, employees, representatives or agents (in each case, with those Persons having knowledge of such matters) and with its independent certified public accountants. If an Incipient Termination Event or a Termination Event shall have occurred and be continuing, or the Administrative Agent, in good faith, believes that an Incipient Termination Event or a Termination Event may have occurred, is imminent or deems any Lender's rights or interests in the Transferred Receivables insecure, each of Superior and each Originator shall provide such access at all times and without advance notice and shall provide Buyer, the Servicer or the Administrative Agent with access to its suppliers and customers. Each of Superior and each Originator shall make available to Buyer, the Servicer or the Administrative Agent and their respective counsel, as quickly as is possible under the circumstances, originals or copies of all books and records, including Records maintained by Superior or such Originator, that Buyer, the Servicer or the Administrative Agent may request. Each of Superior and each Originator shall deliver any document or instrument necessary for Buyer, the Servicer or the Administrative Agent, as they may from time to time request, to obtain records from any service bureau or other Person that maintains records for Superior or such Originator, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by Superior or such Originator. For the avoidance of doubt, the Buyer, the Lenders and Administrative Agent and their respective officers, employees and agents shall only have the right to make environmental inspections once during any twelve (12) month period unless any Lender or the Administrative Agent has reason to believe that a condition exists or an event has occurred which could reasonably give rise to liability under environmental laws.

(c) *Communication with Accountants.* Each of Superior and each Originator authorizes Buyer, the Servicer and the Administrative Agent to communicate directly with its independent

certified public accountants, and authorizes and shall instruct those accountants and advisors to disclose and make available to Buyer, the Servicer and the Administrative Agent any and all financial statements and other supporting financial documents, schedules and information relating to Superior or such Originator (including copies of any issued management letters) with respect to the business, financial condition and other affairs of Superior or such Originator. Each of Superior and each Originator agrees to render to Buyer, the Servicer and the Administrative Agent at Superior's or such Originator's own cost and expense, such clerical and other assistance as may be reasonably requested with regard to the foregoing. If any Termination Event shall have occurred and be continuing, each of Superior and each Originator shall, promptly upon request therefor, assist Buyer in delivering to the

Administrative Agent Records reflecting activity through the close of business on the Business Day immediately preceding the date of such request.

(d) *Compliance With Credit and Collection Policies.* Each of Superior and each Originator shall comply in all material respects with the Credit and Collection Policies applicable to each Transferred Receivable and the Contracts therefor, and with the terms of such Receivables and Contracts.

(e) *Assignment.* Each Originator agrees that, to the extent permitted under the Funding Agreement, Buyer may assign all of its right, title and interest in, to and under the Transferred Receivables and this Agreement, including its right to exercise the remedies set forth in *Section 4.04*. Each Originator agrees that, upon any such assignment, the assignee thereof may enforce directly, without joinder of Buyer, all of the obligations of such Originator hereunder, including any obligations of such Originator set forth in *Sections 4.04, 5.01 and 7.14*.

(f) *Compliance with Agreements and Applicable Laws.* Each of Superior and each Originator shall perform each of its obligations under this Agreement and the other Related Documents and comply with all federal, state, provincial and local laws and regulations applicable to it and the Receivables, including those relating to truth in lending, retail installment sales, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices, privacy, licensing, securities laws, margin regulations, taxation, ERISA and labor matters and environmental laws and environmental permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect. Superior and each Originator shall pay all Charges, including any stamp duties, which may be imposed as a result of the transactions contemplated by this Agreement and the other Related Documents, except to the extent such Charges are being contested in accordance with *Section 4.02(l)*.

(g) *Maintenance of Existence and Conduct of Business.* Each of Superior and each Originator shall: (i) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and its rights and franchises; (ii) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder and in accordance with the terms of its certificate or articles of incorporation and bylaws; (iii) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, including all licenses, permits, charters and registrations, and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and (iv) transact business only in such corporate, legal and trade names as are set forth in *Schedule 4.02(g)* or, upon 30 days' prior written notice to Buyer and the Administrative Agent, in such other corporate, legal or trade names with respect to which all action requested by Buyer, any Lender or the Administrative Agent pursuant to *Section 7.13* shall have been taken with respect to the Transferred Receivables.

(h) *Notice of Material Event.* Each of Superior and each Originator shall promptly inform Buyer and the Administrative Agent in writing of the occurrence of any of the following, in each

case setting forth the details thereof, any notices or other correspondence relating thereto, and what action, if any, Superior or such Originator, as the case may be, proposes to take with respect thereto:

(i) any Litigation commenced or threatened against the Parent, Superior, any Originator or any other Subsidiary of the Parent or with respect to or in connection with all or any portion of the Transferred Receivables that (A) seeks damages or penalties in an uninsured amount in excess of \$250,000 in the aggregate, (B) seeks injunctive relief, (C) is asserted or instituted against any Plan, its fiduciaries (in their capacity as a fiduciary of any such Plan) or its assets or against the Parent, Superior, any Originator or any other Subsidiary of the Parent or any of their respective ERISA Affiliates in connection with any Plan, (D) alleges criminal misconduct by the Parent, Superior, any Originator or any

other Subsidiary of the Parent, or (E) if determined adversely, could reasonably be expected to have a Material Adverse Effect;

(ii) the commencement of a case or proceeding by or against the Parent, Superior, any Originator or any other Subsidiary of the Parent seeking a decree or order in respect of the Parent, Superior, any Originator or such Subsidiary (A) under the Bankruptcy Code or any other applicable federal, state, provincial or foreign bankruptcy or other similar law, (B) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for the Parent, Superior, any Originator or such Subsidiary or for any substantial part of such Person's assets, or (C) ordering the winding-up or liquidation of the affairs of the Parent, Superior, any Originator or any other Subsidiary of the Parent;

(iii) the receipt of notice that (A) the Parent, Superior, such Originator, or any other Subsidiary of the Parent is being placed under regulatory supervision, (B) any license, permit, charter, registration or approval necessary for the conduct of the Parent's, Superior's, such Originator's or any other Subsidiary of the Parent's business is to be, or may be, suspended or revoked, or (C) the Parent, Superior, such Originator or any other Subsidiary of the Parent is to cease and desist any practice, procedure or policy employed by the Parent, Superior, such Originator or any other Subsidiary of the Parent in the conduct of its business if such cessation could reasonably be expected to have a Material Adverse Effect;

(iv) (A) any Adverse Claim made or asserted against any of the Transferred Receivables of which it becomes aware or (B) any determination that a Transferred Receivable designated as an Eligible Receivable in a Borrowing Base Certificate, a Borrowing Request or otherwise was not an Eligible Receivable at the time of such designation;

(v) (A) each infringement or claim of infringement by any Person of any intellectual property of Superior or any Originator or (B) each item of intellectual property necessary to continue its business as then conducted by such originator which it does not own or have rights to use;

(vi) the execution or filing with the IRS or any other Governmental Authority of any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges;

(vii) the establishment of any Plan, Pension Plan, Title IV Plan or undertaking to make contributions to any Multiemployer Plan, ESOP, Welfare Plan or Retiree Welfare Plan not listed on *Schedule 4.01(m)*; or

(viii) any other event, circumstance or condition that has had or could reasonably be expected to have a Material Adverse Effect.

(i) *[Reserved]*

(j) *Separate Identity.*

(i) Superior and each Originator shall, and shall cause each other member of the Parent Group to, maintain records and books of account separate from those of Buyer.

(ii) The financial statements of the Parent and its consolidated Subsidiaries shall disclose the effects of each Originator's transactions in accordance with GAAP and, in addition, disclose that (A) Buyer's sole business consists of the purchase or acceptance through capital contribution (in the case of the Member) of the Receivables from the Originators and the subsequent financing of such Receivables pursuant to the Funding Agreement, (B) Buyer is a separate legal entity with its own separate creditors who will be entitled, upon its liquidation, to be satisfied out of Buyer's assets prior to any value in Buyer becoming available to Buyer's equityholders and (C) the assets of Buyer are not available to pay creditors of any Originator or any other Affiliate of such Originator.

(iii) The resolutions, agreements and other instruments underlying the transactions described in this Agreement shall be continuously maintained by Superior and each Originator as official records.

(iv) Superior and each Originator shall, and shall cause each other member of the Parent Group to, maintain an arm's-length relationship with Buyer and shall not hold itself out as being liable for the Debts of Buyer.

(v) Superior and each Originator shall, and shall cause each other member of the Parent Group to, keep its assets and its liabilities wholly separate from those of Buyer.

(vi) Superior and each Originator shall, and shall cause each other member of the Parent Group to, conduct its business solely in its own name or the name of Superior or Parent through its duly Authorized Officers or agents and in a manner designed not to mislead third parties as to the separate identity of Buyer.

(vii) Neither Superior nor any Originator shall (and each Originator shall cause each other member of the Parent Group not to) mislead third parties by conducting or appearing to conduct business on behalf of Buyer or expressly or impliedly representing or suggesting that Superior, such Originator or any other member of the Parent Group is liable or responsible for the Debts of Buyer or that the assets of Superior, such Originator or any other member of the Parent Group are available to pay the creditors of Buyer.

(viii) The operating expenses and liabilities of Buyer shall be paid from Buyer's own funds and not from any funds of Superior, any Originator or other member of the Parent Group.

(ix) Superior and each Originator shall, and shall cause each other member of the Parent Group to, at all times have stationery and other business forms and a mailing address and telephone number separate from those of Buyer.

(x) Superior and each Originator shall, and shall cause each other member of the Parent Group to, at all times limit its transactions with Buyer only to those expressly permitted hereunder or under any other Related Document.

(xi) Superior and each Originator shall, and shall cause each other member of the Parent Group to, comply with (and cause to be true and correct) each of the facts and assumptions contained in the opinions of Proskauer Rose LLP and Stikeman, Elliott delivered pursuant to the Schedule of Documents.

(k) *ERISA and Environmental Notices.* Each of Superior and each Originator shall give Buyer and the Administrative Agent prompt written notice of (i) any event that could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA, (ii) any event that could reasonably be expected to result in the incurrence by Superior or any Originator of any liabilities under Title IV of ERISA (other than premium payments arising in the ordinary course of business), and (iii) any environmental claims against the Parent, Superior, any Originator or any other Subsidiary of the Parent which, individually or in the aggregate, could reasonably be expected to exceed \$250,000.

(l) *Payment, Performance and Discharge of Obligations.*

(i) Subject to *Section 4.02(l)(ii)*, each of Superior and each Originator shall (and shall cause each other member of the Parent Group to) pay, perform and discharge or cause to be paid, performed and discharged all of its obligations and liabilities, including all Charges upon its income and properties and all lawful claims for labor, materials, supplies and services, promptly when due.

(ii) Each of Superior, each Originator and each other member of the Parent Group may in good faith contest, by appropriate proceedings, the validity or amount of any Charges or claims described in *Section 4.02(l)(i)*; *provided*, that

(A) adequate reserves with respect to such contest are maintained on the books of Superior, such Originator or such member, as applicable, in accordance with GAAP, (B) such contest is maintained and prosecuted continuously and with diligence, (C) none of the Receivables may become subject to forfeiture or loss as a result of such contest, (D) no Lien may be imposed to secure payment of such Charges or claims other than inchoate tax liens and (E) Buyer has advised Superior or such Originator in writing that Buyer reasonably believes that nonpayment or nondischarge thereof could not reasonably be expected to have or result in a Material Adverse Effect.

(m) *Deposit of Collections.* Superior and each Originator shall (and shall cause each of its Affiliates to) (i) instruct all Obligor to remit all payments with respect to any Transferred Receivables directly into a Lockbox Account, and shall deposit and (ii) deposit or cause to be deposited promptly into a Lockbox Account, and in any event no later than the first Business Day after receipt thereof, all Collections it may receive in respect of Transferred Receivables (and until so deposited, all such Collections shall be held in trust for the benefit of Buyer and its assigns (including the Administrative Agent and the Lenders)). Neither Superior nor any Originator shall make or permit to be made deposits into a Lockbox or a Lockbox Account other than in accordance with this Agreement and the other Related Documents. Without limiting the generality of the foregoing, each Originator shall ensure that no Collections or other proceeds with respect to a Receivable reconveyed to it pursuant to *Section 4.04* hereof are paid or deposited into any Lockbox or Lockbox Account.

(n) *Accounting Changes.* If any Accounting Changes occur and such changes result in a change in the standards or terms used herein, then the parties hereto agree to enter into good faith negotiations in order to amend such provisions so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the financial condition of such Persons and their Subsidiaries shall be the same after such Accounting Changes as if such Accounting Changes had not been made. If the parties hereto agree upon the required amendments to this Agreement, then after appropriate amendments have been executed and the underlying Accounting Change with respect thereto has been implemented, any reference to GAAP contained herein shall, only to the extent of such Accounting Change, refer to GAAP consistently applied after giving effect to the implementation of such Accounting Change. If such parties cannot agree upon the required amendments within 30 days following the date of implementation of any Accounting Change, then all financial statements delivered and all

standards and terms used herein shall be prepared, delivered and used without regard to the underlying Accounting Change.

Section 4.03. *Negative Covenants of Superior and Originators.* Each of Superior and each Originator covenants and agrees that, without the prior written consent of Buyer and the Administrative Agent, from and after the Closing Date and until the Termination Date:

(a) *Sale of Stock and Assets.* No member of the Parent Group shall sell, transfer, convey, assign (by operation of law or otherwise) or otherwise dispose of, or assign any right to receive income in respect of, any of its properties or other assets, including capital Stock, any Transferred Receivable or Contract therefor, or any of its rights with respect to any Lockbox or Lockbox Account, except sales, transfers, conveyances, assignments or dispositions permitted pursuant to Section 8.02 of the Credit Agreement as in effect on the Closing Date.

(b) *Liens.* No Originator shall create, incur, assume or permit to exist any Adverse Claim on or with respect to its Receivables (whether now owned or hereafter acquired) except for Permitted Encumbrances that do not attach to Transferred Receivables. No member of the Parent Group shall create, incur, assume or permit to exist any Lien upon any of its property or receivables whether now owned or hereafter acquired, except for (i) Liens permitted pursuant to Section 8.03 of the Credit Agreement as in effect as of the Closing Date and (ii) Liens created pursuant to the Credit Agreement or any credit facility effecting a refinancing of the Debt incurred pursuant to the Credit Agreement; *provided*, that any such credit facility expressly excludes all Receivables from any such Lien and the terms and conditions of any such credit facility are not otherwise inconsistent with the terms and conditions of this Agreement or any other Related Document (but in any event which terms and conditions are consistent

with the provisions of the Credit Agreement relating to the transactions contemplated by this Agreement and the other Related Documents).

(c) *Modifications of Receivables or Contracts.* No Originator shall extend, amend, forgive, discharge, compromise, cancel or otherwise modify the terms of any Transferred Receivable, or amend, modify or waive any term or condition of any Contract therefor.

(d) *Sale Characterization.* None of Superior or any Originator shall (and shall cause each member of the Parent Group not to) make statements or disclosures or prepare any financial statements for any purpose, including for federal income tax, reporting or accounting purposes, that shall account for the transactions contemplated by this Agreement in any manner other than with respect to the Sale of each Sold Receivable originated or acquired by it, as a true sale or absolute assignment of its full right, title and ownership interest in such Transferred Receivable to Buyer and with respect to the Transfer of each Contributed Receivable originated or acquired by it, as a contribution to the capital of Buyer.

(e) *Capital Structure and Business.* None of Superior or any Originator shall (and shall cause each member of the Parent Group not to) (i) make any changes in any of its business objectives, purposes or operations that could reasonably be expected to have or result in a Material Adverse Effect, (ii) other than in connection with the transaction described on Schedule 2.02 to the Funding Agreement, make any change in its capital structure as described on *Schedule 4.01(h)*, including the issuance or repurchase of any shares of Stock, warrants or other securities convertible into Stock or any revision of the terms of its outstanding Stock or (iii) amend, supplement or otherwise modify its certificate or articles of incorporation, bylaws, limited liability company agreement and other organizational documents. No member of the Parent Group shall engage in any business other than the businesses currently engaged in by it and those incidental thereto. No Originator shall change the type of entity it is, its jurisdiction of organization or its organizational identification number, if any, issued by its state of organization, except upon 30 days' prior written notice to Buyer and the Administrative Agent, and with respect

to which jurisdiction all action requested by Buyer or the Administrative Agent pursuant to *Section 7.13* shall have been taken with respect to the Transferred Receivables.

(f) *Actions Affecting Rights.* Neither Superior nor any Originator shall (i) take any action, or fail to take any action, if such action or failure to take action may interfere with the enforcement of any rights hereunder or under the other Related Documents, including rights with respect to the Transferred Receivables; or (ii) fail to pay any Charge, fee or other obligation of Superior or such Originator with respect to the Transferred Receivables, or fail to defend any action, if such failure to pay or defend may adversely affect the priority or enforceability of the perfected title of Buyer to and the sole record and beneficial ownership interest of Buyer in the Transferred Receivables or, prior to their Transfer hereunder, such Originator's right, title or interest therein.

(g) *ERISA.* Neither Superior nor any Originator shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur an event that could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA or cause or permit to occur an ERISA Event.

(h) *Change to Credit and Collection Policies.* Neither Superior nor any Originator shall fail to comply with in any material respect, and no change, amendment, modification or waiver shall be made to, the Credit and Collection Policies without the prior written consent of Buyer and the Administrative Agent.

(i) *Adverse Tax Consequences.* No member of the Parent Group shall take or permit to be taken any action (other than with respect to actions taken or to be taken solely by a Governmental Authority), or fail or neglect to perform, keep or observe any of its obligations hereunder or under the other Related Documents, that would have the effect directly or indirectly of subjecting any payment to Buyer, or any Lender who are residents of the United States of America to withholding taxation.

(j) *No Proceedings.* From and after the Effective Date and until the date one year plus one day following the date on which the Funding Agreement has been terminated and all amounts owing by Buyer thereunder have been indefeasibly paid in full in cash, no member of the Parent Group shall, directly or indirectly, institute or cause to be instituted against Buyer any proceeding of the type referred to in *Sections 9.01(d)* and *9.01(e)* of the Funding Agreement.

(k) *Mergers, Acquisitions, Sales, etc.* Other than (1) in connection with the transaction described on Schedule 2.02 to the Funding Agreement and (2) as permitted pursuant to Section 8.02 of the Credit Agreement, no member of the Parent Group shall (i) be a party to any merger or consolidation, or directly or indirectly purchase or otherwise acquire all or substantially all of the assets or any stock of any class of, or any partnership or joint venture interest in, any other Person, or otherwise create or acquire a Subsidiary, or (ii) directly or indirectly sell, transfer, assign, convey or lease whether in one or a series of transactions, all or substantially all of its assets other than pursuant hereto, or permit any Subsidiary to do any of the foregoing, except for any such merger or consolidation, sale, transfer, conveyance, lease or assignment of or by any majority-owned Subsidiary into such Person or into, with or to any other majority-owned Subsidiary and any such purchase or other acquisition by such Person or any majority-owned Subsidiary of the assets or stock of any majority-owned Subsidiary.

(l) *Indebtedness.* No member of the Parent Group shall create, incur, assume or permit to exist any Debt, except (i) Debt of such Person to any Affected Party, Buyer Indemnified Person or any other Person expressly permitted by this Agreement or any other Related Document, and (ii) other Debt permitted pursuant to Section 8.04 of the Credit Agreement as in effect as of the Closing Date.

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(m) *Modification to Credit Agreement.* Superior will not agree to any amendment, modification or waiver to any provision of the Credit Agreement which is adverse to the interests of the Administrative Agent or any Lender, without the prior written consent of the Administrative Agent; *provided, however*, that if Deutsche Bank Trust Company Americas does not have the right to consent to any amendment, modification or waiver of any Related Document, then the Administrative Agent's prior written consent to any amendment, modification or waiver to the Credit Agreement would not have to be obtained.

(n) *Commingling.* No Originator shall (and each Originator shall cause each other member of the Parent Group not to) deposit or permit the deposit of any funds that do not constitute Collections of Transferred Receivables into any Lockbox or Lockbox Account. If such funds are nonetheless deposited into a Lockbox or Lockbox Account and such Originator so notifies Buyer, Buyer shall notify the Administrative Agent to promptly remit any such amounts to the applicable Originator.

(o) *Purchases of Receivables.* No Originator or Superior shall, directly or indirectly, purchase any accounts receivable from any Person without the express written consent of the Administrative Agent.

Section 4.04. *Breach of Representations, Warranties or Covenants.* Upon discovery by Superior, any Originator or Buyer of any breach of any (a) representation, warranty or covenant relating to the absence of Dilution Factors, or (b) representation, warranty or covenant described in *Sections 4.01, 4.02* or *4.03*, the party discovering the same shall give prompt written notice thereof to the other parties hereto. The Originator that breached such representation, warranty or covenant may, at any time on any Business Day, or shall, if requested by notice from Buyer, on the first Business Day following receipt of such notice, either (a) repurchase the affected Transferred Receivable from Buyer for cash, (b) transfer ownership of a new Eligible Receivable or new Eligible Receivables to Buyer on such Business Day, or (c) in the case of the Member, make a capital contribution in cash to Buyer by remitting the amount of such capital contribution to the Collection Account in accordance with the terms of the Funding Agreement, in each case in an amount (the "*Rejected Amount*") equal to the Billed Amount of such Transferred Receivable *minus* the sum of (i) Collections received in respect thereof plus (ii) the amount of any Dilution Factors taken into account in the calculation of the original Sale Price thereof. Each Originator shall ensure that no Collections or other proceeds with respect to a Transferred Receivable so reconveyed to it are paid or deposited into any Lockbox Account.

ARTICLE V INDEMNIFICATION

Section 5.01. *Indemnification.* Without limiting any other rights that Buyer or any of its Stockholders, officers, directors, employees, attorneys, agents or representatives (each, a "*Buyer Indemnified Person*") may have hereunder or under applicable law, each Originator hereby agrees to indemnify and hold harmless each Buyer Indemnified Person from and against any and all Indemnified Amounts that may be claimed or asserted against or incurred by any such Buyer Indemnified Person in connection with or arising out of the transactions contemplated under this Agreement or under any other Related Document, any actions or failures to act in connection therewith, including any and all reasonable legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Related Documents, or in respect of any Transferred Receivable or any Contract therefor or the use by such Originator of the Sale Price therefor; *provided*, that no Originator shall be liable for any indemnification to a Buyer Indemnified Person to the extent that any such Indemnified Amounts (a) result from such Buyer Indemnified Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction, or (b) constitutes recourse for

uncollectible or uncollected Transferred Receivables due to the failure (without cause or justification) or inability on the part of the related Obligor to perform its obligations thereunder or the occurrence of any event of bankruptcy with respect to such Obligor. Subject to *clauses (a) and (b)* of the proviso in the immediately preceding sentence, but otherwise without limiting the generality of the foregoing, each Originator shall pay on demand to each Buyer Indemnified Person any and all Indemnified Amounts relating to or resulting from:

(i) reliance on any representation or warranty made or deemed made by such Originator (or any of its officers) under or in connection with this Agreement or any other Related Document or on any other information delivered by such Originator pursuant hereto or thereto that shall have been incorrect when made or deemed made or delivered;

(ii) the failure by such Originator to comply with any term, provision or covenant contained in this Agreement, any other Related Document or any agreement executed in connection herewith or therewith, any applicable law, rule or regulation with respect to any Transferred Receivable or Contract therefor, or the nonconformity of any Transferred Receivable or the Contract therefor with any such applicable law, rule or regulation;

(iii) the failure to vest and maintain vested in Buyer, or to Transfer to Buyer, valid and properly perfected title to and sole record and beneficial ownership of the Receivables that constitute Transferred Receivables, together with all Collections in respect thereof, free and clear of any Adverse Claim;

(iv) any dispute, claim, offset or defense of any Obligor (other than its discharge in bankruptcy) to the payment of any Receivable that is the subject of a Transfer hereunder (including a defense based on such Receivable or the Contract therefor not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms (other than as a result of a discharge in bankruptcy), or any other claim resulting from the sale of the merchandise or services giving rise to such Receivable or the furnishing or failure to furnish such merchandise or services or relating to collection activities with respect to such Receivable (if such collection activities were performed by Superior, any Originator or any Affiliate thereof acting as the Servicer or a Sub-Servicer)), except to the extent that such dispute, claim, offset or defense results solely from any action or inaction on the part of Buyer;

(v) any products liability claim or other claim arising out of or in connection with merchandise, insurance or services that is the subject of any Contract;

(vi) the commingling of Collections with respect to Transferred Receivables by any Originator at any time with its other funds or the funds of any other Person;

(vii) any failure by such Originator to cause the filing of, or any delay in filing, financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or any other applicable laws with respect to any Receivable that is the subject of a Transfer hereunder to the extent that such filing is necessary to maintain the perfection and priority of the Buyer in such Receivable, whether at the time of any such Transfer or at any subsequent time;

(viii) any failure by any Originator to perform, keep or observe any of their respective duties or obligations hereunder, under any other Related Document or under any Contract related to a Transferred Receivable, including the commingling of Collections with respect to Transferred Receivables by any Originator at any time with the funds of any other Person;

(ix) any investigation, Litigation or proceeding related to this Agreement or the use of the Sale Price obtained in connection with any Sale or the ownership of Receivables or Collections with respect thereto or in respect of any Receivable or Contract, except to the extent any such investigation, Litigation or proceeding relates to a matter involving a Buyer Indemnified Person for

which neither such Originator nor any of its Affiliates is at fault, as finally determined by a court of competent jurisdiction; or

(x) any claim brought by any Person other than a Buyer Indemnified Person arising from any activity by such Originator or any of its Affiliates in servicing, administering or collecting any Transferred Receivables.

**ARTICLE VI
RESERVED**

**ARTICLE VII
MISCELLANEOUS**

Section 7.01. *Notices.* Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this *Section 7.01*), (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number set forth below in this *Section 7.01* or to such other address (or facsimile number) as may be substituted by notice given as herein provided:

Each Originator: c/o Superior Telecommunications Inc.
120 North Interstate Parkway
Suite 300
Atlanta, Georgia 30339
Attention: Chief Financial Officer
Facsimile No.: (770) 303-8892

Buyer: Superior Essex Funding LLC
1403 Foulk Road
Suite 106-J
Wilmington, Delaware 19803
Attention: Craig Badyna
Facsimile No.: (302) 651-8423

Superior: Superior Telecommunications Inc.
150 North Interstate Parkway
Suite 300

provided, that each such declaration or other communication shall be deemed to have been validly delivered to the Administrative Agent under this Agreement upon delivery to the Administrative Agent in accordance with the terms of the Funding Agreement. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering

copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than Buyer) designated in any written communication provided hereunder to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication. Notwithstanding the foregoing, whenever it is provided herein that a notice is to be given to any other party hereto by a specific time, such notice shall only be effective if actually received by such party prior to such time, and if such notice is received after such time or on a day other than a Business Day, such notice shall only be effective on the immediately succeeding Business Day.

Section 7.02. *No Waiver; Remedies.* Buyer's failure, at any time or times, to require strict performance by the Originators of any provision of this Agreement or any Receivables Assignment shall not waive, affect or diminish any right of Buyer thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of any breach or default hereunder shall not suspend, waive or affect any other breach or default whether the same is prior or subsequent thereto and whether the same or of a different type. None of the undertakings, agreements, warranties, covenants and representations of any Originator contained in this Agreement or any Receivables Assignment, and no breach or default by any Originator hereunder or thereunder, shall be deemed to have been suspended or waived by Buyer unless such waiver or suspension is by an instrument in writing signed by an officer of or other duly authorized signatory of Buyer and directed to such Originator specifying such suspension or waiver. Buyer's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that Buyer may have under any other agreement, including the other Related Documents, by operation of law or otherwise. Recourse to the Receivables shall not be required.

Section 7.03. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of each Originator and Buyer and their respective successors and permitted assigns, except as otherwise provided herein. No Originator may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder without the prior express written consent of Buyer, the Lenders and the Administrative Agent. Any such purported assignment, transfer, hypothecation or other conveyance by any Originator without the prior express written consent of Buyer, the Lenders and the Administrative Agent shall be void. Each Originator acknowledges that, to the extent permitted under the Funding Agreement, Buyer may assign its rights granted hereunder, including the benefit of any indemnities under *Article V*, and upon such assignment, such assignee shall have, to the extent of such assignment, all rights of Buyer hereunder and, to the extent permitted under the Funding Agreement, may in turn assign such rights. Each Originator agrees that, upon any such assignment, such assignee may enforce directly, without joinder of Buyer, the rights set forth in this Agreement. All such assignees, including parties to the Funding Agreement in the case of any assignment to such parties, shall be third party beneficiaries of, and shall be entitled to enforce Buyer's rights and remedies under, this Agreement to the same extent as if they were parties hereto. Without limiting the generality of the foregoing, all notices to be provided to the Buyer hereunder shall be delivered to both the Buyer and the Administrative Agent under the Funding Agreement, and shall be effective only upon such delivery to the Administrative Agent in accordance with the terms of the Funding Agreement. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Originator and Buyer with respect to the transactions contemplated hereby and, except for the Lenders and the Administrative Agent, no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement.

Section 7.04. *Termination; Survival of Obligations.*

(a) This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms, and shall remain in full force and effect until the Termination Date.

(b) Except as otherwise expressly provided herein or in any other Related Document, no termination or cancellation (regardless of cause or procedure) of any commitment made by Buyer under this Agreement shall in any way affect or impair the obligations, duties and liabilities of any Originator or the rights of Buyer relating to any unpaid portion of any and all recourse and indemnity obligations of such Originator to Buyer, including those set forth in *Sections 4.04, 5.01 and 7.14*, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Related Document, all undertakings, agreements, covenants, warranties and representations of or binding upon each Originator, and all rights of Buyer hereunder, all as contained in the Related Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Termination Date; *provided*, that the rights and remedies pursuant to *Sections 4.04*, the indemnification and payment provisions of *Article V*, and the provisions of *Sections 4.03(j), 7.03, 7.12 and 7.14* shall be continuing and shall survive any termination of this Agreement.

Section 7.05. *Complete Agreement; Modification of Agreement.* This Agreement and the other Related Documents constitute the complete agreement between the parties with respect to the subject matter hereof and thereof, supersede all prior agreements and understandings relating to the subject matter hereof and thereof, and may not be modified, altered or amended except as set forth in *Section 7.06*.

Section 7.06. *Amendments and Waivers.* No amendment, modification, termination or waiver of any provision of this Agreement or any of the other Related Documents, or any consent to any departure by any Originator therefrom, shall in any event be effective unless the same shall be in writing and signed by each of the parties hereto and the Lenders and the Administrative Agent. No consent or demand in any case shall, in itself, entitle any party to any other consent or further notice or demand in similar or other circumstances.

Section 7.07. GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **THIS AGREEMENT AND EACH RELATED DOCUMENT (EXCEPT TO THE EXTENT THAT ANY RELATED DOCUMENT EXPRESSLY PROVIDES TO THE CONTRARY) AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES), EXCEPT TO THE EXTENT THAT THE PERFECTION, EFFECT OF PERFECTION OR PRIORITY OF THE INTERESTS OF THE BUYER IN THE RECEIVABLES OR REMEDIES HEREUNDER OR THEREUNDER, IN RESPECT THEREOF, ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF DELAWARE, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

(b) **EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN DELAWARE SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THEM PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT; PROVIDED, THAT EACH PARTY HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF DELAWARE; PROVIDED FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE BUYER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE RECEIVABLES OR ANY OTHER SECURITY FOR THE OBLIGATIONS OF THE**

ORIGINATORS ARISING HEREUNDER, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF BUYER. EACH PARTY HERETO SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR *FORUM NON CONVENIENS* AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN *SECTION 7.01* HEREOF AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH PARTY'S ACTUAL RECEIPT THEREOF OR THREE DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(c) BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 7.08. *Counterparts.* This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one agreement.

Section 7.09. *Severability.* Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 7.10. *Section Titles.* The section titles and table of contents contained in this Agreement are provided for ease of reference only and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

Section 7.11. *No Setoff.* Each Originator's obligations under this Agreement shall not be affected by any right of setoff, counterclaim, recoupment, defense or other right such Originator might have against Buyer, any Lender or the Administrative Agent, all of which rights are hereby expressly waived by such Originator.

Section 7.12. *Confidentiality.*

(a) Except to the extent otherwise required by applicable law, as required to be filed publicly with the Securities and Exchange Commission, or unless each Affected Party shall otherwise consent in writing, each Originator and Buyer agree to maintain the confidentiality of this Agreement (and all drafts hereof and documents ancillary hereto) in its communications with third parties other than any

Affected Party or any Buyer Indemnified Person and otherwise and not to disclose, deliver or otherwise make available to any third party (other than its directors, officers, employees, accountants or counsel) the original or any copy of all or any part of this Agreement (or any draft

hereof and documents ancillary hereto) except to an Affected Party, a Buyer Indemnified Person or any holder of Debt under the Credit Agreement.

(b) Each Originator agrees that it shall not (and shall not permit any of its Subsidiaries to) issue any news release or make any public announcement pertaining to the transactions contemplated by this Agreement and the Related Documents without the prior written consent of Buyer, the Administrative Agent and each Lender (which consent shall not be unreasonably withheld) unless such news release or public announcement is required by law, in which case such Originator shall consult with Buyer, the Administrative Agent and each Lender prior to the issuance of such news release or public announcement. Any Originator may, however, disclose the general terms of the transactions contemplated by this Agreement and the Related Documents to trade creditors, suppliers and other similarly-situated Persons so long as such disclosure is not in the form of a news release or public announcement.

(c) Except to the extent otherwise required by applicable law, or in connection with any judicial or administrative proceedings, as required to be filed publicly with the Securities Exchange Commission, or unless the Originators otherwise consent in writing, the Buyer agrees (i) to maintain the confidentiality of (A) this Agreement (and all drafts hereof and documents ancillary hereto) and (B) all other confidential proprietary information with respect to the Originators and their respective Affiliates and each of their respective businesses obtained by the Buyer in connection with the structuring, negotiation and execution of the transactions contemplated herein and in the other documents ancillary hereto, in each case, in its communications with third parties other than any Affected Party, any Originator or any party to whom information may be disclosed pursuant to *Section 14.05* of the Funding Agreement, and (ii) not to disclose, deliver, or otherwise make available to any third party (other than its directors, officers, employees, accountants or counsel) the original or any copy of all or any part of this Agreement (or any draft hereof and documents ancillary hereto) except to an Affected Party, any Originator or any holder of Debt under the Credit Agreement.

Section 7.13. *Further Assurances.*

(a) Each Originator shall, at its sole cost and expense, upon request of Buyer, any Lender or the Administrative Agent, promptly and duly execute and deliver any and all further instruments and documents and take such further actions that may be necessary or desirable or that Buyer, any Lender or the Administrative Agent may request to carry out more effectively the provisions and purposes of this Agreement or any other Related Document or to obtain the full benefits of this Agreement and of the rights and powers herein granted, including (i) using its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of Buyer of any Transferred Receivable held by such Originator or in which such Originator has any rights not heretofore assigned, and (ii) filing any financing or continuation statements under the UCC with respect to the ownership interests or Liens granted hereunder or under any other Related Document. Each Originator hereby authorizes Buyer, each Lender and the Administrative Agent to file any such financing or continuation statements without the signature of such Originator to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement or of any notice or financing statement covering the Transferred Receivables or any part thereof shall be sufficient as a notice or financing statement where permitted by law. If any amount payable under or in connection with any of the Transferred Receivables is or shall become evidenced by any instrument, such instrument, other than checks and notes received in the ordinary course of business, shall be duly endorsed in a manner satisfactory to Buyer immediately upon such Originator's receipt thereof and promptly delivered to Buyer.

(b) If any Originator fails to perform any agreement or obligation under this *Section 7.13*, Buyer, any Lender or the Administrative Agent may (but shall not be required to) itself perform, or cause performance of, such agreement or obligation, and the reasonable expenses of Buyer, such Lender or the Administrative Agent incurred in connection therewith shall be payable by such Originator upon demand of Buyer, such Lender or the Administrative Agent.

Section 7.14. *Fees and Expenses.* In addition to its indemnification obligations pursuant to *Article V*, each of Superior and each Originator agrees, jointly and severally, to pay on demand all costs and expenses incurred by Buyer or the Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Related Documents, including the reasonable fees and out-of-pocket expenses of Buyer's or Administrative Agent's counsel, advisors, consultants and auditors retained in connection with the

transactions contemplated thereby and advice in connection therewith, and each of Superior and each Originator agrees, jointly and severally, to pay all costs and expenses, if any (including reasonable attorneys' fees and expenses but excluding any costs of enforcement or collection of the Transferred Receivables), in connection with the enforcement of this Agreement and the other Related Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Receivables Sale Agreement to be executed by their respective duly authorized representatives, as of the date first above written.

SUPERIOR TELECOMMUNICATIONS INC.,
individually and as an Originator

By _____
Name _____
Title _____

SUPERIOR ESSEX FUNDING LLC, as Buyer

By _____
Name _____
Title _____

DNE SYSTEMS, INC., as an Originator

By _____
Name _____
Title _____

ESSEX GROUP, INC., as an Originator

By _____
Name _____
Title _____

ESSEX GROUP, INC., as an Originator

By _____
Name _____
Title _____

ESSEX GROUP MEXICO, INC., as an Originator

By _____
Name _____
Title _____

ACTIVE INDUSTRIES, INC., as an Originator

By _____
Name _____
Title _____

ESSEX CANADA, INC., as an Originator

By _____
Name _____
Title _____

SUPERIOR CABLE CORPORATION, as an Originator

By _____
Name _____
Title _____

DIAMOND WIRE & CABLE CO., as an Originator

By _____

Name _____

Title _____

DNE MANUFACTURING AND SERVICE COMPANY,
as an Originator

By _____

Name _____

Title _____

DNE TECHNOLOGIES, INC., as an Originator

By _____

Name _____

Title _____

EXHIBIT 2.01(a)

Form of

RECEIVABLES ASSIGNMENT

THIS RECEIVABLES ASSIGNMENT (the "*Receivables Assignment*") is entered into as of November 6, 2002, by and between [Name of Originator] (the "*Originator*") and SUPERIOR ESSEX FUNDING LLC ("*Buyer*").

1. We refer to that certain Receivables Sale Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "*Sale Agreement*") of even date herewith among the Originator, the other Originators party thereto, Superior Telecommunications Inc. and Buyer. All of the terms, covenants and conditions of the Sale Agreement are hereby made a part of this Receivables Assignment and are deemed incorporated herein in full. Unless otherwise defined herein, capitalized terms or matters of construction defined or established in the Sale Agreement shall be applied herein as defined or established therein.

2. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Originator hereby sells, or, in the event the Originator is a Member of Buyer, sells or contributes, to Buyer, without recourse, except as provided in Sections 4.04 of the Sale Agreement, all of the Originator's right, title and interest in, to and under all of its Receivables (including all Collections, Records and proceeds with respect thereto) existing as of the Closing Date and thereafter created or arising at any time until the Commitment Termination Date.

3. Subject to the terms and conditions of the Sale Agreement, the Originator hereby covenants and agrees to assign, sell or contribute, as applicable, execute and deliver, or cause to be assigned, sold or contributed, executed and delivered, and to do or make, or cause to be done or made, upon request of Buyer and at the Originator's expense, any and all agreements, instruments, papers, deeds, acts or things,

supplemental, confirmatory or otherwise, as may be reasonably required by Buyer for the purpose of or in connection with acquiring or more effectively vesting in Buyer or evidencing the vesting in Buyer of the property, rights, title and interests of the Originator sold or contributed hereunder or intended to be sold or contributed hereunder.

4. Wherever possible, each provision of this Receivables Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Receivables Assignment shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Receivables Assignment.

5. THIS RECEIVABLES ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

IN WITNESS WHEREOF, the parties have caused this Receivables Assignment to be executed by their respective officers thereunto duly authorized, as of the day and year first above written.

[NAME OF ORIGINATOR]

SUPERIOR ESSEX FUNDING LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT 2.01(c)

Form of

SUBORDINATED NOTE

[\$ _____]

November _____, 2002

FOR VALUE RECEIVED, the undersigned, SUPERIOR ESSEX FUNDING LLC, a Delaware limited liability company (the "*Borrower*"), hereby promises to pay to the order of [_____] a [_____] (the "*Subordinated Lender*"), or its assigns, at [ADDRESS], or at such other place as the holder of this Subordinated Note ("*Note*") may designate from time to time in writing, in lawful money of the United States of America and in immediately available funds, the principal amount of [_____] DOLLARS [\$_____], or, if less, the aggregate unpaid principal amount of all Subordinated Loans (as defined in the Sale Agreement referred to below) made to the Borrower, upon the earlier to occur of (i) Final Advance Date and (ii) the Termination Date (in each case, as defined in Annex X to the Sale Agreement referred to below), together with interest thereon from time to time from the Effective Date (as defined in the Sale Agreement referred to below) at the rate shown in The Wall Street Journal as the "Prime Rate" on such date (the "*Interest Rate*") on the unpaid principal amount of each Subordinated Loan for the period commencing on and including the date of such Subordinated Loan to but excluding the date such Subordinated Loan is paid in full.

The date, amount and interest rate of each Subordinated Loan made by the Subordinated Lender to the Borrower, and each payment made by or on behalf of the Borrower on account of the principal thereof, shall be recorded by the Subordinated Lender on its books and, prior to any transfer of this Note, endorsed by the Subordinated Lender on the schedule attached hereto or any continuation thereof. The books of the Subordinated Lender and such schedule shall be presumptive evidence of the amounts due and owing to the Subordinated Lender by the Borrower; *provided*, that any failure of the Subordinated Lender to record a notation in its books or on the schedule to this Note as aforesaid or any error in so recording shall not limit or otherwise affect the obligation of the Borrower to repay Subordinated Loans in accordance with their respective terms set forth herein.

All capitalized terms, unless otherwise defined herein, shall have the meanings assigned to them in the Receivables Sale Agreement of even date herewith (as the same may be subsequently amended, restated or otherwise modified, the "*Sale Agreement*") by and among the Borrower, the Subordinated Lender, the other Originators thereunder and Superior Telecommunications Inc. This Note is issued pursuant to the Sale Agreement, is one of the Subordinated Notes referred to therein. All of the terms, covenants and conditions of the Sale Agreement and all other instruments evidencing the indebtedness hereunder, including the other Related Documents, are hereby made a part of this Note and are deemed incorporated herein in full.

The Borrower may at any time and from time to time upon prior written notice to the Subordinated Lender voluntarily repay, in whole or in part, all Subordinated Loans made hereunder. Any amount so repaid may, subject to the terms and conditions hereof, be reborrowed hereunder; *provided*, that all repayments of Subordinated Loans or any portion thereof shall be made together with payment of all interest accrued on the amount repaid to (but excluding) the date of such repayment. Any such notice must be given in writing on or before the Business Day immediately preceding the day the proposed Subordinated Loan is to be repaid (which shall be a Business Day). Each such notice of repayment shall specify the amount of Subordinated Loans to be repaid and the repayment date thereof.

Interest shall be payable on the outstanding principal amount of this Note from time to time in arrears on the first Business Day of each calendar month. All computations of interest shall be made by the Subordinated Lender on the basis of a 365 day year, in each case for the actual number of days

occurring in the period for which such interest is payable. The Interest Rate shall be determined (i) on the first Business Day immediately prior to the Effective Date for calculation of the Interest Rate for the period from the Effective Date through the end of the first calendar month following the Effective Date, and (ii) as of the last Business Day of each month for use in calculating the interest that is payable for the following calendar month, and the Interest Rate so determined shall be utilized for such calendar month. Each determination by the Subordinated Lender of an interest rate hereunder shall be final, binding and conclusive on the Borrower (absent manifest error). The Borrower shall pay interest at the applicable Interest Rate on unpaid interest on any Subordinated Loan or any installment thereof, and on any other amount payable by the Borrower hereunder (to the extent permitted by law) that shall not be paid in full when due (whether at stated maturity, by acceleration or otherwise) for the period commencing on the due date thereof to (but excluding) the date the same is indefeasibly paid in full.

If any payment or prepayment on this Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the Interest Rate during such extension.

As set forth below, the indebtedness evidenced by this Subordinated Note is subordinate in right of payment to all "Borrower Obligations" (as defined in Annex X to the Sale Agreement) and all renewals, extensions, refinancings or refundings of any such obligations (whether for principal, interest (including but not limited to interest accruing after the filing of a petition initiating any bankruptcy, insolvency or receivership proceeding (each, an "*Insolvency Proceeding*") whether or not such interest is allowed in such Insolvency Proceeding), fees, indemnities, repurchase price, expenses or otherwise) (collectively, the "*Senior Obligations*"). The subordination provisions contained herein are for the direct benefit of, and may be enforced by, any holder of a Senior Obligation, and may not be terminated, amended or otherwise revoked until the Senior Obligations have been indefeasibly paid in full in cash and the Related Documents terminated in accordance with their respective terms. This Subordinated Note shall not be subject to any defense or any rights of set-off, including on account of any past or present debt. Upon the occurrence and during the continuance of any Termination Event or Incipient Termination Event, the Subordinated Lender shall not demand, accelerate, sue for, take, receive or accept from the Borrower, directly or indirectly, in cash or other property or by set-off or any other manner (including, without limitation, from or by way of collateral) any payment of or security for all or any part of the indebtedness under this Subordinated Note or exercise any remedies or take any action or proceeding to enforce the same. The Subordinated Lender hereby agrees that prior to the date that is one year and one day after all of the Senior Obligations have been indefeasibly paid in full in cash and the Related Documents terminated in accordance with their respective terms, the Subordinated Lender will not take any action to

institute any Insolvency Proceeding in respect of the Borrower or which would be reasonably likely to cause the Borrower to be subject to, or seek the protection of, any such Insolvency Proceeding.

If the Borrower becomes subject to any Insolvency Proceeding, then the holders of the Senior Obligations shall receive payment in full of all amounts due or to become due on or with respect to the Senior Obligations before the Subordinated Lender shall be entitled to receive any payment on account of this Subordinated Note. Accordingly, any payment or distribution of assets of the Borrower of any kind or character, whether in cash, securities or other property, in any applicable Insolvency Proceeding, that would otherwise be payable to or deliverable upon or with respect to any or all indebtedness under this Subordinated Note, is hereby assigned to and shall be paid or delivered by the person making such payment or delivery (whether a trustee in bankruptcy, a receiver, custodian or liquidating trustee or otherwise) directly to the Administrative Agent for application to, or as collateral for the payment of, the Senior Obligations until such Senior Obligations shall have been indefeasibly paid in full in cash.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Subordinated Lender for the use, forbearance or detention of money advanced hereunder exceed the highest rate of interest permissible under law (the "*Maximum Lawful Rate*"). In the event that a court of competent jurisdiction determines that Subordinated Lender has charged or received interest hereunder in excess of the Maximum Lawful Rate, the amount of interest payable hereunder shall be equal to the amount payable under the Maximum Lawful Rate; *provided*, that if at any time thereafter the amount of interest payable to Subordinated Lender hereunder is less than the amount payable under the Maximum Lawful Rate, the Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Subordinated Lender from the making of Subordinated Loans hereunder is equal to the total interest that Subordinated Lender would have received had the amount of interest payable to Subordinated Lender hereunder been (but for the operation of this paragraph) the amount of interest payable from the Effective Date. Thereafter, the amount of interest payable hereunder shall be the amount determined in accordance with the terms hereof unless and until the amount so calculated again exceeds the amount payable under the Maximum Lawful Rate, in which event this paragraph shall again apply. In no event shall the total interest received by Subordinated Lender pursuant to the terms hereof exceed the amount that Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate. In the event the amount payable under the Maximum Lawful Rate is calculated pursuant to this paragraph, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made. In the event that a court of competent jurisdiction, notwithstanding the provisions of this Note, shall make a final determination that Subordinated Lender has received interest hereunder in excess of the Maximum Lawful Rate, Subordinated Lender shall, to the extent permitted by applicable law, promptly apply such excess first to any interest due and not yet paid hereunder, then to the outstanding principal amount of the Subordinated Loans, then to fees and any other unpaid charges, and thereafter shall refund any excess to the Borrower or as a court of competent jurisdiction may otherwise order.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, the Borrower expressly waives presentment, demand, diligence, protest and all notices of any kind whatsoever with respect to this Note.

BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE BORROWER HERETO WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE

OR DEFEND ANY RIGHTS OR REMEDIES UNDER THIS NOTE, THE SALE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICT OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

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IN WITNESS WHEREOF, the Borrower has caused this Note to be signed and delivered by its duly authorized officer as of the date set forth above.

SUPERIOR ESSEX FUNDING LLC

By: _____

Name:

Title:

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SCHEDULE OF LOANS TO SUBORDINATED NOTE

EXHIBIT 2.03

Form of

PARENT AGREEMENT

THIS PARENT AGREEMENT ("*Agreement*"), is entered into as of November 6, 2002, by SUPERIOR TELECOMMUNICATIONS INC., a Delaware corporation ("*Superior*"), in favor of SUPERIOR ESSEX FUNDING LLC, a Delaware limited liability company ("*Funding*").

RECITALS

A. Funding, as purchaser, has entered into a Receivables Sale Agreement dated as of November 6, 2002 (as the same may from time to time be amended, restated, supplemented or otherwise modified, the "*Sale Agreement*"), with Superior, and the persons party thereto as "Originators."

B. Funding, as borrower, has entered into a Receivables Funding Agreement dated as of November 6, 2002 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Funding Agreement*") with Superior, as servicer (the "*Servicer*"), the financial institutions from time to time party thereto as lenders (the "*Lenders*") and General Electric Capital Corporation, as administrative agent (the "*Administrative Agent*"). Unless otherwise defined herein, capitalized terms or matters of construction defined or established Annex X to the Funding Agreement and the Sale Agreement shall be applied herein as defined or established therein.

C. It is a condition precedent to (i) the acquisition of Transferred Receivables by Funding under the Sale Agreement and (ii) the making of Advances to Funding pursuant to the Funding Agreement, that Superior, as owner, directly or indirectly, of at least 100% of the outstanding

Stock having ordinary voting power to elect the board of directors of each Originator and the Servicer, shall have executed and delivered this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Funding to make purchases under the Sale Agreement and the Lenders to make Advances under the Funding Agreement, Superior hereby agrees as follows:

Section 1. *Unconditional Undertaking.* Superior hereby unconditionally and irrevocably undertakes and agrees with and for the benefit of Funding and the Administrative Agent to cause the due and punctual performance and observance by each Originator and the Servicer and their respective successors and assigns (collectively, the "*Superior Entities*") of all of the terms, covenants, conditions, agreements and undertakings on the part of such Superior Entity to be performed or observed under the Sale Agreement or the Funding Agreement, as applicable, or any document delivered by such Superior Entity in connection with the Sale Agreement or the Funding Agreement, as applicable, in accordance with the terms thereof, including the punctual payment when due of all obligations of such Superior Entity now or hereafter existing under the Sale Agreement or the Funding Agreement, as applicable, whether for indemnification payments, fees, expenses or otherwise (such terms, covenants, conditions, agreements, undertakings and other obligations being the "*Guaranteed Obligations*"), and agrees to pay any and all reasonable and documented expenses (including reasonable and documented fees and expenses of attorneys, auditors and accountants) incurred by Funding or the Administrative Agent in enforcing any rights under this Agreement; *provided*, that the foregoing unconditional undertaking of Superior is not

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intended to, and shall not, constitute a guarantee of the collectibility or payment of the Transferred Receivables. Superior agrees that each of its Subsidiaries that becomes an "Originator" under the Sale Agreement shall be deemed to be an "Originator" for purposes of this Agreement. In the event that any Superior Entity shall fail in any manner whatsoever to perform or observe any of its Guaranteed Obligations when the same shall be required to be performed or observed under the Sale Agreement or the Funding Agreement, as applicable, or any such other Related Document, then Superior will itself duly and punctually perform or observe, or cause to be duly and punctually performed or observed, such Guaranteed Obligations, and, except to the extent required under the Sale Agreement or the Funding Agreement, as applicable, it shall not be a condition to the accrual of the obligation of Superior hereunder to perform or observe any Guaranteed Obligation (or to cause the same to be performed or observed) that Funding or the Administrative Agent, as applicable, shall have first made any request of or demand upon or given any notice to Superior or to any Superior Entity or their respective successors or assigns, or have instituted any action or proceeding against Superior or any Superior Entity or their respective successors or assigns in respect thereof.

Section 2. *Obligation Absolute.* Superior undertakes that the Guaranteed Obligations will be performed or paid strictly in accordance with the terms of the Sale Agreement or the Funding Agreement, as applicable, or any other Related Document delivered by an Superior Entity in connection with the Sale Agreement or the Funding Agreement, as applicable, regardless of any law, regulation or order applicable to Funding or the Administrative Agent now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Funding or the Administrative Agent with respect thereto. The obligations of Superior under this Agreement are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against Superior to enforce this Agreement, irrespective of whether any action is brought against any Superior Entity or whether any Superior Entity is joined in any such action or actions. The liability of Superior under this Agreement shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability of the Sale Agreement or the Funding Agreement, as applicable, or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Sale Agreement or the Funding Agreement, as applicable, or any other agreement or instrument relating thereto, including, without limitation, any increase in the Guaranteed Obligations resulting from additional purchases or contributions of Receivables or otherwise;

(c) any taking, exchange, release or non-perfection of any collateral, or any taking, release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any collateral for all or any of the Guaranteed Obligations or any other assets of any Superior Entity or any of its subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Superior Entity or any of its subsidiaries; or

(f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Superior Entity or a guarantor.

This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by

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Funding or the Administrative Agent upon the insolvency, bankruptcy or reorganization of any Superior Entity or otherwise, all as though payment had not been made.

Section 3. *Waivers.* Superior hereby waives promptness, diligence, notice of acceptance and, except to the extent required under the Sale Agreement or the Funding Agreement, as applicable, any other notice with respect to any of the Guaranteed Obligations and this Agreement and any requirement that Funding or the Administrative Agent protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Superior Entity or any other person or entity or any collateral.

Section 4. *Subrogation.* Superior agrees not to exercise any rights that it may acquire by way of subrogation against any Superior Entity and its property or any rights of indemnification, contribution and reimbursement from any Superior Entity and its property, in each case in connection with this Agreement and any payments made hereunder, until such time as the Guaranteed Obligations have been paid and performed in full and the Termination Date has occurred.

Section 5. *Separate Identity from Buyer.* Superior shall itself, and shall ensure that each of its Affiliates, at all times comply with the covenants and agreements of the Originators set forth in *Section 4.02(j)* of the Sale Agreement as if Superior and each of its Affiliates were identified therein. Superior is party to no agreements with Funding or the Administrative Agent other than pursuant to the Related Documents. Superior does not, nor at any time shall Superior, directly own any equity interests of any kind in Funding.

Section 6. *No Proceedings.* From and after the Closing Date and until the date one year plus one day following the date on which all Borrower Obligations have been indefeasibly paid in full in cash, Superior shall not, directly or indirectly, institute or cause to be instituted against Funding any proceeding of the type referred to in *Sections 9.01(d)* and *9.01(e)* of the Funding Agreement.

Section 7. *Amendments and Waivers.* No amendment or waiver of any provision of this Agreement, and no consent to any departure by Superior herefrom, shall in any event be effective unless the same shall be in writing and signed by Funding and the

Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 8. *Addresses for Notices.* All notices and other communications hereunder shall be sent in the manner provided in Section 7.01 of the Sale Agreement and Section 14.04 of the Funding Agreement, which provisions are incorporated herein by this reference as though fully set forth herein.

Section 9. *No Waiver; Remedies.* No failure on the part of Funding or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 10. *Continuing Agreement; Assignments under Sale Agreement.* This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Termination Date has occurred and the payment and performance in full of the Guaranteed Obligations and the payment of all other amounts payable under this Agreement, (b) be binding upon Superior, its successors and assigns, and (c) inure to the benefit of, and be enforceable by, Funding and the Administrative Agent and their respective successors, transferees and assigns. Without limiting the generality of the foregoing *clause (c)*, if Buyer assigns all or any of the Transferred Receivables, or any interest therein, the

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assignees shall thereupon become vested with all the benefits in respect thereof granted to Funding and the Administrative Agent herein or otherwise.

Section 11. *Severability.* Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 12. *GOVERNING LAW.* THIS AGREEMENT AND THE ORIGINATOR OBLIGATIONS ARISING HEREUNDER SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS THEREOF) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

IN WITNESS WHEREOF, Superior has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

SUPERIOR TELECOMMUNICATIONS INC.

By:

Name:

Title:

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EXECUTION COPY

ANNEX X

to

RECEIVABLES SALE AGREEMENT

and

RECEIVABLES FUNDING AGREEMENT

each dated as of

November 6, 2002

Definitions and Interpretation

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SECTION 1. *Definitions and Conventions.* Capitalized terms used in the Sale Agreement and the Funding Agreement shall have (unless otherwise provided elsewhere therein) the following respective meanings:

"*Accounting Changes*" shall mean, with respect to any Person, (a) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or any successor thereto or any agency with similar functions); (b) changes in accounting principles concurred in by such Person's certified public accountants; (c) purchase accounting adjustments under A.P.B. 16 or 17 and EITF 88-16, and the application of the accounting principles set forth in FASB 109, including the establishment of reserves pursuant thereto and any subsequent reversal (in whole or in part) of such reserves; and (d) the reversal of any reserves established as a result of purchase accounting adjustments.

"*Additional Amounts*" shall mean any amounts payable to any Affected Party under *Sections 2.09* or *2.10* of the Funding Agreement.

"*Additional Costs*" shall have the meaning assigned to it in *Section 2.09(b)* of the Funding Agreement.

"*Administrative Agent*" shall have the meaning set forth in the Preamble of the Funding Agreement.

"*Administrative Services Agreement*" shall mean that certain Administrative Services Agreement dated as of the date hereof between the Borrower and the Parent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Advance*" shall have the meaning assigned to it in *Section 2.01* of the Funding Agreement.

"*Advance Date*" shall mean each day on which any Advance is made.

"*Adverse Claim*" shall mean any claim of ownership or any Lien, other than any ownership interest or Lien created under the Sale Agreement or the Funding Agreement.

"*Affected Party*" shall mean each of the following Persons: each Lender, the Administrative Agent, the Depository and each Affiliate of the foregoing Persons.

"*Affiliate*" shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, or (c) each of such Person's officers, directors, joint venturers and partners. For the purposes of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"*Aggregate Commitment*" shall mean as to all Lenders, the aggregate commitment of all Lenders to make Advances, which aggregate commitment shall be One Hundred Sixty Million Dollars (\$160,000,000) on the Closing Date, as such amount may be adjusted, if at all, from time to time in accordance with the Funding Agreement.

"*ANICOM*" shall mean ANICOM, Inc.

"*Appendices*" shall mean, with respect to any Related Document, all exhibits, schedules, annexes and other attachments thereto, or expressly identified thereto.

"*Assignment Agreement*" shall mean an assignment agreement in the form of Exhibit 14.02 attached to the Funding Agreement.

"*Authorized Officer*" shall mean, with respect to any corporation or limited liability company, the Chairman or Vice-Chairman of the Board, the President, any Vice President, the General Counsel, the Secretary, the Treasurer, the Controller any Assistant Secretary, any Assistant Treasurer, any manager or managing member and each other officer of such corporation or limited liability company specifically authorized to sign agreements, instruments or other documents on behalf of such corporation or limited liability company in connection with the transactions contemplated by the Sale Agreement, the Funding Agreement and the other Related Documents.

"*Availability Block*" shall mean \$5,000,000.

"*Bankruptcy Code*" shall mean the provisions of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

"*Billed Amount*" shall mean, with respect to any Receivable, the amount billed on the Billing Date to the Obligor thereunder.

"*Billing Date*" shall mean, with respect to any Receivable, the date on which the invoice with respect thereto was generated.

"*Borrower*" shall mean Superior Essex Funding LLC, a Delaware limited liability company, in its capacity as Borrower under the Funding Agreement.

"*Borrower Account*" shall mean account number 00-424-794 maintained by the Borrower at the Borrower Account Bank, which account shall be subject to a blocked account agreement pursuant to which the Administrative Agent shall have control of such account.

"*Borrower Account Bank*" shall mean the bank or other financial institution at which the Borrower Account is maintained.

"*Borrower Account Collateral*" shall have the meaning assigned to it in *Section 8.01(c)* of the Funding Agreement.

"*Borrower Assigned Agreements*" shall have the meaning assigned to it in *Section 8.01(b)* of the Funding Agreement.

"*Borrower Collateral*" shall have the meaning assigned to it in *Section 8.01* of the Funding Agreement.

"*Borrower Obligations*" shall mean all loans, advances, debts, liabilities, indemnities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by the Borrower to any Affected Party under the Funding Agreement and any document or instrument delivered pursuant thereto, and all amendments, extensions or renewals thereof, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising thereunder, including the Outstanding Principal Amount, interest, Unused Facility Fees, amounts in reduction of Funding Excess, Successor Servicing Fees and Expenses, Additional Amounts and Indemnified Amounts. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against the Borrower in bankruptcy, whether or not allowed in such case or proceeding), fees, charges, expenses, reasonable attorneys' fees and any other sum chargeable to the Borrower under any of the foregoing, whether now existing or hereafter arising, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations that are paid to the extent all or any portion of such payment is avoided or

recovered directly or indirectly from any Lender or the Administrative Agent or any assignee of any Lender or the Administrative Agent as a preference, fraudulent transfer or otherwise.

"*Borrowing*" shall have the meaning assigned to it in Section 2.01(a) of the Funding Agreement.

"*Borrowing Base*" means, as of any date of determination, the amount equal to

the lesser of:

(a) the Maximum Facility Amount,

and

(b) an amount equal to the positive difference, if any, of:

(i) the product of (1) the Dynamic Advance Rate *multiplied* by (2) the Net Receivables Balance,

minus

(ii) the sum of (W) an amount equal to the Availability Block, *plus* (X) the Interest Reserve, *plus* (Y) \$250,000, *plus* (Z) such other reserves as the Administrative Agent may determine from time to time based upon its reasonable credit judgment;

in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"*Borrowing Base Certificate*" shall have the meaning assigned to it in Section 5.02(b) of the Funding Agreement.

"*Borrowing Request*" shall have the meaning assigned to it in Section 2.03(a) of the Funding Agreement.

"*Breakage Costs*" shall have the meaning assigned to it in Section 2.10 of the Funding Agreement.

"*Business Day*" shall mean any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York, the State of Georgia or, with respect to any remittances to be made by a Lockbox Account Bank or to any related Lockbox Account, in the jurisdiction(s) in which the Lockbox Account(s) maintained by such Lockbox Account Bank is located.

"*Buyer*" shall mean Superior Essex Funding LLC a Delaware limited liability company, in its capacity as Buyer under the Sale Agreement.

"*Buyer Indemnified Person*" shall have the meaning assigned to it in *Section 5.01* of the Sale Agreement.

"*Capital Lease*" shall mean, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

"*Capital Lease Obligation*" shall mean, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

"*Change of Control*" shall mean any event, transaction or occurrence as a result of which (a) any person or group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as amended) of 20% or more of the issued and outstanding shares of capital Stock of the Parent having the right to vote for the election of directors of the respective entity under ordinary circumstances; (b) during any twelve (12) consecutive calendar months ending after the Closing Date, individuals who at the beginning of such twelve-month period constituted the board of directors of the Parent (together with any new directors whose election by such board or whose nomination for election by the shareholders of the Parent was approved by a vote of a majority of the directors still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) shall cease for any reason to constitute a majority of the board of directors of the Parent then in office; (c) the Parent shall cease to own and control all of the economic and voting rights associated with all of the outstanding Stock of any Originator (other than as a result of the sale of the capital Stock of any Originator in accordance with the terms of the Funding Agreement) or, directly or indirectly, of the Borrower; (d) the Member shall cease to own directly or indirectly and control all of the economic and voting rights associated with the outstanding Stock of the Borrower; (e) the Parent has sold, transferred, conveyed, assigned or otherwise disposed of all or substantially all of the assets of the Parent; or (f) any Person or group acquires direct or indirect control of the Parent.

"*Charges*" shall mean (i) all federal, state, provincial, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to the PBGC at the time due and payable); (ii) all levies, assessments, charges, or claims of any governmental entity or any claims of statutory lienholders, the nonpayment of which could give rise by operation of law to a Lien on Borrower Collateral or any other property of the Borrower or any Originator and (iii) any such taxes, levies, assessment, charges or claims which constitute a lien or encumbrance on any property of the Borrower or any Originator.

"*Closing Date*" shall mean November 6, 2002.

"*Collection Account*" shall mean account number 50-232-854 with the Depository in the name of the Administrative Agent.

"*Collections*" shall mean, with respect to any Receivable, all cash collections and other proceeds of such Receivable (including late charges, fees and interest arising thereon, and all recoveries with respect thereto that have been written off as uncollectible).

"Commitment" shall mean as to any Lender, the aggregate commitment of such Lender to make Advances as set forth in the signature page to the Funding Agreement or in the most recent Assignment Agreement executed by such Lender, as such amount may be adjusted, if at all, from time to time in accordance with the Funding Agreement.

"Commitment Reduction Notice" shall have the meaning assigned to it in *Section 2.02(a)* of the Funding Agreement.

"Commitment Termination Date" shall mean the earliest of (a) the date so designated pursuant to *Section 9.01* of the Funding Agreement, (b) the Final Advance Date, and (c) the date of termination of the Maximum Facility Amount specified in a notice from the Borrower to the Lenders delivered pursuant to and in accordance with *Section 2.02(b)* of the Funding Agreement.

"Commitment Termination Notice" shall have the meaning assigned to it in *Section 2.02(b)* of the Funding Agreement.

"Concentration Percentage" shall mean, with respect to an Obligor as of any date of determination, the General Concentration Percentage or, if applicable, the Special Concentration Percentage for such Obligor at such date of determination.

"Contract" shall mean any agreement or invoice pursuant to, or under which, an Obligor shall be obligated to make payments with respect to any Receivable.

"Contributed Receivables" shall have the meaning assigned to it in *Section 2.01(d)* of the Sale Agreement.

"Credit Agreement" shall mean that certain Credit Agreement, dated as of November 27, 1998, among Superior/Essex Corp., Essex Group, Inc., the guarantors named therein, the lending institutions party thereto, Merrill Lynch & Co, as documentation agent, Fleet National Bank, as syndication agent and Deutsche Bank Trust Company Americas, as administrative agent and collateral agent, and as in effect on Closing Date together with, subject to Section 4.03(m) of the Sale Agreement, such amendments, restatements, supplements or modifications thereto, or any refinancings, replacements or refundings thereof.

"Credit and Collection Policies" shall mean the written credit, collection, customer relations and service policies of the Originators in effect on the Closing Date and attached as Exhibit A to the Funding Agreement, as the same may from time to time be amended, restated, supplemented or otherwise modified with the written consent of the Administrative Agent.

"Debt" of any Person shall mean, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services payment for which is deferred 90 days or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are not overdue by more than 90 days unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations, (f) all obligations of such Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all Guaranteed Indebtedness of such Person, (i) all indebtedness referred to in *clauses (a)* through *(i)* above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; *provided, however*, that in the event that the liability of such Person is non-recourse to such Person and is recourse only to specific assets of such Person and so long as no other Person has guaranteed such debt or otherwise provided support for such debt, for purposes of this definition, the amount of such debt shall not exceed the greater of the market value of such assets and the book value of such assets, (j) all "Indebtedness" as such

term is defined in the Credit Agreement, (k) all "Loans" and other obligations of the Parent under the Credit Agreement, and (l) the Borrower Obligations.

"*Defaulted Receivable*" shall mean any Receivable (a) with respect to which any payment, or part thereof, remains unpaid for more than 90 days after its Maturity Date, (b) with respect to which the Obligor thereunder has taken any action, or suffered any event to occur, of the type

described in *Sections 9.01(d)* or *9.01(e)* of the Funding Agreement or (c) that otherwise has been or should be written off in accordance with the Credit and Collection Policies.

"*Default Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Outstanding Balance of all Defaulted Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) as of the last day of the three Settlement Periods immediately preceding such date;

to

(b) the aggregate Outstanding Balance of all Transferred Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) as of the last day of the three Settlement Periods immediately preceding such date.

"*Delinquency Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Outstanding Balance of all Receivables with respect to which any payment, or part thereof, is between 61 and 90 days past due as of the last day of the three Settlement Periods immediately preceding such date

to

(b) the aggregate Outstanding Balance of all Transferred Receivables as of the last day of the three Settlement Periods immediately preceding such date.

"*Depository*" has the meaning given such term in *Section 6.01(b)(i)* of the Funding Agreement.

"*Dilution Factors*" shall mean, with respect to any Receivable (other than Receivables owing by Grand Eagle and ANICOM as of the Closing Date), any portion of which (a) was reduced, canceled or written-off as a result of (i) any credits, rebates, freight charges, cash discounts, volume discounts, cooperative advertising expenses, royalty payments, warranties, cost of parts required to be maintained by agreement (either express or implied), allowances for early payment, warehouse and other allowances, defective, rejected, returned or repossessed merchandise or services, or any failure by any Originator to deliver any merchandise or services or otherwise perform under the underlying Contract or invoice, or (ii) any setoff in respect of any claim by the Obligor thereof (whether such claim arises out of the same or a related transaction or an unrelated transaction) or (b) is subject to any specific dispute, offset, counterclaim or defense whatsoever (except discharge in bankruptcy of the Obligor thereof); *provided*, that, in respect of any Receivable the full amount of which is credited and then rebilled for a lesser amount but otherwise on the same terms, including the original invoice date, the "Dilution Factors" for such Receivable in connection for such "credit-rebills" shall be, if such credit and rebill occurs within one Business Day, zero, and otherwise the difference, if positive, between the original balance of such Receivable *minus* the balance of the re-billed Receivable.

"*Dilution Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Dilution Factors for all Transferred Receivables during the Settlement Period immediately preceding such date

to

(b) the aggregate Billed Amount of all Transferred Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) originated during the Settlement Period immediately preceding such date.

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"*Dilution Reserve Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) equal to the sum of (i) two times the average of the Dilution Ratios as of the last day of each of the three Settlement Periods immediately preceding such date, *plus* (ii) 5%.

"*Dilution Trigger Ratio*" shall mean, as of any date of determination, the average of the Dilution Ratios for the three most recently ended Settlement Periods.

"*Dollars*" or "\$" shall mean lawful currency of the United States of America.

"*Dynamic Advance Rate*" shall mean, as of any date of determination, the lesser of (i) 85% and (ii) a percentage equal to 100% minus the Dilution Reserve Ratio as of such date.

"*Effective Date*" shall have the meaning given to such term in *Section 3.01* of the Funding Agreement.

"*Election Notice*" shall have the meaning assigned to it in *Section 2.01(d)* of the Sale Agreement.

"*Eligible Receivable*" shall mean, as of any date of determination, a Transferred Receivable:

ARTICLE VIII (i) that is due and payable within 120 days of the Billing Date thereof and does not have cash on delivery or C.O.D. payment terms and (ii) with respect to which no payment or part thereof remains unpaid for more than 60 days after its Maturity Date or more than 121 days after its Billing Date;

ARTICLE IX that is not a liability of an Excluded Obligor or an Obligor with respect to which more than 50% of the aggregate Outstanding Balance of all Receivables owing by such Obligor are more than 60 days past due from the Maturity Date thereof or more than 121 days past due from the Billing Date thereof;

ARTICLE X that is not a liability of an Obligor organized under the laws of any jurisdiction outside of the United States of America (including the District of Columbia but otherwise excluding its territories and possessions), Canada or Mexico; *provided, however*, that if it is organized under the laws of Mexico, such Obligor's parent must be organized under the laws of a State in the United States of America;

ARTICLE XI that is denominated and payable in Dollars in the United States of America or Canadian dollars and is not represented by a note or other negotiable instrument or by chattel paper;

ARTICLE XII that is not subject to any right of rescission, dispute, offset (including, without limitation, as a result of customer promotional allowances, discounts, rebates, or claims for damages), hold back defense, adverse claim or other claim (with only the portion of any such Receivable subject to any such right of rescission, dispute, offset (including, without limitation, as a result of customer promotional allowances, discounts, rebates, or claims for damages), hold back defense, adverse claim or other claim being considered an Ineligible Receivable by virtue of this clause (e)), whether arising out of transactions concerning the Contract therefor or otherwise;

ARTICLE XIII with respect to which the Obligor thereunder is not: (i) bankrupt or insolvent, (ii) unable to make payment of its obligations when due, (iii) a debtor in a voluntary or involuntary bankruptcy proceeding, or (iv) the subject of a comparable receivership or insolvency proceeding; *provided, however*, that if a Receivable is not eligible as a result of this clause (f) but would otherwise constitute an Eligible Receivable hereunder, such Receivable shall be an Eligible Receivable so long as it arose post-petition and the Obligor thereof has designated the applicable Originator as a "critical vendor" and obtained the requisite court approval to pay the post-petition claims of such Originator on an administrative priority basis;

ARTICLE XIV that is not an Unapproved Receivable;

ARTICLE XV that does not represent "billed but not yet shipped" goods or merchandise, partially performed or unperformed services, consigned goods or "sale or return" goods and does not arise from a transaction for which any additional performance by the Originator thereof, or acceptance by or other act of the Obligor thereunder, including any required submission of documentation, remains to be performed as a condition to any payments on such Receivable or the enforceability of such Receivable under applicable law;

ARTICLE XVI as to which the representations and warranties of *Sections 4.01(v)(ii)* through *(iv)* of the Sale Agreement are true and correct in all respects as of the Transfer Date therefor;

ARTICLE XVII that is not the liability of an Obligor that has any claim of a material nature against or affecting the Originator thereof or the property of such Originator (with only that portion of Receivables owing by such Obligor equal to the amount of such claim being an Ineligible Receivable);

ARTICLE XVIII that was originated in accordance with and satisfies in all material respects all applicable requirements of the Credit and Collection Policies;

ARTICLE XIX that represents the genuine, legal, valid and binding obligation of the Obligor thereunder enforceable by the holder thereof in accordance with its terms;

ARTICLE XX that is entitled to be paid pursuant to the terms of the Contract therefor, has not been paid in full or been compromised, adjusted, extended, satisfied, subordinated, rescinded or modified (except for adjustments to the Outstanding Balance thereof to reflect Dilution Factors made in accordance with the Credit and Collection Policies);

ARTICLE XXI that does not contravene in any material respect any laws, rules or regulations applicable thereto (including laws, rules and regulations relating to usury, consumer protection, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) and with respect to which no party to the Contract therefor is in violation of any such law, rule or regulation that could reasonably be expected to have a material adverse effect on the collectibility, value or payment terms of such Receivable;

ARTICLE XXII with respect to which no proceedings or investigations are pending or threatened before any Governmental Authority (i) asserting the invalidity of such Receivable or the Contract therefor, (ii) asserting the bankruptcy or insolvency of the Obligor thereunder; *provided, however*, that if a Receivable is not eligible as a result of this clause (ii) but would otherwise constitute an Eligible Receivable hereunder, such Receivable shall be an Eligible Receivable so long as it arose post-petition and the Obligor thereof has designated the applicable Originator as a "critical vendor" and obtained the requisite court approval to pay the post-petition claims of such Originator on an administrative priority basis, (iii) seeking payment of such Receivable or payment and performance of such Contract or (iv) seeking any determination or ruling that could reasonably be expected to materially and adversely affect the validity or enforceability of such Receivable or such Contract;

ARTICLE XXIII (i) that is an "account" within the meaning of the UCC (or any other applicable legislation) of the jurisdictions in which the each of the Originators, the Parent and the Borrower are organized and in which chief executive offices of each of the Originators, the Parent and the Borrower are located and (ii) under the terms of the related Contract, the right to payment thereof may be freely assigned (or with respect to which, the prohibition on the assignment of rights to payment are made fully ineffective under applicable law);

ARTICLE XXIV that is payable solely and directly to an Originator and not to any other Person (including any shipper of the merchandise or goods that gave rise to such Receivable), except to

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the extent that payment thereof may be made to a Lockbox or otherwise as directed pursuant to *Article VI* of the Funding Agreement;

ARTICLE XXV with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any Governmental Authority required to be obtained, effected or given in connection with the creation of such Receivable or the Contract therefor have been duly obtained, effected or given and are in full force and effect;

ARTICLE XXVI that is created through the provision of merchandise, goods or services by the Originator thereof in the ordinary course of its business in a current transaction;

ARTICLE XXVII that is not the liability of an Obligor that, under the terms of the Credit and Collection Policies, is receiving or should receive merchandise, goods or services on a "cash on delivery" basis;

ARTICLE XXVIII that does not constitute a rebilled amount arising from a deduction taken by an Obligor with respect to a previously arising Receivable;

ARTICLE XXIX that is not subject to any Lien, right, claim, security interest or other interest of any other Person, other than Liens in favor of the Administrative Agent for the benefit of the Lenders;

ARTICLE I to the extent such Transferred Receivable represents sales tax such portion of such Receivable shall not be an Eligible Receivable;

ARTICLE XXX that does not represent the balance owed by an Obligor on a Receivable in respect of which the Obligor has made partial payment;

ARTICLE II with respect to which no check, draft or other item of payment was previously received that was returned unpaid or otherwise; and

ARTICLE XXXI that complies with such other criteria and requirements as the Administrative Agent, using its good faith and commercially reasonable credit judgment following a detailed analysis of the Transferred Receivables (or upon receipt of additional information with respect thereto), may from time to time specify to the Borrower or the Originator thereof upon not less than three (3) Business Days prior written notice; provided that, as long as no Termination Event has occurred, the Administrative Agent shall give advance written notice to the Seller with respect to such modification.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974 and any regulations promulgated thereunder.

"ERISA Affiliate" shall mean, with respect to any Originator, any trade or business (whether or not incorporated) that, together with such Originator, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

"ERISA Event" shall mean, with respect to any Originator or any ERISA Affiliate, the occurrence of one or more of the following events: (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan unless the 30-day notice requirement with respect thereto has been waived pursuant to the regulations under Section 4043 of ERISA; (b) the withdrawal of any Originator or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a "substantial employer," as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Originator or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by any Originator or ERISA Affiliate to make when due required contributions to a Multiemployer

Plan or Title IV Plan unless such failure is cured within 30 days; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 of ERISA; or (i) the loss of a Qualified Plan's qualification or tax exempt status.

"ESOP" shall mean a Plan that is intended to satisfy the requirements of Section 4975(e)(7) of the IRC.

"Event of Servicer Termination" shall have the meaning assigned to it in Section 9.02 of the Funding Agreement.

"Excess Concentration Amount" shall mean, with respect to any Obligor of a Receivable and as of any date of determination after giving effect to all Eligible Receivables to be transferred on such date, the amount by which the Outstanding Balance of Eligible Receivables owing by such Obligor exceeds (i) the Concentration Percentage for such Obligor *multiplied* by (ii) the Outstanding Balance of all Eligible Receivables on such date.

"Excluded Obligor" shall mean any Obligor (a) that is an Affiliate of any Originator, the Parent or the Borrower, (b) that is a Governmental Authority (unless approved by the Administrative Agent as a result of satisfactory compliance with all assignment of claims statutes and regulations applicable to such Governmental Authority's Receivables or such other agreements have been entered into which are satisfactory to the Administrative Agent in its absolute discretion), or (c) that is designated as an Excluded Obligor upon ten (10) Business Days' prior written notice from the Administrative Agent to the Borrower, the Servicer and the Parent.

"Existing Securitization" shall mean that certain Loan and Security Agreement dated as of April 29, 1998, as amended, between Essex Funding, Inc. and Three Rivers Funding Corporation.

"Federal Funds Rate" means, for any day, a floating rate equal to the weighted average of the rates on overnight federal funds transactions among members of the Federal Reserve System, as determined by the Administrative Agent.

"Federal Reserve Board" shall mean the Board of Governors of the Federal Reserve System.

"Fees" shall mean any and all fees payable to the Administrative Agent or any Lender pursuant to the Funding Agreement or any other Related Document.

"Fee Letter" shall mean that certain letter agreement dated the November 6, 2002 between the Parent and the Administrative Agent.

"Final Advance Date" shall mean February 27, 2004.

"*Funding Agreement*" shall mean that certain Receivables Funding Agreement dated as of November 6, 2002, among the Borrower, the Lenders, the Servicer and the Administrative Agent as amended, supplemented, restated or otherwise modified from time to time.

"*Funding Availability*" shall mean, as of any date of determination, the amount, if any, by which the Borrowing Base exceeds the Outstanding Principal Amount, in each case as of the end of the immediately preceding day.

"*Funding Excess*" shall mean, as of any date of determination, the extent to which the Outstanding Principal Amount exceeds the Borrowing Base, in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including

any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"*GAAP*" shall mean generally accepted accounting principles in the United States of America as in effect from time to time, consistently applied as such term is further defined in *Section 2(a)* of this *Annex X*.

"*GE Capital*" shall mean General Electric Capital Corporation, a Delaware corporation, and its successors and assigns.

"*General Concentration Percentage*" shall mean at any time of determination with respect to any Obligor, the percentage corresponding to such Obligor based upon the Obligor Rating of such Obligor by S&P and Moody's at the time of such determination, as set forth below; *provided*, that, (i) in the case of any split Obligor Rating between S&P and Moody's, the General Concentration Percentage for the lower Obligor Rating shall be used to determine the applicable General Concentration Percentage, and (ii) an Obligor may be deemed to have the long term unsecured debt rating of its parent so long as the Administrative Agent has received evidence that the debts of such Obligor are guaranteed by its parent:

Obligor Rating of Such Obligor	General Concentration Percentage
AA- and Aa3 or higher	10%
At least A and A2 but less than AA- and Aa3	8%
At least BBB and Baa2 but less than A and A2	6%
Less than BBB or Baa2 (or Obligors without an Obligor Rating from S&P or Moody's)	5%

"*General Trial Balance*" shall mean, with respect to any Originator and as of any date of determination, such Originator's accounts receivable trial balance (whether in the form of a computer printout, magnetic tape or diskette) as of such date, listing Obligors and the Receivables owing by such Obligors as of such date together with the aged Outstanding Balances of such Receivables, in form and substance reasonably satisfactory to the Borrower and the Administrative Agent.

"*Governmental Authority*" shall mean any nation or government, any state, province or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Grand Eagle*" shall mean Grand Eagle Corporation.

"*Guaranteed Indebtedness*" shall mean, as to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation ("*primary obligation*") of any other Person (the "*primary obligor*") in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at

any time shall be deemed to be the amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness; or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"*Incipient Servicer Termination Event*" shall mean any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Servicer Termination.

"*Incipient Termination Event*" shall mean any event that, with the passage of time or notice or both, would, unless cured or waived, become a Termination Event.

"*Indemnified Amounts*" shall mean, with respect to any Person, any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable expenses (including, but not limited to, reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal).

"*Indemnified Person*" shall have the meaning assigned to it in *Section 12.01(a)* of the Funding Agreement.

"*Indemnified Taxes*" shall have the meaning assigned to it in *Section 2.08(b)* of the Funding Agreement.

"*Index Rate*" shall mean, for any day, a floating rate equal to the sum of (a) the higher of (i) the rate publicly quoted from time to time by *The Wall Street Journal* as the "base rate on corporate loans at large U.S. money center commercial banks" (or, if *The Wall Street Journal* ceases quoting a base rate of the type described, the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled "Selected Interest Rates" as the Bank prime loan rate or its equivalent), and (ii) the Federal Funds Rate plus fifty (50) basis points per annum, plus (b) 0.75% per annum. Each change in any interest rate provided for in the Funding Agreement based upon the Index Rate shall take effect at the time of such change in the Index Rate.

"*Index Rate Advance*" shall mean an Advance or portion thereof bearing interest by reference to the Index Rate.

"*Ineligible Receivable*" shall mean any Receivable (or portion thereof) which fails to satisfy all of the requirements of an "Eligible Receivable" set forth in the definition thereof.

"*Interest Payment Date*" shall mean (a) as to any Index Rate Advance, the first Business Day of each month to occur while such Index Rate Advance is outstanding, (b) as to any LIBOR Rate Advance, the last day of the applicable LIBOR Period; *provided, further*, that, in addition to the foregoing, each of (x) the date upon which all of the Commitments have been terminated and the aggregate Outstanding Principal Amount has been paid in full and (y) the Commitment Termination Date shall be deemed to be an "Interest Payment Date" with respect to any interest which is then accrued under the Funding Agreement.

"Interest Reserve" shall mean, as of any date of determination, the greater of (1) the product of (a) the Index Rate as of such date, (b) the Outstanding Principal Amount as of such date and (c) a fraction, the numerator of which is equal to the higher of (i) 30 and (ii) the Receivable Collection Turnover as of such date, and the denominator of which is 360, and (2) \$1,000,000.

"Investment Company Act" shall mean the provisions of the Investment Company Act of 1940, 15 U.S.C. § § 80a *et seq.*, and any regulations promulgated thereunder.

"Investments" shall mean, with respect to any Borrower Account Collateral, the certificates, instruments, investment property or other investments in which amounts constituting such collateral are invested from time to time.

"IRC" shall mean the Internal Revenue Code of 1986 and any regulations promulgated thereunder.

"IRS" shall mean the Internal Revenue Service.

"Lender" shall mean each financial institution party to the Funding Agreement in the capacity as a lender together with the successors and assigns of any of the foregoing.

"LIBOR Business Day" shall mean a Business Day on which banks in the city of London are generally open for interbank or foreign exchange transactions.

"LIBOR Period" shall mean, with respect to any LIBOR Rate Advance, each period commencing on a LIBOR Business Day selected by the Borrower pursuant to the Funding Agreement and ending one, two or three months thereafter, as selected by Borrower's irrevocable notice to the Administrative Agent in a Borrowing Request as set forth in *Section 2.03(a)* of the Funding Agreement or a Notice of Continuation/Conversion as set forth in *Section 2.06(c)* of the Funding Agreement; *provided* that the foregoing provision relating to LIBOR Periods is subject to the following:

- (a) if any LIBOR Period would otherwise end on a day that is not a LIBOR Business Day, such LIBOR Period shall be extended to the next succeeding LIBOR Business Day unless the result of such extension would be to carry such LIBOR Period into another calendar month in which event such LIBOR Period shall end on the immediately preceding LIBOR Business Day;
- (b) any LIBOR Period that would otherwise extend beyond the Commitment Termination Date shall end two (2) LIBOR Business Days prior to such date;
- (c) any LIBOR Period pertaining to a LIBOR Rate Advance that begins on the last LIBOR Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such LIBOR Period would otherwise end) shall end on the last LIBOR Business Day of the calendar month during which such LIBOR Period would otherwise end;
- (d) Borrower shall select LIBOR Periods so as not to require a payment or prepayment of any LIBOR Rate Advance during a LIBOR Period for such Revolving Advance; and
- (e) Borrower shall select LIBOR Periods so that there shall be no more than ten (10) Borrowings consisting of LIBOR Rate Advances in existence at any one time.

"LIBOR Rate" shall mean for each LIBOR Period, a rate of interest determined by the Administrative Agent equal to the sum of 2.50% plus:

(a) the offered rate for deposits in United States Dollars for the applicable LIBOR Period which appears on Telerate Page 3750 as of 11:00 a.m., London time, on the second full LIBOR Business Day next preceding the first day of each LIBOR Period (unless the first day of such Settlement Period is not a Business Day, in which event the next succeeding Business Day will be used); *divided by*

(b) a number equal to 1.0 *minus* the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day which is two (2) LIBOR Business Days prior to the beginning of such LIBOR Period (including basic, supplemental, marginal and emergency reserves under any regulations of the Board of

Governors of the Federal Reserve system or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) which are required to be maintained by a member bank of the Federal Reserve System;

provided, that if the introduction of or any change in any law or regulation (or any change in the interpretation thereof) shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for a Lender to agree to make or to make or to continue to fund or maintain any Advances at the LIBOR Rate, then, unless that Lender is able to make or to continue to fund or to maintain such Advances at another branch or office of such Lender without, in such Lender's good faith opinion, adversely affecting it or its Outstanding Principal Amount or the income obtained therefrom, the LIBOR Rate shall in all such cases be equal to the Index Rate.

If such interest rates shall cease to be available from Telerate News Service, the LIBOR Rate shall be determined from such financial reporting service or other information as shall be mutually acceptable to the Administrative Agent and the Borrower.

"*LIBOR Rate Advance*" shall mean an Advance or portion thereof bearing interest by reference to the LIBOR Rate.

"*Lien*" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction).

"*Litigation*" shall mean, with respect to any Person, any action, claim, lawsuit, demand, investigation or proceeding pending or threatened against such Person before any court, board, commission, agency or instrumentality of any federal, state, local or foreign government or of any agency or subdivision thereof or before any arbitrator or panel of arbitrators.

"*Lockbox*" shall have the meaning assigned to it in *Section 6.01(a)(ii)* of the Funding Agreement.

"*Lockbox Account*" shall mean any deposit account established by or assigned to the Borrower for the deposit of Collections pursuant to and in accordance with *Section 6.01(a)* of the Funding Agreement.

"*Lockbox Account Agreement*" shall mean any agreement among an Originator, the Borrower, GE Capital, as Administrative Agent, and a Lockbox Account Bank with respect to a Lockbox and Lockbox Account that provides, among other things, that (a) all items of payment deposited in such Lockbox and Lockbox Account are held by such Lockbox Account Bank as custodian for GE Capital, as Administrative Agent, (b) such Lockbox Account Bank has no rights of setoff or recoupment or any other claim against such Lockbox Account, as the case may be, other than for payment of its service fees and other charges directly related to the administration of such Lockbox Account and for returned checks or other items of payment and (c) such Lockbox Account Bank agrees to forward all Collections received in such Lockbox Account to the Collection Account within one Business Day of receipt (other than with respect to Lockbox Accounts maintained in Canada, with respect to which Collections received therein must be

"*Lockbox Account Bank*" shall mean any bank or other financial institution at which one or more Lockbox Accounts are maintained.

"*Material Adverse Effect*" shall mean a material adverse effect on (a) the business, assets, liabilities, operations, prospects or financial or other condition of (i) any Originator or the Originators considered as a whole, (ii) the Borrower, (iii) the Servicer or (iv) the Parent and its Subsidiaries considered as a whole, (b) the ability of any Originator, the Borrower, the Parent or the Servicer to perform any of its obligations under the Related Documents in accordance with the terms thereof, (c) the validity or enforceability of any Related Document or the rights and remedies of the Borrower, the Lenders or the Administrative Agent under any Related Document, (d) the federal income tax attributes of the sale, contribution or pledge of the Transferred Receivables pursuant to any Related Document or (e) the Transferred Receivables, the Contracts therefor, the Borrower Collateral or the ownership interests or Liens of the Borrower or the Lenders or the Administrative Agent thereon or the priority of such interests or Liens.

"*Maturity Date*" shall mean, with respect to any Receivable, the due date for payment therefor specified in the Contract therefor, or, if no date is so specified, 30 days from the Billing Date.

"*Maximum Facility Amount*" shall mean \$160,000,000, as such amount may be reduced in accordance with *Section 2.02(a)* of the Funding Agreement.

"*Member*" shall have the meaning given to such term in the Recitals to the Funding Agreement.

"*Monthly Report*" shall have the meaning assigned to it in *paragraph (a)* of *Annex 5.02(a)* to the Funding Agreement.

"*Moody's*" shall mean Moody's Investors Service, Inc. or any successor thereto.

"*Multiemployer Plan*" shall mean a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA with respect to which any Originator or ERISA Affiliate is making, is obligated to make, or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

"*Net Receivables Balance*" means, as of any date of determination, the amount equal to:

(a) the Outstanding Balance of Eligible Receivables,

minus

(b) the sum of (i) the Excess Concentration Amount, *plus* (ii) the Specified Reserves;

in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"*Notice of Continuation/Conversion*" shall have the meaning assigned to such term in Section 2.06(c) of the Funding Agreement.

"*Obligor*" shall mean, with respect to any Receivable, the Person primarily obligated to make payments in respect thereof.

"*Obligor Rating*" shall mean, with respect to any Rating Agency for an Obligor, if available, the long term unsecured and unguaranteed debt rating of such Obligor by such Rating Agency.

"*Officer's Certificate*" shall mean, with respect to any Person, a certificate signed by an Authorized Officer of such Person.

"*Originator*" shall mean each of the Subsidiaries of Parent which is a party to the Sale Agreement and any other Person approved by the Administrative Agent in writing.

"*Outstanding Balance*" shall mean, with respect to any Receivable, as of any date of determination, the amount (which amount shall not be less than zero) equal to (a) the Billed Amount thereof, *minus* (b) all Collections received from the Obligor thereunder, *minus* (c) all discounts to, or any other modifications by, the Originator, the Borrower or the Servicer that reduce such Billed Amount; *provided*, that if the Administrative Agent or the Servicer makes a good faith determination that all payments by such Obligor with respect to such Billed Amount have been made, the Outstanding Balance shall be zero.

"*Outstanding Principal Amount*" shall mean, as of any date of determination, the amount equal to (a) the aggregate Advances made by the Lenders under the Funding Agreement on or before such date, *minus* (b) the aggregate amounts disbursed to any Lender in reduction of the principal of such Advances pursuant to the Funding Agreement on or before such date; *provided*, that references to the Outstanding Principal Amount of any Lender shall mean an amount equal to (x) the aggregate Advances made by such Lender pursuant to the Funding Agreement on or before such date, *minus* (b) the aggregate amounts disbursed to such Lender in reduction of the principal of such Advances pursuant to the Funding Agreement on or before such date.

"*Parent*" shall mean Superior Telecom Inc., a Delaware corporation.

"*Parent Agreement*" shall mean certain Parent Agreement dated as of November 6, 2002 between the Parent and the Administrative Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Parent Group*" shall mean the Parent and each of its Affiliates other than The Alpine Group, Inc. and the Borrower.

"*PBGC*" shall mean the Pension Benefit Guaranty Corporation.

"*Pension Plan*" shall mean a Plan described in Section 3(2) of ERISA.

"*Permitted Encumbrances*" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges or levies not yet due and payable; (b) pledges or deposits securing obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) pledges or deposits securing bids, tenders, government contracts, contracts (other than contracts for the payment of money) or leases to which any Originator, the Borrower or the Servicer is a party as lessee made in the ordinary course of business; (d) deposits securing statutory obligations of any Originator, the Borrower or the Servicer; (e) inchoate and unperfected workers', mechanics', suppliers' or similar Liens arising in the ordinary course of business; (f) carriers', warehousemen's or other similar possessory Liens arising in the ordinary course of business; (g) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which any Originator, the Borrower or the Servicer is a party; (h) any attachment or judgment Lien not constituting a Termination Event under *Section 9.01(f)* of the Funding Agreement; (i) licenses, leases or subleases granted to third Persons not interfering in any material respect with the business of Superior Telecom, the Parent, the Borrower, any Originator or any other Subsidiary of the Parent, (j) easements, zoning restrictions, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of Superior Telecom, the Parent, the Borrower, any Originator or any other Subsidiary of the Parent, (k) Liens arising as a result of the filing of precautionary UCC financing statements in connection with operating leases, (l) any interest or title of a licensor, lessor or sublessor under any license or lease, (m) Liens created in connection

security interests securing Debt representing the purchase price (or financing of the purchase price within 90 days after the applicable purchase) of assets acquired after the Closing Date; *provided* that (i) any such Liens attach only to the assets so purchased, (ii) the Debt secured by such Lien (including refinancings thereof) does not exceed 100% of the lesser of fair market value of such assets and the purchase price of such assets, in each case, at the time of the incurrence of such Debt and (iii) the Debt secured thereby is permitted pursuant to the terms of the Funding Agreement, (o) Liens arising as a result of the filing of precautionary UCC financing statements in connection with consigned goods, (p) Liens arising as a result of the pre-filing of UCC financing statements against DNE Systems, Inc. and its Subsidiaries by the lender or lenders financing the transaction described on Schedule 2.02 to the Funding Agreement so long as such Liens do not cover any Borrower Collateral, (q) Liens existing on the Closing Date and listed on *Schedule 4.03(b)* of the Sale Agreement or *Schedule 5.03(b)* of the Funding Agreement; and (r) presently existing or hereinafter created Liens in favor of the Buyer, the Borrower, the Lenders or the Administrative Agent or the Collateral Agent.

"*Permitted Investments*" shall mean any of the following:

- (a) obligations of, or guaranteed as to the full and timely payment of principal and interest by, the United States of America or obligations of any agency or instrumentality thereof if such obligations are backed by the full faith and credit of the United States of America, in each case with maturities of not more than 90 days from the date acquired;
- (b) repurchase agreements on obligations of the type specified in *clause (a)* of this definition; *provided*, that the short-term debt obligations of the party agreeing to repurchase are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's;
- (c) federal funds, certificates of deposit, time deposits and bankers' acceptances of any depository institution or trust company incorporated under the laws of the United States of America or any state, in each case with original maturities of not more than 90 days or, in the case of bankers' acceptances, original maturities of not more than 365 days; *provided*, that the short-term obligations of such depository institution or trust company are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's;
- (d) commercial paper of any corporation incorporated under the laws of the United States of America or any state thereof with original maturities of not more than 30 days that on the date of acquisition are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's; and
- (e) securities of money market funds rated at least Aam or the equivalent by S&P and P-1 or the equivalent by Moody's.

"*Person*" shall mean any individual, sole proprietorship, partnership, joint venture, unincorporated organization, trust, association, corporation (including a business trust), limited liability company, institution, public benefit corporation, joint stock company, Governmental Authority or any other entity of whatever nature.

"*Plan*" shall mean, at any time during the preceding five years, an "employee benefit plan," as defined in Section 3(3) of ERISA, that any Originator or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any Originator or ERISA Affiliate.

"*Prepayment Premium*" shall mean (I) with respect to any reduction of the Aggregate Commitment by the Borrower pursuant to Section 2.02(a) of the Funding Agreement, an amount equal to the product of (x) the amount by which the Borrower elects to reduce the Aggregate Commitment and (y) (i) 2%, if such reduction of the Aggregate Commitment occurs during the

first year following the Closing Date, (ii) 1% if such reduction of the Aggregate Commitment occurs during the second year following the Closing Date, and (iii) $\frac{1}{2}\%$, if such reduction in the Aggregate Commitment occurs during the third year following the Closing Date, and (II) in the event the Borrower terminates the Aggregate Commitment pursuant to Section 2.02(b) of the Funding Agreement or voluntarily causes a Termination Event to occur, an amount equal to the product of (a) the Maximum Facility Amount as of the date the Borrower delivers a Commitment Termination Notice in accordance with Section 2.02(b) of the Funding Agreement or as of the date such Termination Event occurs, as the case may be, and (b) (i) 2%, if the Aggregate Commitment is so terminated during the first year following the Closing Date; provided that the percentage set forth in this clause (i) shall be 1% if the Aggregate Commitment is terminated in connection with a debtor-in-possession financing, (ii) 1% if the Aggregate Commitment is so terminated or such Termination Event occurs during the second year following the Closing Date, and (iii) $\frac{1}{2}\%$, if the Aggregate Commitment is so terminated or such Termination Event occurs during the third year following the Closing Date.

"*Pro Rata Share*" shall mean with respect to all matters relating to any Lender, the percentage obtained by dividing (i) the Commitment of that Lender by (ii) the Aggregate Commitment, as such percentage may be adjusted by assignments permitted pursuant to Section 14.02 of the Funding Agreement.

"*Projections*" shall mean the Parent's forecasted consolidated: (a) balance sheets; (b) profit and loss statements; (c) cash flow statements; and (d) capitalization statements, all prepared on a Subsidiary-by-Subsidiary or division-by-division basis, if applicable, and otherwise consistent with the historical financial statements of the Parent, together with appropriate supporting details and a statement of underlying assumptions.

"*Qualified Plan*" shall mean a Pension Plan that is intended to be tax-qualified under Section 401(a) of the IRC.

"*Rating Agency*" shall mean Moody's or S&P.

"*Ratios*" shall mean, collectively, the Default Ratio, the Delinquency Ratio, the Dilution Ratio, the Receivables Collection Turnover and the Dilution Reserve Ratio.

"*Receivable*" shall mean, with respect to any Obligor:

(a) indebtedness of such Obligor (whether constituting an account, chattel paper, document, instrument or general intangible (under which the Obligor's principal obligation is a monetary obligation)) arising from the provision of merchandise, goods or services by an Originator, or other Person approved by the Administrative Agent in its sole discretion, to such Obligor, including the right to payment of any interest or finance charges and other obligations of such Obligor with respect thereto;

(b) all Liens and property subject thereto from time to time securing or purporting to secure any such indebtedness of such Obligor;

(c) all guaranties, indemnities and warranties, insurance policies, financing statements and other agreements or arrangements of whatever character from time to time supporting or securing payment of any such indebtedness;

(d) all right, title and interest of any Originator, the Parent or the Borrower in and to any goods (including returned, repossessed or foreclosed goods) the sale of which gave rise to a Receivable; *provided*, that "Receivable" will not include

- (e) all Collections with respect to any of the foregoing;
- (f) all Records with respect to any of the foregoing; and
- (g) all proceeds with respect to any of the foregoing.

"*Receivables Assignment*" shall have the meaning assigned to such term in Section 2.01(a) of the Sale Agreement.

"*Receivables Collection Turnover*" shall mean, as of any date of determination, the amount (expressed in days) equal to:

(a) a fraction, (i) the numerator of which is equal to the aggregate Outstanding Balance of Transferred Receivables on the first day of the three (3) Settlement Periods immediately preceding such date and (ii) the denominator of which is equal to aggregate Collections received during such three (3) Settlement Periods with respect to all Transferred Receivables,

multiplied by

- (b) the average number of days contained in such three (3) Settlement Periods.

"*Records*" shall mean all Contracts and other documents, books, records and other information (including customer lists, credit files, computer programs, tapes, disks, data processing software and related property and rights) prepared and maintained by any Originator, the Servicer, any Sub-Servicer or the Borrower with respect to the Receivables and the Obligors thereunder and the Borrower Collateral.

"*Regulatory Change*" shall mean any change after the Closing Date in any federal, state or foreign law or regulation (including Regulation D of the Federal Reserve Board) or the adoption or making after such date of any interpretation, directive or request under any federal, state or foreign law or regulation (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof that, in each case, is applicable to any Affected Party.

"*Rejected Amount*" shall have the meaning assigned to it in Section 4.04 of the Sale Agreement.

"*Related Documents*" shall mean each Lockbox Account Agreement, the Sale Agreement, the Funding Agreement, each Receivables Assignment, the Subordinated Notes, the Parent Agreement and all other agreements, instruments, documents and certificates identified in the Schedule of Documents and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Person, or any employee of any Person, and delivered in connection with the Sale Agreement, the Funding Agreement or the transactions contemplated thereby. Any reference in the Sale Agreement, the Funding Agreement or any other Related Document to a Related Document shall include all Appendices thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to such Related Document as the same may be in effect at any and all times such reference becomes operative.

"*Repayment Notice*" shall have the meaning assigned to it in Section 2.03(h) of the Funding Agreement.

"*Reportable Event*" shall mean any of the events set forth in Section 4043(c) of ERISA.

"*Requisite Lenders*" shall mean (a) Lenders having more than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Aggregate Commitment, or (b) if the Commitments have been terminated, Lenders having more than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) aggregate Outstanding Principal Amount.

"*Retiree Welfare Plan*" shall mean, at any time, a Welfare Plan that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant's termination of employment, other than continuation coverage provided pursuant to Section 4980B of the IRC and at the sole expense of the participant or the beneficiary of the participant.

"*Revolving Note*" shall have the meaning assigned to such term in Section 2.01(b) of the Funding Agreement.

"*Revolving Period*" shall mean the period from and including the Closing Date through and including the day immediately preceding the Commitment Termination Date.

"*S&P*" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"*Sale*" shall mean with respect to a sale of receivables under the Sale Agreement, a sale of Receivables by an Originator to the Borrower in accordance with the terms of the Sale Agreement.

"*Sale Agreement*" shall mean that certain Receivables Sale Agreement dated as of November 6, 2002, among each Originator, the Parent and the Borrower, as the Buyer thereunder, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

"*Sale Price*" shall mean, with respect to any Sale of Sold Receivables, a price calculated by the Borrower and approved from time to time by the Administrative Agent equal to:

- (a) the Outstanding Balance of such Sold Receivables, *minus*
- (b) the expected costs to be incurred by the Borrower in financing the purchase of such Sold Receivables until the Outstanding Balance of such Sold Receivables is paid in full, *minus*
- (c) the portion of such Sold Receivables that are reasonably expected by such Originator on the Transfer Date to become Defaulted Receivables by reason of *clause (b)* of the definition thereof, *minus*
- (d) the portion of such Sold Receivables that are reasonably expected by such Originator on the Transfer Date to be reduced by means other than the receipt of Collections thereon or pursuant to *clause (c)* above, *minus*
- (e) amounts expected to be paid to the Servicer with respect to the servicing, administration and collection of such Sold Receivables;

provided, that such calculations shall be determined based on the historical experience of (y) such Originator, with respect to the calculations required in each of *clauses (c)* and *(d)* above, and (z) the Borrower, with respect to the calculations required in *clauses (b)* and *(e)* above.

"*Schedule of Documents*" shall mean the schedule, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with the Sale Agreement, the Funding Agreement and the other Related Documents and the transactions contemplated thereunder, substantially in the form attached as *Annex Y* to the Funding Agreement and the Sale Agreement.

"*Securities Act*" shall mean the provisions of the Securities Act of 1933, 15 U.S.C. Sections 77a *et seq.*, and any regulations promulgated thereunder.

"*Securities Exchange Act*" shall mean the provisions of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a *et seq.*, and any regulations promulgated thereunder.

"*Servicer*" shall mean Superior Telecommunications Inc., a Delaware corporation, in its capacity as the Servicer under the Funding Agreement, or any other Person designated as a Successor Servicer in accordance with the terms of the Funding Agreement.

"*Servicer Termination Notice*" shall mean any notice by the Administrative Agent to the Servicer that (a) an Event of Servicer Termination has occurred and (b) the Servicer's appointment under the Funding Agreement has been terminated.

"*Servicing Fee*" shall mean, for any day within a Settlement Period, the amount equal to (a) (i) the Servicing Fee Rate *divided* by (ii) 360, *multiplied* by (b) the Outstanding Principal Amount on such day.

"*Servicing Fee Rate*" shall mean 1.00%.

"*Servicing Officer*" shall mean any officer of the Servicer involved in, or responsible for, the administration and servicing of the Transferred Receivables and whose name appears on any Officer's Certificate listing servicing officers furnished to the Administrative Agent by the Servicer, as such certificate may be amended from time to time.

"*Servicing Records*" shall mean all Records prepared and maintained by the Servicer with respect to the Transferred Receivables and the Obligor thereunder.

"*Settlement Date*" shall mean the tenth Business Day following the end of each Settlement Period.

"*Settlement Period*" shall mean (a) solely for purposes of determining the Ratios, (i) with respect to all Settlement Periods other than the final Settlement Period, each calendar month, whether occurring before or after the Closing Date, and (ii) with respect to the final Settlement Period, the period ending on the Termination Date and beginning with the first day of the calendar month in which the Termination Date occurs, and (b) for all other purposes, (i) with respect to the initial Settlement Period, the period from and including the Closing Date through and including the last day of the calendar month in which the Closing Date occurs, (ii) with respect to the final Settlement Period, the period ending on the Termination Date and beginning with the first day of the calendar month in which the Termination Date occurs, and (iii) with respect to all other Settlement Periods, each calendar month.

"*Sold Receivable*" shall have the meaning assigned to it in *Section 2.01(b)* of the Sale Agreement.

"*Special Concentration Percentage*" shall mean, with respect to any Obligor, that percentage, if any, designated by the Administrative Agent in its sole discretion with respect to such Obligor in *Annex Z* to the Funding Agreement or otherwise in a written notification to the Borrower (provided that the Administrative Agent retains the discretion to change or eliminate any such Special Concentration Percentage at any time).

"*Specified Reserves*" shall mean, at any time, the sum of (a) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables which are due and payable more than 90 days (but less than 121 days) after the Billing Date therefor, *over* fifteen percent (15%) of the aggregate Outstanding Balance of all Eligible Receivables, *plus* (b) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables the Obligor with respect thereto is organized under the laws of Canada or any province thereof, *over* five percent (5%) of the aggregate Outstanding Balance of all Eligible Receivables, *plus* (c) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables which are payable in Canadian dollars, *over* five percent (5%) of the

aggregate Outstanding Balance of all Eligible Receivables, *plus* (d) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables the Obligor with respect thereto is organized under the laws of Mexico, *over* \$1,000,000.

"*Stock*" shall mean all shares, options, warrants, member interests, general or limited partnership interests or other equivalents (regardless of how designated) of or in a corporation, limited liability company, partnership or equivalent entity whether voting or nonvoting, including

common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act).

"*Stockholder*" shall mean, with respect to any Person, each holder of Stock of such Person.

"*Subordinated Loan*" shall have the meaning given such term in *Section 2.01(c)* of Sale Agreement.

"*Subordinated Note*" shall have the meaning given such term in *Section 2.01(c)* of Sale Agreement.

"*Sub-Servicer*" shall mean any Person with whom the Servicer enters into a Sub-Servicing Agreement.

"*Sub-Servicing Agreement*" shall mean any written contract entered into between the Servicer and any Sub-Servicer pursuant to and in accordance with *Section 7.01* of the Funding Agreement relating to the servicing, administration or collection of the Transferred Receivables.

"*Subsidiary*" shall mean, with respect to any Person, any corporation or other entity (a) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such Person or (b) that is directly or indirectly controlled by such Person within the meaning of control under Section 15 of the Securities Act.

"*Successor Servicer*" shall have the meaning assigned to it in *Section 11.02* of the Funding Agreement.

"*Successor Servicing Fees and Expenses*" shall mean the fees and expenses payable to the Successor Servicer as agreed to by the Borrower, the Lenders and the Administrative Agent.

"*Superior*" shall mean Superior Telecommunications Inc., a Delaware corporation.

"*Termination Date*" shall mean the date on which (a) the Outstanding Principal Amount has been permanently reduced to zero, (b) all other Borrower Obligations under the Funding Agreement and the other Related Documents have been indefeasibly repaid in full and completely discharged and (c) the Aggregate Commitment has been irrevocably terminated in accordance with the provisions of *Section 2.02(b)* of the Funding Agreement.

"*Termination Event*" shall have the meaning assigned to it in *Section 9.01* of the Funding Agreement.

"*Title IV Plan*" shall mean a Pension Plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA and that any Originator or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

"*Transfer*" shall mean any Sale or contribution of Transferred Receivables by any Originator to the Borrower pursuant to the terms of the Sale Agreement.

"*Transfer Date*" shall have the meaning assigned to it in *Section 2.01(a)* of the Sale Agreement.

"*Transferred Receivable*" shall mean any Sold Receivable or Contributed Receivable; *provided*, that any Receivable repurchased by an Originator thereof pursuant to *Section 4.04* of the Sale Agreement shall not be deemed to be a Transferred Receivable from and after the date of such repurchase unless such Receivable has subsequently been repurchased by or contributed to the Borrower.

"*UCC*" shall mean, with respect to any jurisdiction, the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in such jurisdiction.

"*Unapproved Receivable*" shall mean any receivable (a) with respect to which the obligor thereunder is not an Obligor on any Transferred Receivable and whose customer relationship with an Originator arises as a result of the acquisition by such Originator of another Person or (b) that was originated in accordance with standards established by another Person acquired by an Originator, in each case, solely with respect to any such acquisitions that have not been approved in writing by the Administrative Agent and then only for the period prior to any such approval.

"*Underfunded Plan*" shall mean any Plan that has an Underfunding.

"*Underfunding*" shall mean, with respect to any Title IV Plan, the excess, if any, of (a) the present value of all benefits under the Title IV Plan (based on the assumptions used to fund the Title IV Plan pursuant to Section 412 of the IRC) as of the most recent valuation date over (b) the fair market value of the assets of such Title IV Plan as of such valuation date.

"*Unfunded Pension Liability*" shall mean, at any time, the aggregate amount, if any, of the sum of (a) the amount by which the present value of all accrued benefits under each Title IV Plan exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, all determined as of the most recent valuation date for each such Title IV Plan using the actuarial assumptions for funding purposes in effect under such Title IV Plan, and (b) for a period of five years following a transaction that might reasonably be expected to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could be avoided by any Originator or any ERISA Affiliate as a result of such transaction.

"*Unused Commitment Fee*" shall mean a fee equal to the product of (i) the amount by which the Maximum Facility Amount exceeds the Outstanding Principal Amount (in each case, as of any date of determination) and (ii) 0.50%.

"*Welfare Plan*" shall mean a Plan described in Section 3(1) of ERISA.

SECTION 2. *Other Terms and Rules of Construction.*

(a) *Accounting Terms.* Unless otherwise specifically provided therein, any accounting term used in any Related Document shall have the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed in accordance with GAAP consistently applied. That certain items or computations are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing.

(b) *Other Terms.* All other undefined terms contained in any of the Related Documents shall, unless the context indicates otherwise, have the meanings provided for by the UCC as in effect in the State of New York to the extent the same are used or defined therein.

(c) *Rules of Construction.* Unless otherwise specified, references in any Related Document or any of the Appendices thereto to a Section, subsection or clause refer to such Section, subsection or clause as contained in such Related Document. The words "herein," "hereof" and "hereunder" and other words of similar import used in any Related Document refer to such Related Document

as a whole, including all annexes, exhibits and schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in such Related Document or any such annex, exhibit or schedule. Any reference to or definition of any document, instrument or agreement shall, unless expressly noted otherwise, include the same as amended, restated, supplemented or otherwise modified from time to time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words

"including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Related Documents) or, in the case of Governmental Authorities, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations.

(d) *Rules of Construction for Determination of Ratios.* The Ratios as of the last day of the Settlement Period immediately preceding the Closing Date shall be established by the Administrative Agent on or prior to the Closing Date and the underlying calculations for periods immediately preceding the Closing Date to be used in future calculations of the Ratios shall be established by the Administrative Agent on or prior to the Closing Date in accordance with the form of Monthly Report. For purposes of calculating the Ratios, (i) averages shall be computed by rounding to the second decimal place and (ii) the Settlement Period in which the date of determination thereof occurs shall not be included in the computation thereof and the first Settlement Period immediately preceding such date of determination shall be deemed to be the Settlement Period immediately preceding the Settlement Period in which such date of determination occurs.

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RECEIVABLES FUNDING AGREEMENT

Dated as of November 6, 2002

by and among

SUPERIOR ESSEX FUNDING LLC,

as Borrower,

SUPERIOR TELECOMMUNICATIONS INC.,

as Servicer,

THE FINANCIAL INSTITUTIONS SIGNATORY HERETO FROM TIME TO TIME,

as Lenders

and

GENERAL ELECTRIC CAPITAL CORPORATION,

as a Lender and as Administrative Agent

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Exhibit 2.06(c)	Notice of Conversion/Continuation	
Exhibit 5.02(b)	Form of Borrowing Base Certificate	
Exhibit 10.03	Form of Power of Attorney	
Exhibit 14.02(b)	Form of Assignment Agreement	
Exhibit A	Credit and Collection Policy	
Schedule 2.02	Asset Sales	
Schedule 3.01(h)	Amendment No. 9 to Credit Agreement	
Schedule 4.01(b)	Jurisdiction of organization/organizational number; Executive Offices; Collateral Locations; Corporate or Other Names;	

Schedule 4.01(d)	Litigation
Schedule 4.01(i)	Tax Matters/Borrower
Schedule 4.01(q)	Deposit and Disbursement Accounts/Borrower
Schedule 5.01(b)	Trade Names/Borrower
Schedule 5.03(b)	Existing Liens
Schedule 7.06(c)	Servicer Litigation
Schedule 7.06(e)	Servicer Taxes
Schedule 7.07(b)	Servicer Trade Names
Annex 5.02(a)	Reporting Requirements of the Borrower (including Form of Monthly Report)
Annex W	Administrative Agent's Account/Lenders' Accounts
Annex X	Definitions
Annex Y	Schedule of Documents
Annex Z	Special Concentration Percentages

THIS RECEIVABLES FUNDING AGREEMENT (as amended, supplemented or otherwise modified and in effect from time to time, the "Agreement") is entered into as of November 6, 2002 by and among SUPERIOR ESSEX FUNDING LLC, a Delaware limited liability company (the "Borrower"), Superior Telecommunications Inc., a Delaware corporation, in its capacity as servicer hereunder (in such capacity, the "Servicer"), the financial institutions signatory hereto from time to time as lenders (the "Lenders"), and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, as a Lender and as administrative agent for the Lenders hereunder (in such capacity, the "Administrative Agent").

RECITALS

A. The Borrower is a special purpose limited liability company the sole member of which is Essex Group, Inc., a Michigan corporation (in such capacity, the "Member").

B. The Borrower has been formed for the purpose of purchasing, or otherwise acquiring by capital contribution, Receivables of the Originators party to the Sale Agreement.

C. The Borrower intends to fund its purchases of the Receivables, in part, by borrowing Advances hereunder and pledging all of its right, title and interest in and to the Receivables as security therefor, and, subject to the terms and conditions hereof, the Lenders intend to make such Advances, from time to time, as described herein.

D. The Administrative Agent has been requested and is willing to act as administrative agent on behalf of each of the Lenders in connection with the making and financing of such Advances.

E. In order to effectuate the purposes of this Agreement, each of the Lenders desires to appoint Superior Telecommunications Inc. to service, administer and collect the Receivables securing the Advances pursuant to this Agreement and Superior Telecommunications Inc. is willing to act in such capacity as Servicer hereunder on the terms and conditions set forth herein.

AGREEMENT

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

ARTICLE I.

DEFINITIONS AND INTERPRETATION

Section 1.01. *Definitions.* Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in *Annex X*.

Section 1.02. *Rules of Construction.* For purposes of this Agreement, the rules of construction set forth in *Annex X* shall govern. All Appendices hereto, or expressly identified to this Agreement, are incorporated herein by reference and, taken together with this Agreement, shall constitute but a single agreement.

ARTICLE II.

AMOUNTS AND TERMS OF ADVANCES

Section 2.01. *Advances.*

(a) From and after the Effective Date and until the Commitment Termination Date and subject to the terms and conditions hereof, each Lender severally agrees to make its Pro Rata Share of advances (each such advance hereunder, an "*Advance*" and the Advance of the Lenders collectively made at any time, and as thereafter converted or continued, being a "*Borrowing*") to the Borrower from time to time. The Outstanding Principal Amount of any Lender shall not at any time exceed its separate Commitment. Under no circumstances shall a Lender make any Advances if, after giving effect thereto,

a Funding Excess would exist. The aggregate amount of Borrowings outstanding shall not exceed at any time the Borrowing Base, as determined by the most recent Borrowing Base Certificate or Borrowing Request delivered by the Borrower hereunder. The Borrower may from time to time borrow, repay and reborrow Advances hereunder on the terms and conditions set forth herein.

(b) The Borrower shall execute and deliver to each Lender a note to evidence the Advances which may be made hereunder from time to time by such Lender. Each such note shall be in the principal amount of the Commitment of the applicable Lender, dated the Closing Date and substantially in the form of *Exhibit 2.01(b)* (each, a "*Revolving Note*"). Each Revolving Note shall represent the obligation of Borrower to pay the amount of each Lender's Commitment or, if less, the Lender's Pro Rata Share of the aggregate unpaid principal amount of all outstanding Advances made to the Borrower, together with interest thereon as prescribed in *Section 2.06*. The Outstanding Principal Amount of Advances and all other accrued and unpaid Borrower Obligations shall be immediately due and payable in full in immediately available funds on the Commitment Termination Date.

Section 2.02. *Optional Changes in Maximum Facility Amount.*

(a) So long as no Incipient Termination Event or Termination Event shall have occurred and be continuing, the Borrower may, not more than twice during each calendar year, reduce the Aggregate Commitment permanently (*provided* that any such reduction resulting from the transaction described on Schedule 2.02 shall not be counted for this purpose); *provided*, that (i) the Borrower shall give ten Business Days' prior written notice of any such reduction to the Administrative Agent substantially in the form of *Exhibit 2.02(a)* (each such notice, a "*Commitment Reduction Notice*"), (ii) any partial reduction of the Aggregate Commitment shall be in a minimum amount of \$5,000,000 or an integral multiple thereof, (iii) no such partial reduction shall reduce the Aggregate Commitment below the greater of (x) the Outstanding Principal Amount at such time and (y) \$50,000,000 and (iv) the Borrower shall pay the Prepayment Premium with respect to such reduction if such reduction occurs prior to the third anniversary of the Closing Date; *provided, however*, that the Borrower shall not have to pay a Prepayment Premium with respect to a single reduction of the Aggregate Commitment, at the Borrower's option, to an amount not less than \$110,000,000, but only if such reduction is in connection with the sale of the assets of the Originators described on *Schedule 2.02* made on or before December 31, 2002. Any such reduction in the Aggregate Commitment shall result in a reduction in each Lender's Commitment in an amount equal to such Lender's Pro Rata Share of the amount by which the Aggregate Commitment is being reduced.

(b) The Borrower may, at any time, on at least 20 days' prior written notice, by the Borrower to the Administrative Agent irrevocably terminate the Aggregate Commitment; *provided*, that (i) such notice of termination shall be substantially in the form of *Exhibit 2.02(b)* (the "*Commitment Termination Notice*"), (ii) the Borrower shall reduce the Outstanding Principal Amount to zero and make all payments required by *Section 2.03(h)* at the time and in the manner specified therein and (iii) the Borrower shall pay the Prepayment Premium if such termination occurs prior to the third anniversary of the Closing Date. Upon such termination, the Borrower's right to request that any Lender

make Advances hereunder shall simultaneously terminate and the Commitment Termination Date shall automatically occur. In addition to the foregoing, the Borrower hereby agrees to pay the Prepayment Premium if it voluntarily causes a Termination Event to occur prior to the third anniversary of the Closing Date.

(c) Each written notice required to be delivered pursuant to *Sections 2.02(a)* and *(b)* shall be irrevocable and shall be effective (i) on the day of receipt if received by the Administrative Agent and the Lenders not later than 4:00 p.m. (New York time) on any Business Day and (ii) on the immediately succeeding Business Day if received by the Administrative Agent and the Lenders after such time on such Business Day or if any such notice is received on a day other than a Business Day (regardless of

the time of day such notice is received). Each such notice of termination or reduction shall specify, respectively, the amount of, or the amount of the proposed reduction in, the Aggregate Commitment.

Section 2.03. *Procedures for Making Advances.*

(a) *Borrowing Requests.* Each Borrowing shall be made upon notice by the Borrower to the Administrative Agent in the manner provided herein. Any such notice must be given in writing so that it is received no later than (1) 12:00 Noon (New York time) on the Business Day of the proposed Advance Date set forth therein in the case of an Index Rate Advance or (2) 12:00 Noon (New York time) on the date which is three (3) Business Days prior to the proposed Advance Date set forth therein in the case of a LIBOR Rate Advance. Each such notice (a "*Borrowing Request*") shall (i) be substantially in the form of *Exhibit 2.03(a)*, (ii) be irrevocable and (iii) specify the amount of the requested Borrowing (which shall be in a minimum amount of \$250,000) and the proposed Advance Date (which shall be a Business Day), and shall include such other information as may be required by the Lenders and the Administrative Agent. If the Borrower requests LIBOR Rate Advances it must comply with *Section 2.06(c)*.

(b) *Advances; Payments.*

(i) Except as otherwise provided in *Section 2.03(b)(ii)* below, (A) the Administrative Agent shall notify the Lenders, promptly after receipt of a Borrowing Request and in any event prior to 12:00 noon (New York time) on the date such Borrowing Request is deemed received, by telecopy, telephone or other similar form of communication and (B) each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to the Administrative Agent in same day funds by wire transfer to the Administrative Agent's account as set forth in *Annex W* not later than 2:00 p.m. (New York time) on the requested Advance Date, in the case of an Index Rate Advance and not later than 12:00 noon (New York time) on the requested Advance Date in the case of a LIBOR Rate Advance. After receipt of such wire transfers (or, in the Administrative Agent's sole discretion, before receipt of such wire transfers), subject to the terms hereof (including, without limitation, the satisfaction of the conditions precedent set forth in *Section 3.02*), the Administrative Agent shall make available to the Borrower by deposit into the Borrower Account on the Advance Date therefor, the lesser of (x) the amount of the requested Borrowing and (y) the Funding Availability. All payments by each Lender under this *Section 2.03(b)(i)* shall be made without setoff, counterclaim or deduction of any kind.

(ii) On each Interest Payment Date, the Administrative Agent will advise each Lender by telephone or telecopy of the amount of such Lender's Pro Rata Share of principal, interest and Fees (to the extent payable to all Lenders) paid for the benefit of Lenders with respect to each applicable Advance. Provided that such Lender has made all payments required to be made by it and purchased all participations required to be purchased by it under this Agreement and the other Related Documents as of such Interest Payment Date, the Administrative Agent will pay to each Lender such Lender's Pro Rata Share of principal, interest and Fees (to the extent payable to all Lenders) paid by the Borrower since the previous Interest Payment Date for the benefit of that Lender. Such payments shall be made by wire transfer to such Lender's account (as specified by such Lender in *Annex W* or the applicable Assignment Agreement) not later than 2:00 p.m. (New York time) on each Interest Payment Date.

(c) *Availability of Lenders' Advances.* The Administrative Agent may assume that each Lender will make its Pro Rata Share of each Borrowing available to the Administrative Agent on each Advance Date. If the Administrative Agent has made available to the Borrower such Lender's Pro Rata Share of a Borrowing but such Pro Rata Share is not, in fact, paid to the Administrative Agent by such Lender when due, the Administrative Agent will be entitled to recover such amount on demand from such Lender without set-off, counterclaim or deduction of any kind. If any Lender fails to pay the amount of its Pro Rata Share forthwith upon the Administrative Agent's demand, the Administrative Agent shall

promptly notify the Borrower and the Borrower shall immediately repay such amount to the Administrative Agent; any such prepayment shall be without any prepayment or penalty, including any payment of Breakage Costs described in *Section 2.10*. Nothing in this *Section 2.03(c)* or elsewhere in this Agreement or the other Related Documents shall be deemed to require the Administrative Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder. To the extent that the Administrative Agent advances funds to the Borrower on behalf of any Lender and is not reimbursed therefor on the same Business Day as such Advance is made, the Administrative Agent shall be entitled to retain for its account all interest accrued on such Advance from the date of such Advance to the date such Advance is reimbursed by the applicable Lender.

(d) *Return of Payments.* (i) If the Administrative Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by the Administrative Agent from the Borrower and such related payment is not received by the Administrative Agent, then the Administrative Agent will be entitled to recover such amount from such Lender on demand without set-off, counterclaim or deduction of any kind.

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

(e) *Non-Funding Lenders.* The failure of any Lender (such Lender, a "Non-Funding Lender") to make any Advance to be made by it on the date specified therefor shall not relieve any other Lender (each such other Lender, an "Other Lender") of its obligations to make the Advance to be made by it, but neither any Other Lender nor the Administrative Agent shall be responsible for the failure of any Non-Funding Lender to make an Advance to be made by such Non-Funding Lender. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Related Document or constitute a "Lender" (or be included in the calculation of "Requisite Lenders" hereunder) for any voting or consent rights under or with respect to any Related Document unless and until such Non-Funding Lender shall have cured in full its failures to make Advances hereunder.

(f) *Dissemination of Information.* The Administrative Agent will use reasonable efforts to provide Lenders with (i) copies of all notices and other documents provided to the Administrative Agent pursuant to *Section 5.02*, (ii) any notice of an Incipient Termination Event or Termination Event received by the Administrative Agent from, or delivered by the Administrative Agent to, the Borrower, (iii) notice of any Termination Event of which the Administrative Agent has actually become aware and (iv) notice of any action taken by the Administrative Agent following any Termination Event; *provided, however*, that the Administrative Agent shall not be liable to any Lender for any failure to do so.

(g) *Actions in Concert.* Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Revolving Notes (including exercising any rights of set-off) without first obtaining the prior written consent of the Administrative Agent or the Requisite Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this

Agreement and the Revolving Notes shall be taken in concert and at the direction or with the consent of the Administrative Agent.

(h) *Principal Repayments.* The Borrower may at any time repay outstanding Advances hereunder; *provided* that (i) the Borrower shall give one Business Day's prior written notice of any such repayment to the Administrative Agent substantially in the form of *Exhibit 2.03(h)* (each such notice, a "*Repayment Notice*"), (ii) each such notice shall be irrevocable, (iii) each such notice shall specify the amount of the requested repayment and the proposed date of such repayment (which shall be a Business Day) and (iv) any such repayment must be accompanied by payment of (A) all interest accrued and unpaid on the portion of the Outstanding Principal Amount being repaid through but excluding the date of such repayment and (B) any amounts required to be paid in accordance with *Section 2.10*, if any. Any such notice of repayment must be received by the Administrative Agent no later than 4:00 p.m. (New York time) on the Business Day immediately preceding the date of the proposed repayment; *provided, further*, that the foregoing requirements shall not apply to repayment of the outstanding principal amount of Advances as a result of the application of amounts on deposit in the Collection Account pursuant to *Section 2.08*.

Section 2.04. *Pledge and Release of Transferred Receivables.*

(a) *Pledge.* The Borrower shall indicate in its Records that the Transferred Receivables have been pledged hereunder and that the Administrative Agent has a lien on and security interest in all such Transferred Receivables for the benefit of the Lenders. The Borrower and the Servicer shall hold all Contracts and other documents relating to such Transferred Receivables in trust for the benefit of the Administrative Agent on behalf of the Lenders in accordance with their interests hereunder. The Borrower and the Servicer hereby acknowledge that their retention and possession of such Contracts and documents shall at all times be at the sole discretion of the Administrative Agent and in a custodial capacity for the Administrative Agent's (on behalf of the Lenders) benefit only.

(b) *Repurchases of Transferred Receivables.* If an Originator is required to repurchase Transferred Receivables from the Borrower pursuant to *Section 4.04* of the Sale Agreement, upon payment by such Originator to the Collection Account of the applicable repurchase price thereof (which repurchase price shall not be less than an amount equal to the Billed Amount of such Transferred Receivable *minus* the sum of (A) Collections received in respect thereof and (B) the amount of any Dilution Factors taken into account in the calculation of the Sale Price therefor), the Administrative Agent and the Lenders shall release their liens on and security interests in the Transferred Receivables being so repurchased.

Section 2.05. *Commitment Termination Date.* Notwithstanding anything to the contrary set forth herein, no Lender shall have any obligation to make any Advances from and after the Commitment Termination Date.

Section 2.06. *Interest; Charges.*

(a) The Borrower shall pay interest to the Administrative Agent, for the ratable benefit of the Lenders, with respect to each Advance made or maintained by each Lender, in arrears on each applicable Interest Payment Date, (i) for each LIBOR Rate Advance, at the applicable LIBOR Rate for the relevant LIBOR Period then ending, and (ii) for all of the Index Rate Advances outstanding from time to time, at the applicable Index Rate as in effect from time to time during the immediately preceding calendar month, based on the aggregate outstanding amount of Index Rate Advances outstanding from time to time during such month. Interest for each LIBOR Rate Advance or Index Rate Advance shall be calculated based upon actual days elapsed during the related LIBOR Period, with respect to each LIBOR Rate Advance, or during the applicable calendar month, with respect to each Index Rate Advance, for a 360 day year based upon actual days elapsed since the last Interest Payment Date.

(b) So long as any Termination Event shall have occurred and be continuing, the interest rates applicable to each Advance and any other unpaid Borrower Obligation hereunder shall be increased by two percent (2.0%) per annum (such increased rate, the "Default Rate"), and all outstanding Borrowing Obligations shall bear interest at the applicable Default Rate from the date of such Termination Event until such Termination Event is waived.

(c) So long as no Incipient Termination Event or Termination Event shall have occurred and be continuing, and subject to the additional conditions precedent set forth in *Section 3.02*, the Borrower shall have the option to (i) request that any Borrowing be made as Index Rate Advances or as LIBOR Rate Advances, (ii) convert at any time all or any part of the outstanding Advances of a Borrowing from Index Rate Advances to LIBOR Rate Advances, (iii) convert all or any part of LIBOR Rate Advances of a Borrowing to Index Rate Advances, subject to payment of Breakage Costs in accordance with *Section 2.10* if such conversion is made prior to the expiration of the LIBOR Period applicable thereto, or (iv) continue all or any portion of the LIBOR Rate Advances of a Borrowing upon the expiration of the applicable LIBOR Period and the succeeding LIBOR Period of those continued LIBOR Rate Advances shall commence on the last day of the LIBOR Period of the LIBOR Rate Advances to be continued; *provided* that except as provided in *Section 2.09(d)*, all Advances comprising a Borrowing shall be either Index Rate Advances or LIBOR Rate Advances, as the case may be. Any Advances of a Borrowing to be made or continued as, or converted into, LIBOR Rate Advances must be in an aggregate amount equal to \$1,000,000 or an integral multiple of \$500,000 in excess of \$1,000,000. Any such election must be made by 11:00 a.m. (New York time) on (A) the third (3rd) Business Day prior to (1) the date of any proposed LIBOR Rate Advances, (2) the end of each LIBOR Period with respect to any LIBOR Rate Advances to be continued as such, or (3) the date on which Borrower wishes to convert any Index Rate Advances to LIBOR Rate Advances for a LIBOR Period designated by the Borrower in such election, or (B) the Business Day of any proposed Advances which are to bear interest at the Index Rate. If no election is received with respect to any LIBOR Rate Advances by 11:00 a.m. (New York time) on the third (3rd) Business Day prior to the end of the LIBOR Period with respect thereto (or if an Incipient Termination Event or a Termination Event shall have occurred and be continuing or the additional conditions precedent set forth in *Section 3.02* shall not have been satisfied), those LIBOR Rate Advances shall be converted to Index Rate Advances at the end of the applicable LIBOR Period. The Borrower must make each such election by notice to the Administrative Agent in writing, by telecopy or overnight courier. In the case of any conversion or continuation, such election must be made pursuant to a written notice (a "*Notice of Conversion/Continuation*") in the form of *Exhibit 2.06(c)*.

(d) The Administrative Agent is authorized to, and at its sole election may, charge to the Borrower as Advances and cause to be paid all Fees, expenses, charges, costs, interest and principal, other than principal of the Advances, owing by the Borrower under this Agreement or any of the other Related Documents if and to the extent the Borrower fails to pay any such amounts as and when due, and any charges so made shall constitute part of the Outstanding Principal Amount hereunder even if such charges would cause the aggregate balance of the Outstanding Principal Amount to exceed the Borrowing Base.

Section 2.07. *Fees.*

(a) On the Effective Date, the Borrower shall pay to the Administrative Agent, for the account of itself and the Lenders, the fees set forth in the Fee Letter that are payable on the Effective Date.

(b) From and after the Closing Date, as additional compensation for the Lenders, the Borrower agrees to pay to Administrative Agent, for the ratable benefit of such Lenders, monthly in arrears, on the first Business Day of each month prior to the Commitment Termination Date and on the Commitment Termination Date, the Unused Commitment Fee.

(c) On each Settlement Date, the Borrower shall pay to the Servicer or to the Successor Servicer, as applicable, the Servicing Fee or the Successor Servicing Fees and Expenses, respectively, in each case to the extent of available funds therefor.

Section 2.08. *Application of Funds in Collection Account; Time and Method of Payments.*

(a) Each Index Rate Advance shall mature, and be payable, on the earlier of (i) the date funds are allocated to such Index Rate Advance pursuant to *clause (iii)* of the following *subsection (b)* (and in such case only to the extent of the funds so allocated), and (ii) the Commitment

Termination Date (in which case such Index Rate Advance shall be payable in full). Each LIBOR Rate Advance shall mature, and be payable in full, on the earliest of (1) the date on which funds are allocated therefor pursuant to *clause (iv)* of the following *subsection (b)*, (2) the last day of the LIBOR Period with respect thereto (unless such LIBOR Rate Advance is converted or continued in compliance with the terms hereof) and (3) the Commitment Termination Date (in which case such LIBOR Rate Advance shall be payable in full).

(b) On each Business Day, the Administrative Agent shall allocate amounts on deposit in the Collection Account on such day as follows:

(i) *first*, to the extent then due and payable, pro rata, to the payment of all Fees accrued and unpaid through such date and all unreimbursed expenses of the Administrative Agent which are reimbursable pursuant to the terms hereof;

(ii) *second*, if such Business Day is an Interest Payment Date for any Advances, pro rata, to the payment of interest accrued through such date with respect to such Advances;

(iii) *third*, pro rata, to the payment of the outstanding principal balance of the Advances which constitute Index Rate Advances;

(iv) *fourth*, pro rata, to the payment of the outstanding principal balance of Advances which constitute LIBOR Rate Advances together with amounts payable with respect thereto under *Section 2.10*; and

(v) *fifth*, to the extent then due and payable, pro rata, to the payment of all other obligations of the Borrower accrued and unpaid hereunder, including, without limitation, the expenses of the Lenders reimbursable under *Section 14.04*.

On any such Business Day on which funds on deposit in the Collection Account are allocated pursuant to the foregoing, the Administrative Agent shall withdraw the funds so allocated and pay the same to the parties entitled thereto. To the extent that on any Business Day funds remain in the Collection Account unallocated after application of the foregoing *clauses (i)* through *(v)*, such remaining funds shall be remitted to the Borrower Account.

(c) On each Interest Payment Date with respect to Index Rate Advances, the Administrative Agent shall withdraw funds allocated on such Interest Payment Date pursuant to *clause (ii)* of the foregoing *subsection (b)*, and pay the same to the Lenders, pro rata, in payment of accrued and unpaid interest on the Index Rate Advances. On each Interest Payment Date with respect to LIBOR Rate Advances, the Administrative Agent shall withdraw funds allocated on such Interest Payment Date pursuant to *clause (ii)* of the foregoing *subsection (b)*, and pay the same to the Lenders pro rata, in payment of accrued and unpaid interest on such LIBOR Rate Advances. On each Business Day on which any other amounts are payable hereunder or under any other Related Document, the Administrative Agent shall withdraw funds allocated on such Business Day pursuant to *clause (i)* or *clause (v)* of the foregoing *subsection (b)*, and pay the same, pro rata, to such Persons as may be entitled to receive such amounts pursuant to the terms hereof or of any other Related Document. To the extent that amounts on deposit in the Collection Account on any day are insufficient to pay amounts due on such day in respect of the matured portion of any Advances or any interest, Fees or

any other amounts due and payable by the Borrower hereunder, the Borrower shall pay, upon notice from the Administrative Agent, the amount of such insufficiency to the Administrative Agent in Dollars, in immediately available funds (for the account of the Administrative Agent, the applicable Lenders, Affected Parties or Indemnified Persons) not later than 11:00 a.m. (New York time) on such day. Any such payment made on such date but after such time shall be deemed to have been made on, and interest shall continue to accrue and be payable thereon at the LIBOR Rate (in the case of LIBOR Rate Advances) or the Index Rate (in all other cases), until the next succeeding Business Day.

(d) The Borrower hereby irrevocably waives the right to direct the application of any and all payments received from or on behalf of the Borrower, and the Borrower hereby irrevocably agrees that any and all such payments shall be applied by the Administrative Agent in accordance with this *Section 2.08*.

(e) All payments of principal of the Advances and all payments of interest, Fees and other amounts payable by the Borrower hereunder shall be made in Dollars, in immediately available funds. If any such payment becomes due on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day (except as set forth in the definition of LIBOR Period) and interest thereon at the LIBOR Rate (in the case of LIBOR Rate Advances) or Index Rate (in all other cases) shall be payable during such extension. Payments received prior to 12:00 Noon (New York time) on any Business Day shall be deemed to have been received on such Business Day. Payments received after 12:00 Noon (New York time) on any Business Day or on a day that is not a Business Day shall be deemed to have been received on the following Business Day.

(f) Any and all payments by the Borrower hereunder shall be made in accordance with this *Section 2.08* without setoff or counterclaim and free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, Charges or withholdings, excluding taxes imposed on or measured by the net income, gross receipts or franchise taxes of any Affected Party by the jurisdictions under the laws of which such Affected Party is organized or by any political subdivisions thereof (such non-excluded taxes, levies, imposts, deductions, Charges and withholdings being "*Indemnified Taxes*"). If the Borrower shall be required by law to deduct any Indemnified Taxes from or in respect of any sum payable hereunder, (i) the sum payable shall be increased as much as shall be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this *Section 2.08*) the Affected Party entitled to receive any such payment receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, and (iii) the Borrower shall pay the full amount deducted to the relevant taxing or other authority in accordance with applicable law. Within 30 days after the date of any payment of Indemnified Taxes, the Borrower shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof. The Borrower shall indemnify any Affected Party from and against, and, within ten days of demand therefor, pay any Affected Party for, the full amount of Indemnified Taxes (together with any taxes imposed by any jurisdiction on amounts payable under this *Section 2.08*) paid by such Affected Party and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted.

Section 2.09. *Capital Requirements; Additional Costs.*

(a) If any Affected Party shall have determined that the adoption after the date hereof of any law, treaty, governmental (or quasi-governmental) rule, regulation, guideline or order regarding capital adequacy, reserve requirements or similar requirements or compliance by such Affected Party with any request or directive regarding capital adequacy, reserve requirements or similar requirements (whether or not having the force of law) from any central bank or other Governmental Authority increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by such Affected Party against commitments made by it under this Agreement or any other

Related Document and thereby reducing the rate of return on such Affected Party's capital as a consequence of its commitments hereunder or thereunder, then the Borrower shall from time to time upon demand by the Administrative Agent pay to the Administrative Agent on behalf of such Affected Party additional amounts sufficient to compensate such Affected Party for such reduction together with interest thereon from the date of any such demand until payment in full at the applicable Index Rate. A certificate as to the amount of that reduction and showing the basis of the computation thereof submitted by the Affected Party to the Borrower shall be final, binding and conclusive on the parties hereto (absent manifest error) for all purposes.

(b) If, due to any Regulatory Change, there shall be any increase in the cost to any Affected Party of agreeing to make or making, funding or maintaining any commitment hereunder or under any other Related Document, including with respect to any Advances or Outstanding Principal Amount, or any reduction in any amount receivable by such Affected Party hereunder or thereunder, including with respect to any Advances or Outstanding Principal Amount (any such increase in cost or reduction in amounts receivable are hereinafter referred to as "*Additional Costs*"), then the Borrower shall, from time to time upon demand by the Administrative Agent, pay to the Administrative Agent on behalf of such Affected Party additional amounts sufficient to compensate such Affected Party for such Additional Costs together with interest thereon from the date demanded until payment in full thereof at the applicable Index Rate. Each Affected Party agrees that, as promptly as practicable after it becomes aware of any circumstance referred to above that would result in any such Additional

Costs, it shall, to the extent not inconsistent with its internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by the Borrower pursuant to this *Section 2.09(b)*.

(c) Determinations by any Affected Party for purposes of this *Section 2.09* of the effect of any Regulatory Change on its costs of making, funding or maintaining any commitments hereunder or under any other Related Document or on amounts payable to it hereunder or thereunder or of the additional amounts required to compensate such Affected Party in respect of any Additional Costs shall be set forth in a written notice to the Borrower in reasonable detail and which is calculated the same as for comparable claims with respect to similarly situated sellers or borrowers of the Affected Party and shall be final, binding and conclusive on the Borrower (absent manifest error) for all purposes.

(d) Notwithstanding anything to the contrary contained herein, if the introduction of or any change in any law or regulation (or any change in the interpretation thereof) shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to agree to make or to make or to continue to fund or maintain any LIBOR Rate Advance, then, unless that Lender is able to make or to continue to fund or to maintain such LIBOR Rate Advance at another branch or office of that Lender without, in that Lender's good faith opinion, adversely affecting it or its Advances or the income obtained therefrom, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, (i) the obligation of such Lender to agree to make or to make or to continue to fund or maintain LIBOR Rate Advances shall terminate and (ii) Borrower shall forthwith prepay in full all outstanding LIBOR Rate Advances owing to such Lender, together with interest accrued thereon, unless Borrower, within five (5) Business Days after the delivery of such notice and demand, converts all such LIBOR Rate Advances into Index Rate Loans.

Section 2.10. *Breakage Costs.* To induce the Lenders to provide the LIBOR Rate option on the terms provided herein, if (i) any LIBOR Rate Advances are, except by reason of the requirements in *Section 2.03(c)*, repaid in whole or in part prior to the last day of any applicable LIBOR Period (whether that repayment is made pursuant to any other provision of this Agreement or any other Related Document or is the result of acceleration, by operation of law or otherwise); (ii) the Borrower shall default in payment when due of the principal amount of or interest on any LIBOR Rate Advance; (iii) the Borrower shall default in making any borrowing of, conversion into or continuation of LIBOR Rate Advances after the Borrower has given notice requesting the same in accordance herewith

(including any failure to satisfy conditions precedent to the making of, or conversion or continuation of, any LIBOR Rate Advances); or (iv) the Borrower shall fail to make any prepayment of a LIBOR Rate Advance after the Borrower has given a notice thereof in accordance herewith, then, in any such case, the Borrower shall indemnify and hold harmless each Lender from and against all losses, costs and expenses resulting from or arising from any of the foregoing (any such loss, cost or expense, "*Breakage Costs*"). Such indemnification shall include any loss (including loss of margin) or expense arising from the reemployment of funds obtained by it or from fees payable to terminate deposits from which such funds were obtained (if any). Each Lender shall make a good faith effort to reinvest any repayment proceeds received from the Borrower in order to mitigate the losses which would otherwise be reimbursable under this *Section 2.10*. For the purpose of calculating amounts payable to a Lender under this subsection, each Lender shall be deemed to have actually funded its relevant LIBOR Rate Advance through the purchase of a deposit bearing interest at the LIBOR Rate in an amount equal to the amount of that LIBOR Rate Advance and having a maturity comparable to the relevant LIBOR Period; *provided, however*, that each Lender may fund each of its LIBOR Rate Advances in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection. This covenant shall survive the termination of this Agreement and the payment of the Revolving Notes and all other amounts payable hereunder. The determination by any Lender of the amount of any such loss or expense shall be set forth in a written notice to the Borrower in reasonable detail and shall be final, binding and conclusive on the Borrower (absent manifest error) for all purposes.

Section 2.11. *Funding Excess.* On each Business Day during the Revolving Period, the Administrative Agent shall notify the Borrower and the Servicer of any Funding Excess on such day, and the Borrower shall deposit the amount of such Funding Excess in the Collection Account by 11:00 a.m. (New York time) on the immediately succeeding Business Day.

ARTICLE III.

Section 3.01. *Conditions to Effectiveness of Agreement.* This Agreement shall not be effective until the date on which each of the following conditions have been satisfied, in the sole discretion of, or waived in writing by, the Lenders and the Administrative Agent (such date, the "Effective Date"):

(a) *Funding Agreement; Other Related Documents.* This Agreement and the Revolving Notes shall have been duly executed by, and delivered to, the parties hereto and the Lenders and the Administrative Agent shall have received such other documents, instruments, agreements and legal opinions as each Lender and the Administrative Agent shall request in connection with the transactions contemplated by this Agreement, including all those listed in the Schedule of Documents, each in form and substance satisfactory to each Lender and the Administrative Agent.

(b) *Governmental Approvals.* The Lenders and the Administrative Agent shall have received (i) satisfactory evidence that the Borrower and the Servicer have obtained all required consents and approvals of all Persons, including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Related Documents and the consummation of the transactions contemplated hereby or thereby or (ii) an Officer's Certificate from each of the Borrower and the Servicer in form and substance satisfactory to the Lenders and the Administrative Agent affirming that no such consents or approvals are required.

(c) *Compliance with Laws.* The Borrower and the Servicer shall be in compliance with all applicable foreign, federal, state and local laws and regulations, including those specifically referenced in *Section 5.01(a)*, except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect.

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(d) *Payment of Fees.* The Borrower shall have paid all fees required to be paid by it on the Effective Date, including all fees required hereunder and under the Fee Letter, and shall have reimbursed the Administrative Agent for all fees, costs and expenses of closing the transactions contemplated hereunder and under the other Related Documents, including the Administrative Agent's reasonable legal and audit expenses, and other document preparation costs.

(e) *Representations and Warranties.* Each representation and warranty by the Borrower contained herein and in each other Related Document shall be true and correct as of the Effective Date, except to the extent that such representation or warranty expressly relates solely to an earlier date.

(f) *No Termination Event.* No Incipient Termination Event or Termination Event hereunder or any "Event of Default" or "Default" (each as defined in the Credit Agreement) shall have occurred and be continuing or would result after giving effect to any of the transactions contemplated on the Closing Date.

(g) *Audit.* The Administrative Agent shall have completed a prefunding audit of the Receivables as of the Closing Date, the scope and results of which are satisfactory to the Administrative Agent and each Lender in its sole discretion.

(h) *Credit Agreement.* Amendment No. 9 to the Credit Agreement attached hereto as *Schedule 3.01(h)* shall have been executed and delivered by each of the parties thereto and shall have become effective in accordance with its terms, and no subsequent amendments to or waivers or modifications of the Credit Agreement shall have become effective or been signed.

(i) *Material Adverse Change.* There will have been (i) no material adverse change, individually or in the aggregate, (x) in the business, the industry which the Parent or any Originator operates, the financial or other condition or prospects of the Parent, the Servicer, or any Originator, or (y) in the Receivables, (ii) no litigation commenced which, if successful, would have a Material Adverse Effect on the Parent, the Servicer, the Originators, their business, or which would challenge the transactions contemplated under this Agreement, the Sale Agreement and the other Related Documents, and (iii) since the Parent's last audited financial statements (other than as disclosed in the Parent's filings on Form 10-Q with the Securities and Exchange Commission for the

quarters ended March 31, 2002 and June 30, 2002) and as otherwise disclosed in the financial projections provided to the Administrative Agent in the revised business plan delivered on September 9, 2002, no material increase in the liabilities, liquidated or contingent, of the Parent or the Originators, or material decrease in the assets of the Parent or the Originators.

(j) *Existing Securitization.* Evidence satisfactory to the Administrative Agent that the Existing Securitization has been paid in full and all liens associated therewith have been released.

(k) *Syndication.* No change shall have occurred in loan syndication, financial or capital market conditions generally that, in the reasonable judgment of GECC Capital Markets Group, Inc., would materially impair the ability to syndicate the Aggregate Commitment to financial institutions after the Closing Date.

(l) *Waiver of Set-Off Rights.* Each Originator shall have waived its rights of set-off with respect to the Receivables.

Section 3.02. *Conditions Precedent to All Advances.* No Lender shall be obligated to make any Advances hereunder (including the initial Advance) on any date if, as of the date thereof:

(a) any representation or warranty of the Borrower or the Servicer contained herein or in any of the other Related Documents shall be untrue or incorrect as of such date, either before or after giving effect to the Advances on such date and to the application of the proceeds therefrom,

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except to the extent that such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted by this Agreement;

(b) any event shall have occurred, or would result from such Advances or from the application of the proceeds therefrom, that constitutes an Incipient Termination Event, a Termination Event, an Incipient Servicer Termination Event or an Event of Servicer Termination;

(c) the Borrower shall not be in compliance with any of its covenants or other agreements set forth herein;

(d) the Commitment Termination Date shall have occurred;

(e) either before or after giving effect to such Advance and to the application of the proceeds therefrom, a Funding Excess would exist;

(f) any Originator, the Borrower or the Servicer shall fail to have taken such other action, including delivery of approvals, consents, opinions, documents and instruments to the Lenders and the Administrative Agent, as any Lender or the Administrative Agent may reasonably request;

(g) on or prior to such date, the Borrower or the Servicer shall have failed to deliver any Monthly Report or Borrowing Base Certificate required to be delivered in accordance with *Section 5.02* hereof; or

(h) the Administrative Agent shall have determined that any event or condition has occurred that has had, or could reasonably be expected to have or result in, a Material Adverse Effect.

Notwithstanding a failure to satisfy *clause (b)* above solely as a result of an Incipient Termination Event (and not a Termination Event) under *Section 9.01(c)* with respect to a breach of a covenant under the Credit Agreement (*provided* that such breach has not continued for more than 30 days and that no enforcement or remedies have been sought under the Credit Agreement), the Borrower shall be permitted to repay Borrowings and request additional Borrowings so long as the Outstanding Principal Amount does not exceed the Outstanding Principal Amount as of the Business Day immediately preceding the day such breach occurred.

The delivery by the Borrower of a Borrowing Request and the acceptance by the Borrower of the funds from the related Borrowing on any Advance Date shall be deemed to constitute, as of any such Advance Date, a representation and warranty by the Borrower that the conditions in this *Section 3.02* have been satisfied.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of the Borrower. To induce each Lender to make Advances from time to time and the Administrative Agent to take any action required to be performed by it hereunder, the Borrower makes the following representations and warranties to each Lender and the Administrative Agent on the Effective Date and each Advance Date, each and all of which shall survive the execution and delivery of this Agreement.

(a) *Existence; Compliance with Law.* The Borrower (i) is a limited liability company duly formed, validly existing and in good standing under the laws of its jurisdiction of incorporation and is a "registered organization" as defined in the UCC of such jurisdiction; (ii) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification; (iii) has the requisite power and authority and the legal right to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease, and to conduct its business, in each case, as now, heretofore and proposed to be conducted; (iv) has all licenses, permits, consents or approvals from or by, and has

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made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct; (v) is in compliance with its limited liability company agreement; and (vi) subject to specific representations set forth herein regarding ERISA, tax and other laws, is in compliance with all applicable provisions of law, except where the failure to so comply would not have an adverse effect on (1) the business, assets, liabilities, operations, prospects or financial or other condition of the Borrower, or (2) the Borrower Collateral.

(b) *Executive Offices; Collateral Locations; Corporate or Other Names; FEIN.* The state of organization and the organization identification number of the Borrower and current location of the Borrower's chief executive office, principal place of business, other offices, the premises within which any Borrower Collateral is stored or located, and the locations of its records concerning the Borrower Collateral (including originals of the Borrower Assigned Agreements) are set forth in *Schedule 4.01(b)* and none of such locations has changed within the past 12 months (or such shorter time as the Borrower has been in existence). During the prior five years (or such shorter time as the Borrower has been in existence), except as set forth in *Schedule 4.01(b)*, the Borrower has not been known as or used any fictitious or trade name. In addition, *Schedule 4.01(b)* lists the federal employer identification number of the Borrower.

(c) *Power, Authorization, Enforceable Obligations.* The execution, delivery and performance by the Borrower of this Agreement and the other Related Documents to which it is a party, and the creation and perfection of all Liens and ownership interests provided for herein and therein: (i) are within the Borrower's limited liability company power; (ii) have been duly authorized by all necessary or proper actions; (iii) do not contravene any provision of the Borrower's certificate of formation or limited liability company agreement; (iv) do not violate any law or regulation, or any order or decree of any court or Governmental Authority; (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which the Borrower or any Originator is a party or by which the Borrower or any Originator or any of the property of the Borrower or any Originator is bound; (vi) do not result in the creation or imposition of any Adverse Claim upon any of the property of the Borrower or any Originator; and (vii) do not require the consent or approval of any Governmental Authority or any other Person, except those which have been duly obtained, made or complied with prior to the Effective Date as provided in *Section 3.01(b)*. The exercise by each of the Borrower, the Lenders or the Administrative Agent of any of its rights and remedies under any Related Document to which it is a party do not require the consent or approval of any Governmental Authority or any other Person (other than consents or approvals solely relating to or required to be obtained by a Lender or the Administrative Agent as to which Borrower makes no representation

hereunder), except those which will have been duly obtained, made or complied with prior to the Closing Date as provided in *Section 3.01(b)*. On or prior to the Effective Date, each of the Related Documents to which the Borrower is a party shall have been duly executed and delivered by the Borrower and each such Related Document shall then constitute a legal, valid and binding obligation of the Borrower enforceable against it in accordance with its terms.

(d) *No Litigation*. No Litigation is now pending or, to the knowledge of the Borrower, threatened against the Borrower that (i) challenges the Borrower's right or power to enter into or perform any of its obligations under the Related Documents to which it is a party, or the validity or enforceability of any Related Document or any action taken thereunder, (ii) seeks to prevent the transfer, sale, pledge or contribution of any Receivable or the consummation of any of the transactions contemplated under this Agreement or the other Related Documents, or (iii) except as set forth on *Schedule 4.01(d)*, that, if adversely determined, could reasonably be expected to have a Material Adverse Effect. Except as set forth on *Schedule 4.01(d)*, as of the Effective Date there is no Litigation pending or threatened that seeks damages or injunctive relief against, or alleges criminal misconduct by, the Borrower.

(e) *Solvency*. No insolvency proceedings of any nature are now pending or threatened against any of the Borrower, Superior, the Member or any Originator. After giving effect to (i) the transactions contemplated by this Agreement and the other Related Documents and (ii) the payment and accrual of all transaction costs in connection with the foregoing (1) the fair value of the property of the Borrower is greater than the total amount of its liabilities, including contingent liabilities, (2) the present fair salable value of the assets of the Borrower is not less than the amount that will be required to pay the probable liability on its debts as they become absolute and matured, (3) the Borrower has not incurred nor intends to incur, and does not believe that it will incur, debts or liabilities beyond its ability to pay as such debts and liabilities mature, (4) the Borrower is not engaged in a business or transaction, nor is about to engage in a business or transaction, for which its property would constitute an unreasonably small capital and (5) none of the Borrower, Superior, the Member or any Originator is generally not paying its debts as they become due.

(f) *Material Adverse Effect*. Since the date of the Borrower's organization, (i) the Borrower has not incurred any obligations, contingent or non-contingent liabilities, liabilities for Charges, long-term leases or unusual forward or long-term commitments, other than in connection with the Related Documents, (ii) no contract, lease or other agreement or instrument has been entered into by the Borrower or has become binding upon the Borrower's assets, other than in connection with the Related Documents, and no law or regulation applicable to the Borrower has been adopted that has had or could reasonably be expected to have a Material Adverse Effect and (iii) the Borrower is not in default and no third party is in default under any material contract, lease or other agreement or instrument to which the Borrower is a party. Since the date of the Borrower's organization, no event has occurred with respect to the Borrower that alone or together with other events could reasonably be expected to have a Material Adverse Effect.

(g) *Ownership of Property; Liens*. None of the properties and assets (including the Transferred Receivables) of the Borrower are subject to any Adverse Claims other than Permitted Encumbrances not attaching to Transferred Receivables, and there are no facts, circumstances or conditions known to the Borrower that may result in (i) with respect to the Transferred Receivables, any Adverse Claims (including Adverse Claims arising under environmental laws) and (ii) with respect to its other properties and assets, any Adverse Claims (including Adverse Claims arising under environmental laws) other than Permitted Encumbrances. The Borrower has received all assignments, bills of sale and other documents, and has duly effected all recordings, filings and other actions necessary to establish, protect and perfect the Borrower's right, title and interest in and to the Transferred Receivables and its other properties and assets. The Liens granted to the Lender pursuant to *Section 8.01* will at all times be fully perfected first priority Liens in and to the Borrower Collateral.

(h) *Ventures, Subsidiaries and Affiliates; Outstanding Stock and Indebtedness*. The Borrower has no Subsidiaries, and is not engaged in any joint venture or partnership with any other Person. The Member is the sole member of the Borrower. There are no outstanding rights to purchase or options, warrants or similar rights or agreements pursuant to which the Borrower may be required to issue, sell, repurchase or redeem some or all of its membership interests. All outstanding Debt of the Borrower as of the Effective Date is described in *Section 5.03(i)*.

(i) *Taxes.* All material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed by the Borrower and each of its Affiliates included in the Parent Group have been filed with the appropriate Governmental Authority and all Charges have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof (or any such fine, penalty, interest, late charge or loss has been paid), excluding Charges or other amounts being contested in accordance with *Section 5.01(e)*. Proper and accurate amounts have been withheld by the Borrower or such Affiliate from its respective employees for all periods in compliance in all material respects with all applicable federal, state, local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities.

Schedule 4.01(i) sets forth as of the Effective Date (i) those taxable years for which the Borrower's or such Affiliates' tax returns are currently being audited by the IRS or any other applicable Governmental Authority and (ii) any assessments or threatened assessments in connection with any such audit or otherwise currently outstanding. Except as described on *Schedule 4.01(i)*, neither the Borrower nor any such Affiliate has executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges. The Borrower is not liable for any Charges: (A) under any agreement (including any tax sharing agreements) or (B) to the best of the Borrower's knowledge, as a transferee.

(j) *Full Disclosure.* All information contained in this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished by or on behalf of the Borrower to any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents, in each case, taken as a whole (which shall not include any projections or pro forma information), is true and accurate in every material respect, and none of this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished by or on behalf of the Borrower to any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents, in each case, taken as a whole, is misleading as a result of the failure to include therein a material fact. All information contained in this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished to any Lender or the Administrative Agent has been prepared in good faith by the management of the Borrower with the exercise of reasonable diligence.

(k) *ERISA.* The Borrower is in compliance with ERISA and has not incurred and does not expect to incur any liabilities (except for premium payments arising in the ordinary course of business) payable to the PBGC under ERISA.

(l) *Brokers.* No broker or finder acting on behalf of the Borrower was employed or utilized in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby and the Borrower has no obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

(m) *Margin Regulations.* The Borrower is not engaged in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security," as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as "*Margin Stock*"). The Borrower owns no Margin Stock, and no portion of the proceeds of the Advances made hereunder will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Debt that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any portion of such proceeds to be considered a "purpose credit" within the meaning of Regulations T, U or X of the Federal Reserve Board. The Borrower will not take or permit to be taken any action that might cause any Related Document to violate any regulation of the Federal Reserve Board.

(n) *Nonapplicability of Bulk Sales Laws.* No transaction contemplated by this Agreement or any of the Related Documents requires compliance with any bulk sales act or similar law.

(o) *Government Regulation.* The Borrower is not an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act. The making of Advances by the Lenders hereunder, the application of the proceeds thereof and the consummation of the transactions contemplated by this Agreement and the

(p) *Nonconsolidation.* The Borrower is operated in such a manner that the separate corporate existence of the Borrower, on the one hand, and any member of the Parent Group, on the other hand, would not be disregarded in the event of the bankruptcy or insolvency of any member of the Parent Group and, without limiting the generality of the foregoing:

(i) the Borrower is a limited purpose limited liability company whose activities are restricted in its limited liability company agreement to those activities expressly permitted hereunder and under the other Related Documents and the Borrower has not engaged, and does not presently engage, in any activity other than those activities expressly permitted hereunder and under the other Related Documents, nor has the Borrower entered into any agreement other than this Agreement, the other Related Documents to which it is a party and, with the prior written consent of the Lenders and the Administrative Agent, any other agreement necessary to carry out more effectively the provisions and purposes hereof or thereof;

(ii) the Borrower's business is managed solely by its own officers and directors, each of whom when acting for the Borrower shall be acting solely in his or her capacity as an officer or director of the Borrower and not as an officer, director, employee or agent of any member of the Parent Group;

(iii) Borrower shall compensate all employees, consultants and agents directly or indirectly through reimbursement of the Parent, from the Borrower's bank accounts, for services provided to the Borrower by such employees, consultants and agents and, to the extent any employee, consultant or agent of the Borrower is also an employee, consultant or agent of such member of the Parent Group on a basis which reflects the respective services rendered to the Borrower and such member of the Parent Group and in accordance with the terms of the Administrative Services Agreement;

(iv) Borrower shall pay its own incidental administrative costs and expenses not covered under the terms of the Administrative Services Agreement from its own funds, and shall allocate all other shared overhead expenses (including, without limitation, telephone and other utility charges, the services of shared employees, consultants and agents, and reasonable legal and auditing expenses) which are not reflected in the Servicing Fee, and other items of cost and expense shared between the Borrower and the Parent, pursuant to the terms of the Administrative Services Agreement, on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use or the value of services rendered;

(v) other than the purchase and acceptance through capital contribution of Transferred Receivables, the acceptance of Subordinated Loans pursuant to the Subordinated Notes, the payment of distributions and the return of capital to the Member, the payment of Servicing Fees to the Servicer under this Agreement and the transactions contemplated under the Administrative Services Agreement, the Borrower engages and has engaged in no intercorporate transactions with any member of the Parent Group;

(vi) the Borrower maintains records and books of account separate from that of each member of the Parent Group, holds regular meetings and otherwise observes limited liability company formalities;

(vii) (A) the financial statements (other than consolidated financial statements) and books and records of the Borrower and each member of the Parent Group reflect the separate existence of the Borrower and (B) the consolidated financial statements of the Parent Group shall contain disclosure to the effect that the Borrower's assets are not available to the creditors of any member of the Parent Group;

(viii) (A) the Borrower maintains its assets separately from the assets of each member of the Parent Group (including through the maintenance of separate bank accounts and except for any

Records to the extent necessary to assist the Servicer in connection with the servicing of the Transferred Receivables), (B) except as contemplated by the Administrative Services Agreement the Borrower's funds (including all money, checks and other cash proceeds) and assets, and records relating thereto, have not been and are not commingled with those of any member of the Parent Group and (C) the separate creditors of the Borrower will be entitled to be satisfied out of the Borrower's assets prior to any value in the Borrower becoming available to the Member;

(ix) except as otherwise expressly permitted hereunder, under the other Related Documents and under the Borrower's organizational documents, no member of the Parent Group (A) pays the Borrower's expenses, (B) guarantees the Borrower's obligations, or (C) advances funds to the Borrower for the payment of expenses or otherwise;

(x) all business correspondence and other communications of the Borrower are conducted in the Borrower's own name, on its own stationery and through a separately-listed telephone number;

(xi) Borrower shall maintain separate office space from the offices of any member of the Parent Group and identify such office by a sign in its own name;

(xii) Borrower shall respond to any inquiries with respect to ownership of a Transferred Receivable by stating that it is the owner of such Transferred Receivable, and that such Transferred Receivable is pledged to the Administrative Agent for the benefit of the Lenders;

(xiii) the Borrower does not act as agent for any member of the Parent Group, but instead presents itself to the public as a legal entity separate from each such member and independently engaged in the business of purchasing and financing Receivables;

(xiv) the Borrower maintains at least two independent directors each of whom (A) is not a Stockholder, director, officer, employee or associate, or any relative of the foregoing, of any member of the Parent Group (other than the Borrower), all as provided in its limited liability company agreement, (B) has (1) prior experience as an independent director for an entity whose organizational documents required the unanimous consent of all independent directors thereof before such corporation 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 (2) at least two years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management, independent director services or placement services to issuers of securitization or structured finance instruments, agreements or securities, and (C) is otherwise acceptable to the Lenders and the Administrative Agent; and

(xv) the limited liability company agreement of the Borrower requires (A) the affirmative vote of each independent director before a voluntary petition under Section 301 of the Bankruptcy Code may be filed by the Borrower, and (B) the Borrower to maintain (1) correct and complete books and records of account and (2) minutes of the meetings and other proceedings of its members and board of directors.

(q) *Deposit and Disbursement Accounts.* Schedule 4.01(q) lists all banks and other financial institutions at which the Borrower maintains deposit or other bank accounts as of the Closing Date, including any Lockbox Accounts and the Borrower Account, and such schedule correctly identifies the name, address and telephone number of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor. The Borrower Account and each Lockbox Account constitute deposit accounts within the meaning of the UCC. The Borrower (or the Servicer on its behalf) has delivered to the Administrative Agent a fully executed agreement pursuant to which the Borrower Account Bank (with respect to the Borrower Account) and each Lockbox Account Bank (with respect to each Lockbox Account) has agreed to comply with all instructions originated by the Administrative Agent directing the disposition of funds in the Borrower

Account and each Lockbox Account without further consent by the Borrower, the Servicer or any Originator. None of the Borrower Account or any Lockbox Account is in the name of any person other than the Borrower or the Administrative Agent, and the Borrower has not consented to the Borrower Account Bank or any Lockbox Account Bank following the instructions of any Person other than the Administrative Agent. Accordingly, the Administrative Agent has a first priority perfected security interest in the Borrower Account and each Lockbox Account, and all funds on deposit therein.

(r) *Transferred Receivables.*

(i) *Transfers.* Each Transferred Receivable was purchased by or contributed to the Borrower on the relevant Transfer Date pursuant to the Sale Agreement.

(ii) *Eligibility.* Each Transferred Receivable designated as an Eligible Receivable in each Borrowing Base Certificate constitutes an Eligible Receivable as of the date specified in such Borrowing Base Certificate.

(iii) *No Material Adverse Effect.* The Borrower has no actual knowledge of any fact (including any defaults by the Obligor thereunder on any other Receivable) that would cause it or should have caused it to expect that any payments on any Transferred Receivable designated as an Eligible Receivable in any Borrowing Base Certificate will not be paid in full when due or that has caused it to expect any material adverse effect on any such Transferred Receivable.

(iv) *Nonavoidability of Transfers.* The Borrower shall (A) have received each Contributed Receivable as a contribution to the capital of the Borrower by the Member and (B) (1) have purchased each Sold Receivable from the applicable Originator for cash consideration or with the proceeds of a Subordinated Loan and (2) have accepted assignment of any Eligible Receivables transferred pursuant to *clause (b)* of *Section 4.04* of the Sale Agreement, in each case in an amount that constitutes fair consideration and reasonably equivalent value therefor. Each Sale of a Sold Receivable effected pursuant to the terms of the Sale Agreement shall not have been made for or on account of an antecedent debt owed by any Originator to the Borrower and no such Sale is or may be avoidable or subject to avoidance under any bankruptcy laws, rules or regulations.

(s) *Assignment of Interest in Related Documents.* The Borrower's interests in, to and under the Receivables Sale Agreement and the Parent Agreement have been assigned by the Borrower to the Administrative Agent (for the benefit of itself and the Lenders).

(t) *Representations and Warranties in Other Related Documents.* Each of the representations and warranties of the Borrower contained in the Related Documents (other than this Agreement) is true and correct in all respects and the Borrower hereby makes each such representation and warranty to, and for the benefit of, the Lenders and the Administrative Agent as if the same were set forth in full herein.

ARTICLE V.

GENERAL COVENANTS OF THE BORROWER

Section 5.01. *Affirmative Covenants of the Borrower.* The Borrower covenants and agrees that from and after the Effective Date and until the Termination Date:

(a) *Compliance with Agreements and Applicable Laws.* The Borrower shall (i) perform each of its obligations under this Agreement and the other Related Documents and (ii) comply with all federal, state and local laws and regulations applicable to it and the Transferred Receivables, including those relating to truth in lending, retail installment sales, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices, privacy, licensing, taxation, ERISA and labor matters and environmental laws and environmental permits, except, solely with respect to this *clause (ii)*, where the failure to so comply would not have an adverse effect on

(1) the business, assets, liabilities, operations, prospects or financial or other condition of the Borrower, or (2) the Borrower Collateral.

(b) *Maintenance of Existence and Conduct of Business.* The Borrower shall: (i) do or cause to be done all things necessary to preserve and keep in full force and effect its limited liability company existence and its rights and franchises; (ii) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder and in accordance with (1) the terms of its limited liability company agreement, (2) *Section 4.01(p)* and (3) the assumptions set forth in each legal opinion of Proskauer Rose LLP and Stikeman, Elliott or other counsel to the Borrower from time to time delivered pursuant to Section 3.02(d) of the Sale Agreement with respect to issues of substantive consolidation and true sale and absolute transfer; (iii) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, including all licenses, permits, charters and registrations, and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and (iv) transact business only in the name of Superior Essex Funding LLC or such trade names as are set forth in *Schedule 5.01(b)*.

(c) *Lockboxes; Deposit of Collections.* The Borrower shall deposit or cause to be deposited promptly into a Lockbox Account, and in any event no later than the first Business Day after receipt thereof, all Collections it may receive with respect to any Transferred Receivable.

(d) *Use of Proceeds.* The Borrower shall utilize the proceeds of the Advances made hereunder solely for (i) the repayment of Advances made hereunder and the payment of any fees due hereunder, (ii) the purchase of Receivables from the Originators pursuant to the Sale Agreement, (iii) the payment of distributions to the Member, (iv) the repayment of Subordinated Loans, and (v) the payment of administrative fees or Servicing Fees or expenses to the Servicer or routine administrative or operating expenses, in each case only as expressly permitted by and in accordance with the terms of this Agreement and the other Related Documents.

(e) *Payment, Performance and Discharge of Obligations.*

(i) Subject to *Section 5.01(e)(ii)*, the Borrower shall pay, perform and discharge or cause to be paid, performed and discharged promptly all charges and claims payable by it, including (A) Charges imposed upon it, its income and profits, or any of its property (real, personal or mixed) and all Charges with respect to tax, social security and unemployment withholding with respect to its employees, and (B) lawful claims for labor, materials, supplies and services or otherwise before any thereof shall become past due.

(ii) The Borrower may in good faith contest, by appropriate proceedings, the validity or amount of any charges or claims described in *Section 5.01(e)(i)*; provided, that (A) adequate reserves with respect to such contest are maintained on the books of the Borrower, in accordance with GAAP, (B) such contest is maintained and prosecuted continuously and with diligence, (C) none of the Borrower Collateral becomes subject to forfeiture or loss as a result of such contest, (D) no Lien shall be imposed to secure payment of such charges or claims other than inchoate tax liens and (E) none of the Lenders or the Administrative Agent has advised the Borrower in writing that such Affected Party reasonably believes that failure to pay or to discharge such claims or charges could have or result in a Material Adverse Effect.

(f) *ERISA.* The Borrower shall give the Administrative Agent prompt written notice of any event that (i) could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA, or (ii) could reasonably be expected to result in the incurrence by Borrower of any liabilities under Title IV of ERISA (other than premium payments arising in the ordinary course of business).

Section 5.02. *Reporting Requirements of the Borrower.* The Borrower hereby agrees that from and after the Effective Date until the Termination Date, it shall furnish or cause to be furnished to the Administrative Agent and the Lenders:

(a) The financial statements, notices and other information at the times, to the Persons and in the manner set forth in *Annex 5.02(a)*.

(b) As soon as available, and in any event no later than 12:00 Noon (New York time) on the third Business Day of each week, a completed certificate in the form attached hereto as *Exhibit 5.02(b)* (each, a "Borrowing Base Certificate"), each of which shall be prepared by the Borrower or the Servicer as of the last day of the previous week; *provided*, that if (i) an Incipient Termination Event or a Termination Event shall have occurred and be continuing or (ii) the Administrative Agent, in good faith, believes that an Incipient Termination Event or a Termination Event is imminent or deems the Lender's rights or interests in the Transferred Receivables or the Borrower Collateral insecure, then such reports shall be delivered daily.

(c) Such other reports, statements and reconciliations with respect to the Borrowing Base or Borrower Collateral as any Lender or the Administrative Agent shall from time to time request in its reasonable discretion.

Section 5.03. *Negative Covenants of the Borrower.* The Borrower covenants and agrees that, without the prior written consent of the Requisite Lenders and the Administrative Agent, from and after the Effective Date until the Termination Date:

(a) *Sale of Membership Interests and Assets.* The Borrower shall not sell, transfer, convey, assign or otherwise dispose of, or assign any right to receive income in respect of, any of its properties or other assets or any of its membership interests (whether in a public or a private offering or otherwise), any Transferred Receivable or Contract therefor or any of its rights with respect to any Lockbox or any Lockbox Account, the Collection Account or any other deposit account in which any Collections of any Transferred Receivable are deposited except as otherwise expressly permitted by this Agreement or any of the other Related Documents.

(b) *Liens.* The Borrower shall not create, incur, assume or permit to exist (i) any Adverse Claim on or with respect to its Transferred Receivables or (ii) any Adverse Claim on or with respect to its other properties or assets (whether now owned or hereafter acquired) except for the Liens set forth in *Schedule 5.03(b)* and other Permitted Encumbrances. In addition, the Borrower shall not become a party to any agreement, note, indenture or instrument or take any other action that would prohibit the creation of a Lien on any of its properties or other assets in favor of the Lenders as additional collateral for the Borrower Obligations, except as otherwise expressly permitted by this Agreement or any of the other Related Documents.

(c) *Modifications of Receivables, Contracts or Credit and Collection Policies.* The Borrower shall not, without the prior written consent of the Administrative Agent, (i) extend, amend, forgive, discharge, compromise, waive, cancel or otherwise modify the terms of any Transferred Receivable or amend, modify or waive any term or condition of any Contract related thereto, *provided*, that the Borrower may authorize the Servicer to take such actions as are expressly permitted by the terms of any Related Document or the Credit and Collection Policies, or (ii) amend, modify or waive any term or provision of the Credit and Collection Policies.

(d) *Changes in Instructions to Obligors.* The Borrower shall not make any change in its instructions to Obligors regarding the deposit of Collections with respect to the Transferred Receivables, except to the extent the Administrative Agent directs the Borrower to change such instructions to Obligors or the Administrative Agent consents in writing to such change.

(e) *Capital Structure and Business.* The Borrower shall not (i) make any changes in any of its business objectives, purposes or operations, (ii) make any change in its capital structure, including the issuance of any membership interests, warrants or other securities convertible into membership interests or any revision of the terms of its outstanding membership interests, (iii) amend, waive or modify any term or provision of its certificate of formation or limited liability company agreement, (iv) make any change to its name indicated on the public records of its jurisdiction of organization or (v) change its jurisdiction of organization. The Borrower shall not engage in any business other than as provided in its certificate of formation, limited liability company agreement and the Related Documents.

(f) *Mergers, Subsidiaries, Etc.* The Borrower shall not directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or capital Stock of, or otherwise combine with or acquire, any Person.

(g) *Sale Characterization; Receivables Sale Agreement.* The Borrower shall not make statements or disclosures, prepare any financial statements or in any other respect account for or treat the transactions contemplated by the Sale Agreement (including for accounting, tax and reporting purposes) in any manner other than (i) with respect to each Sale of each Sold Receivable effected pursuant to the Sale Agreement, as a true sale and absolute assignment of the title to and sole record and beneficial ownership interest of the Transferred Receivables by the Originators to the Borrower and (ii) with respect to each contribution of Contributed Receivables thereunder, as an increase in the stated capital of the Borrower.

(h) *Restricted Payments.* Except for the Subordinated Loans, the Borrower shall not enter into any lending transaction with any other Person. The Borrower shall not at any time (i) advance credit to any Person or (ii) declare any distributions, repurchase any membership interest, return any capital, or make any other payment or distribution of cash or other property or assets in respect of the Borrower's membership interest or make a repayment with respect to any Subordinated Loans if, after giving effect to any such advance or distribution, a Funding Excess, Incipient Termination Event or Termination Event would exist or otherwise result therefrom.

(i) *Indebtedness.* The Borrower shall not create, incur, assume or permit to exist any Debt, except (i) Debt of the Borrower to any Affected Party, Indemnified Person, the Servicer or any other Person expressly permitted by this Agreement or any other Related Document, (ii) Subordinated Loans pursuant to the Subordinated Notes, (iii) deferred taxes, (iv) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law, and (v) endorser liability in connection with the endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

(j) *Prohibited Transactions.* The Borrower shall not enter into, or be a party to, any transaction with any Person except as expressly permitted hereunder or under any other Related Document.

(k) *Investments.* Except as otherwise expressly permitted hereunder or under the other Related Documents, the Borrower shall not make any investment in, or make or accrue loans or advances of money to, any Person, including the Member, any director, officer or employee of the Borrower, the Parent or any of the Parent's other Subsidiaries, through the direct or indirect lending of money, holding of securities or otherwise, except with respect to Transferred Receivables, Permitted Investments and investments received in connection with the bankruptcy or reorganization of any Obligor of a Transferred Receivable.

(l) *Commingling.* The Borrower shall not deposit or permit the deposit of any funds that do not constitute Collections of Transferred Receivables into any Lockbox Account. If funds that are not Collections are deposited into a Lockbox Account and the Servicer has so notified the Administrative Agent in writing, the Administrative Agent shall promptly remit (or direct the applicable Lockbox Account Bank to remit) any such amounts that are not Collections to the applicable Originator or other Person designated in such notice from the Servicer.

(m) *ERISA.* The Borrower shall not, and shall not cause or permit any of its ERISA Affiliates to, cause or permit to occur an event that (i) could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA, or (ii) could reasonably be expected to result in the incurrence by Borrower of any liabilities under Title IV of ERISA (other than premium payments arising in the ordinary course of business).

(n) *Related Documents.* The Borrower shall not amend, modify or waive any term or provision of any Related Document without the prior written consent of the Administrative Agent.

(o) *Board Policies.* The Borrower shall not modify the terms of any policy or resolutions of its board of directors if such modification could reasonably be expected to have or result in a Material Adverse Effect.

(p) *Additional Members of Borrower.* The Borrower shall not admit any additional member without the prior written consent of the Administrative Agent and the Requisite Lenders other than a "Special Member" as such term is defined in the Borrower's limited liability company agreement as of the date hereof.

ARTICLE VI.

ACCOUNTS

Section 6.01. *Establishment of Accounts.*

(a) *The Lockbox Accounts.*

(i) The Borrower has established with each Lockbox Bank one or more Lockbox Accounts. The Borrower agrees that the Administrative Agent shall have exclusive dominion and control of each Lockbox Account and all monies, instruments and other property from time to time on deposit therein. The Borrower shall not make or cause to be made, or have any ability to make or cause to be made, any withdrawals from any Lockbox Account except as provided in *Section 6.01(b)(ii)*.

(ii) The Borrower and the Servicer have instructed all existing Obligor of Transferred Receivables, and shall instruct all future Obligor of such Receivables, to make payments in respect thereof only (A) by check or money order mailed to one or more lockboxes or post office boxes under the control of the Administrative Agent (each a "Lockbox" and collectively the "Lockboxes") or (B) by wire transfer or moneygram directly to a Lockbox Account. *Schedule 4.01(q)* lists all Lockboxes and all Lockbox Banks at which the Borrower maintains Lockbox Accounts as of the Effective Date, and such schedule correctly identifies (1) with respect to each such Lockbox Bank, the name, address and telephone number thereof, (2) with respect to each Lockbox Account, the name in which such account is held and the complete account number therefor, and (3) with respect to each Lockbox, the lockbox number and address thereof. The Borrower and the Servicer shall endorse, to the extent necessary, all checks or other instruments received in any Lockbox so that the same can be deposited in the Lockbox Account, in the form so received (with all necessary endorsements), on the first Business Day after the date of receipt thereof. In addition, each of the Borrower and the Servicer shall deposit or cause to be deposited into a Lockbox Account all cash, checks, money orders or other proceeds of Transferred Receivables or Borrower Collateral received by it other than in a Lockbox or a Lockbox Account, in the form so received (with all necessary endorsements), not later than the close of business on the first Business Day following the date of receipt thereof, and until so deposited all such items or other proceeds shall be held in trust for the benefit of the Administrative Agent. Neither the Borrower nor the Servicer shall make any deposits into a Lockbox or any Lockbox Account except in accordance with the terms of this Agreement or any other Related Document.

(iii) If, for any reason, a Lockbox Account Agreement terminates or any Lockbox Bank fails to comply with its obligations under the Lockbox Account Agreement to which it is a party, then the Borrower shall promptly notify all Obligor of Transferred Receivables who had previously been instructed to make wire payments to a Lockbox Account maintained at any such Lockbox Bank to make all future payments to a new Lockbox Account in accordance with this *Section 6.01(a)(iii)*. The Borrower shall not close any such Lockbox Account unless it shall have (A) received the prior written consent of the Administrative Agent, (B) established a new account with the same Lockbox Bank or with a new depository institution satisfactory to the Administrative Agent, (C) entered into an agreement covering such new account with such Lockbox Bank or with such new depository institution substantially in the form of such Lockbox Account Agreement or that is satisfactory in all respects to the Administrative Agent (whereupon, for all purposes of this Agreement and the other Related Documents, such new account shall become a Lockbox Account, such new agreement shall become a Lockbox Account Agreement and any new depository institution shall become a Lockbox Bank), and (D) taken all such action as the Administrative Agent shall require to grant and perfect a first priority Lien in such new Lockbox Account to the Lender under *Section 8.01* of this Agreement. Except as permitted by this *Section 6.01(a)*, neither

the Borrower nor the Servicer shall open any new Lockbox or Lockbox Account without the prior written consent of the Administrative Agent.

(b) *Collection Account.*

(i) The Lenders have established and shall maintain the Collection Account with Deutsche Bank Trust Company Americas (the "Depository"). The Collection Account shall be registered in the name of the Administrative Agent and the Administrative Agent shall, subject to the terms of this Agreement, have exclusive dominion and control thereof and of all monies, instruments and other property from time to time on deposit therein.

(ii) The Borrower shall instruct each Lockbox Bank to transfer, and the Borrower hereby grants the Administrative Agent the authority to instruct each such Lockbox Bank to transfer, on each Business Day in same day funds, all available funds in each Lockbox Account to the Collection Account. The Lenders and the Administrative Agent may deposit into the Collection Account from time to time all monies, instruments and other property received by any of them as proceeds of the Transferred Receivables.

(iii) If, for any reason, the Depository wishes to resign as depository of the Collection Account or fails to carry out the instructions of the Administrative Agent, then the Administrative Agent shall promptly notify the Lenders. Neither the Lenders nor the Administrative Agent shall close the Collection Account unless (A) a new deposit account has been established with a new depository institution, (B) the Lenders and the Administrative Agent have entered into an agreement covering such new account with such new depository institution satisfactory in all respects to the Administrative Agent (whereupon such new account shall become the Collection Account and such new depository institution shall become the Depository for all purposes of this Agreement and the other Related Documents), and (C) the Lenders and the Administrative Agent have taken all such action as the Administrative Agent shall require to grant and perfect a first priority Lien in such new Collection Account to the Administrative Agent on behalf of the Lenders.

(c) *Borrower Account.*

(i) The Borrower has established the Borrower Account and agrees that the Administrative Agent shall have exclusive dominion and control of such Borrower Account and all monies, instruments and other property from time to time on deposit therein.

(ii) The Administrative Agent hereby agrees that until such time as it instructs the Borrower Account Bank otherwise, the Borrower shall have the right to give instruction for the withdrawal, transfer or payment of funds on deposit in the Borrower Account. The Administrative Agent further agrees that it shall not instruct the Borrower Account Bank to no longer accept instructions from the Borrower unless an Incipient Termination Event or a Termination Event shall have occurred and be continuing.

ARTICLE VII.

SERVICER PROVISIONS

Section 7.01. *Appointment of the Servicer.* Each of the Lenders hereby appoints the Servicer as its agent, and the Borrower hereby acknowledges and agrees to such appointment, to service the Transferred Receivables and enforce the Borrower's, the Lenders' and the Administrative Agent's rights and interests in and under each Transferred Receivable and Contract therefor and to serve in such capacity until the termination of its responsibilities pursuant to *Sections 9.02 or 11.01*. In connection therewith, the Servicer hereby accepts such appointment and agrees to perform the duties and obligations set forth herein. The Servicer may, with the prior written consent of the Requisite Lenders

and the Administrative Agent, subcontract with a Sub-Servicer for the collection, servicing or administration of the Transferred Receivables; *provided*, that (a) the Servicer shall remain liable for the performance of the duties and obligations of such Sub-Servicer pursuant to the terms hereof, (b) any Sub-Servicing Agreement that may be entered into and any other transactions or services relating to the Transferred Receivables involving a Sub-Servicer shall be deemed to be between the Sub-Servicer and the Servicer alone, and the Lenders and the Administrative Agent shall not be deemed parties thereto and shall have no obligations, duties or liabilities with respect to the Sub-Servicer and (c) each Sub-Servicing Agreement shall expressly provide that it shall automatically terminate upon the termination of the Servicer's responsibilities hereunder in accordance with the terms hereof.

Section 7.02. *Duties and Responsibilities of the Servicer.* Subject to the provisions of this Agreement, the Servicer shall conduct the servicing, administration and collection of the Transferred Receivables and shall take, or cause to be taken, all actions that (i) may be necessary or advisable to service, administer and collect each Transferred Receivable from time to time, (ii) the Servicer would take if the Transferred Receivables were owned by the Servicer, and (iii) are consistent with industry practice for the servicing of such Transferred Receivables.

Section 7.03. *Collections on Receivables.*

(a) In the event that the Servicer is unable to determine the specific Transferred Receivables on which Collections have been received from the Obligor thereunder, the parties agree for purposes of this Agreement only that such Collections shall be deemed to have been received on such Receivables in the order in which they were originated with respect to such Obligor. In the event that the Servicer is unable to determine the specific Transferred Receivables on which discounts, offsets or other non-cash reductions have been granted or made with respect to the Obligor thereunder, the parties agree for purposes of this Agreement only that such reductions shall be deemed to have been granted or made (i) prior to a Termination Event, on such Receivables as determined by the Servicer, and (ii) from and after the occurrence of a Termination Event, in the reverse order in which they were originated with respect to such Obligor.

(b) If the Servicer determines that amounts unrelated to the Transferred Receivables (the "*Unrelated Amounts*") have been deposited in the Collection Account, then the Servicer shall provide written evidence thereof to the Lenders and the Administrative Agent no later than the first Business Day following the day on which the Servicer had actual knowledge thereof, which evidence shall be provided in writing and shall be otherwise reasonably satisfactory to each such Affected Party. Upon receipt of any such notice, the Administrative Agent shall, if such amounts have not been applied to the Borrower Obligations, segregate the Unrelated Amounts and the same shall not be deemed to constitute Collections on Transferred Receivables.

Section 7.04. *Authorization of the Servicer.* Each of the Lenders hereby authorizes the Servicer, and the Borrower acknowledges and agrees to such authorization, to take any and all reasonable steps in its name and on its behalf necessary or desirable and not inconsistent with the rights of the Administrative Agent and the Lenders hereunder, in the determination of the Servicer, to (a) collect all amounts due under any Transferred Receivable, including endorsing the applicable name on checks and other instruments representing Collections on such Receivable, and execute and deliver any and all instruments of satisfaction or cancellation or of partial or full release or discharge and all other comparable instruments with respect to any such Receivable and (b) after any Transferred Receivable becomes a Delinquent Receivable or a Defaulted Receivable and to the extent permitted under and in compliance with applicable law and regulations, commence proceedings with respect to the enforcement of payment of any such Receivable and the Contract therefor and adjust, settle or compromise any payments due thereunder, in each case to the same extent as the applicable Originator could have done if it had continued to own such Receivable. The Borrower, the Administrative Agent and each Lender shall furnish the Servicer with any powers of attorney and other documents necessary or appropriate to

enable the Servicer to carry out its servicing and administrative duties hereunder. Notwithstanding anything to the contrary contained herein, the Lenders and the Administrative Agent shall have the absolute and unlimited right to direct the Servicer (at the Servicer's expense) (i) to commence or settle any legal action to enforce collection of any Transferred Receivable or (ii) to foreclose upon, repossess or take any other

action that the Administrative Agent deems necessary or advisable with respect thereto. In no event shall the Servicer be entitled to make any Affected Party a party to any Litigation without such Affected Party's express prior written consent, or to make the Borrower a party to any Litigation without the Administrative Agent's consent.

Section 7.05. *Servicing Fees.* As compensation for its servicing activities and as reimbursement for its reasonable expenses in connection therewith, the Servicer shall be entitled to receive the Servicing Fees in accordance with *Section 2.07*. The Servicer shall be required to pay for all expenses incurred by it in connection with its activities hereunder (including any payments to accountants, counsel or any other Person) and shall not be entitled to any payment therefor other than the Servicing Fees.

Section 7.06. *Representations and Warranties of the Servicer.* To induce the Lenders to make Advances from time to time and the Administrative Agent to take any action required to be performed by it hereunder, the Servicer makes the following representations and warranties to each Lender and the Administrative Agent on the Effective Date and each Advance Date, which shall survive the execution and delivery of this Agreement:

(a) *Corporate Existence; Compliance with Law.* The Servicer (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to so qualify could not reasonably be expected to result in a Material Adverse Effect; (iii) has the requisite corporate power and authority and the legal right to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease, and to conduct its business, in each case, as now, heretofore and proposed to be conducted; (iv) has all licenses, permits, consents or approvals from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct, except where the failure to do any of the foregoing could not reasonably be expected to result in a Material Adverse Effect; (v) is in compliance with its charter and bylaws; and (vi) subject to specific representations set forth herein regarding ERISA, tax and other laws, is in compliance with all applicable provisions of law, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

(b) *Corporate Power, Authorization, Enforceable Obligations.* The execution, delivery and performance by the Servicer of this Agreement and the other Related Documents to which it is a party and, solely with respect to clause (vii) below, the exercise by each of the Borrower, the Lenders or the Administrative Agent of any of its rights and remedies under any Related Document to which it is a party (i) are within the Servicer's corporate power; (ii) have been duly authorized by all necessary or proper corporate and shareholder action; (iii) do not contravene any provision of the Servicer's certificate or articles of incorporation or bylaws; (iv) do not violate any law or regulation, or any order or decree of any court or Governmental Authority applicable to Servicer; (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which the Servicer is a party or by which the Servicer or any of the property of the Servicer is bound; (vi) do not result in the creation or imposition of any Adverse Claim upon any of the property of the Servicer; and (vii) do not require the consent or approval of any Governmental Authority or any other Person, except those which have been duly obtained, made or complied with prior to the Closing Date as

provided in *Section 3.01(b)*. On or prior to the Effective Date, each of the Related Documents to which the Servicer is a party shall have been duly executed and delivered by the Servicer and each such Related Document shall then constitute a legal, valid and binding obligation of the Servicer enforceable against it in accordance with its terms.

(c) *No Litigation.* No Litigation is now pending or, to the knowledge of the Servicer, threatened against the Servicer that (i) challenges the Servicer's right or power to enter into or perform any of its obligations under the Related Documents to which it is a party, or the validity or enforceability of any Related Document or any action taken thereunder, (ii) seeks to prevent the transfer, sale, pledge or contribution of any Receivable or the consummation of any of the transactions contemplated under this Agreement or

the other Related Documents, or (iii) except as set forth on *Schedule 7.06(c)*, that, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(d) *Solvency*. (i) No insolvency proceedings of any nature are now pending or threatened against the Servicer, and (ii) the Servicer is generally paying its debts as they become due.

(e) *Taxes*. All material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed by the Servicer and each of its Affiliates included in the Parent Group have been filed with the appropriate Governmental Authority and all Charges have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof (or any such fine, penalty, interest, late charge or loss has been paid), excluding Charges or other amounts being contested in accordance with *Section 7.07(g)*. Proper and accurate amounts have been withheld by the Servicer or such Affiliate from its respective employees for all periods in compliance in all material respects with all applicable federal, state, local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities. *Schedule 7.06(e)* sets forth as of the Closing Date (i) those taxable years for which the Servicer's or such Affiliates' tax returns are currently being audited by the IRS or any other applicable Governmental Authority and (ii) any assessments or threatened assessments in connection with any such audit or otherwise currently outstanding. Except as described on *Schedule 7.06(e)*, neither the Servicer nor any such Affiliate has executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges. Except as described in *Schedule 7.06(e)*, the Servicer is not liable for any Charges: (A) under any agreement (including any tax sharing agreements) or (B) to the best of the Servicer's knowledge, as a transferee.

(f) *Full Disclosure*. To the extent prepared by or based upon information provided by the Servicer, all information contained in this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished to any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents (which shall not include any projections or pro forma financial information), in each case, taken as a whole, is true and accurate in every material respect, and none of this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished to any Lender or the Administrative Agent pursuant to the terms of this Agreement or any of the other Related Documents in each case, taken as whole, is misleading as a result of the failure to include therein a material fact. All information contained in this Agreement, any Borrowing Base Certificate or any of the other Related Documents, or any written statement furnished to any Lender or the Administrative Agent has been prepared in good faith by the management of the Servicer with the exercise of reasonable diligence.

(g) *ERISA*. The Servicer is in compliance with ERISA and has not incurred and does not expect to incur any liabilities (except for premium payments arising in the ordinary course of business) payable to the PBGC under ERISA.

(h) *Brokers*. No broker or finder acting on behalf of the Servicer was employed or utilized in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby and the Servicer has no obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

(i) *Margin Regulations*. The Servicer is not engaged in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security," as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as "Margin Stock"). The Servicer owns no Margin Stock, and no portion of the proceeds of the Advances made hereunder will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Debt that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any portion of such proceeds to be considered a "purpose credit" within the meaning of Regulations T, U or X of the Federal Reserve Board. The Servicer will not take or permit to be taken any action that might cause any Related Document to violate any regulation of the Federal Reserve Board.

(j) *Government Regulation.* The Servicer is not an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act.

(k) *No Material Adverse Effect.* The Servicer has no actual knowledge of any fact (including any defaults by the Obligor thereunder on any other Receivable) that would cause it or should have caused it to expect that any payments on any Transferred Receivable designated as an Eligible Receivable in any Borrowing Base Certificate will not be paid in full when due or that has caused it to expect any material adverse effect on any such Transferred Receivable.

(l) *Representations and Warranties in Other Related Documents.* Each of the representations and warranties of the Servicer contained in the Related Documents (other than this Agreement) is true and correct in all respects and the Servicer hereby makes each such representation and warranty to, and for the benefit of, the Lenders and the Administrative Agent as if the same were set forth in full herein.

Section 7.07. *Covenants of the Servicer.* The Servicer covenants and agrees that from and after the Effective Date and until the Termination Date:

(a) *Compliance with Agreements and Applicable Laws.* The Servicer shall perform each of its obligations under this Agreement and the other Related Documents and comply with all federal, state and local laws and regulations applicable to it and the Transferred Receivables, including those relating to truth in lending, retail installment sales, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices, privacy, licensing, taxation, ERISA and labor matters and environmental laws and environmental permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

(b) *Maintenance of Existence and Conduct of Business.* The Servicer shall: (i) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and its rights and franchises; (ii) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder and in accordance with the terms of its certificate or articles of incorporation and bylaws; (iii) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, including all licenses, permits, charters and registrations, and keep the same in good repair, working order and condition in all material

respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and (iv) without notifying the Administrative Agent in writing at least thirty (30) days prior thereto, and subject to satisfaction of all actions requested by the Administrative Agent pursuant to *Section 14.14*, transact business only in such corporate and trade names as are set forth in *Schedule 7.07(b)*.

(c) *Deposit of Collections.* The Servicer shall deposit or cause to be deposited promptly into a Lockbox Account, and in any event no later than the first Business Day after receipt thereof, all Collections it may receive with respect to any Transferred Receivable.

(d) *ERISA.* The Servicer shall give the Administrative Agent prompt written notice of any event that (i) could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA, or (ii) could reasonably be expected to result in the incurrence by Servicer of any liabilities under Title IV of ERISA (other than premium payments arising in the ordinary course of business).

(e) *Compliance with Credit and Collection Policies.* The Servicer shall comply in all material respects with the Credit and Collection Policies with respect to each Transferred Receivable and the Contract therefor. The Servicer shall not amend, waive or modify any term or provision of the Credit and Collection Policies without the prior written consent of the Administrative Agent.

(f) *Ownership of Transferred Receivables.* The Servicer shall identify the Transferred Receivables clearly and unambiguously in its Servicing Records to reflect that a Lien on such Transferred Receivables has been granted to the Administrative Agent for the benefit of the Lenders.

(g) *Payment, Performance and Discharge of Obligations.*

(i) Subject to *Section 7.07(g)(ii)*, the Servicer shall pay, perform and discharge or cause to be paid, performed and discharged promptly all charges and claims payable by it, including (A) Charges imposed upon it, its income and profits, or any of its property (real, personal or mixed) and all Charges with respect to tax, social security and unemployment withholding with respect to its employees, and (B) lawful claims for labor, materials, supplies and services or otherwise before any thereof shall become past due.

(ii) The Servicer may in good faith contest, by appropriate proceedings, the validity or amount of any charges or claims described in *Section 7.07(g)(i)*; *provided* that (A) adequate reserves with respect to such contest are maintained on the books of the Servicer, in accordance with GAAP, (B) such contest is maintained and prosecuted continuously and with diligence, (C) none of the Borrower Collateral becomes subject to forfeiture or loss as a result of such contest, (D) no Lien shall be imposed to secure payment of such charges or claims other than inchoate tax liens and (E) none of the Lenders or the Administrative Agent has advised the Servicer in writing that such Affected Party reasonably believes that failure to pay or to discharge such claims or charges could have or result in a Material Adverse Effect.

Section 7.08. Reporting Requirements of the Servicer. The Servicer hereby agrees that, from and after the Effective Date and until the Termination Date, it shall deliver or cause to be delivered to the Lenders and the Administrative Agent the financial statements, notices, and other information at the times, to the Persons and in the manner set forth in *Section 5.02* and *Annex 5.02(a)*.

ARTICLE VIII

GRANT OF SECURITY INTERESTS

Section 8.01. Borrower's Grant of Security Interest. To secure the prompt and complete payment, performance and observance of all Borrower Obligations, and to induce the Administrative Agent and the Lenders to enter into this Agreement and perform the obligations required to be performed by them hereunder in accordance with the terms and conditions hereof, the Borrower hereby grants, assigns, conveys, pledges, hypothecates and transfers to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a Lien upon and security interest in all of the Borrower's right, title and interest in, to and under, but none of its obligations arising from, the following property, whether now owned by or owing to, or hereafter acquired by or arising in favor of, the Borrower (including under any trade names, styles or derivations of the Borrower), and regardless of where located (all of which being hereinafter collectively referred to as the "*Borrower Collateral*"):

(a) all Receivables;

(b) the Sale Agreement, all Lockbox Account Agreements and all other Related Documents now or hereafter in effect relating to the purchase, servicing or processing of Receivables (collectively, the "*Borrower Assigned Agreements*"), including (i) all rights of the Borrower to receive moneys due and to become due thereunder or pursuant thereto, (ii) all rights of the Borrower to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all claims of the Borrower for damages or breach with respect thereto or for default thereunder and (iv) the right of the Borrower to amend, waive or terminate the same and to perform and to compel performance and otherwise exercise all remedies thereunder;

(c) all of the following (collectively, the "*Borrower Account Collateral*"):

(i) the Lockbox Accounts, the Lockboxes, and all funds on deposit therein and all certificates and instruments, if any, from time to time representing or evidencing the Lockbox Accounts, the Lockboxes or such funds,

(ii) the Collection Account and all funds on deposit therein and all certificates and instruments, if any, from time to time representing or evidencing the Collection Account or such funds,

(iii) the Borrower Account and all funds on deposit therein and all certificates and instruments, if any, from time to time representing or evidencing the Borrower Account or such funds,

(iv) all notes, certificates of deposit and other instruments from time to time delivered to or otherwise possessed by any Lender or any assignee or agent on behalf of any Lender in substitution for or in addition to any of the then existing Borrower Account Collateral, and

(v) all interest, dividends, cash, instruments, investment property and other property from time to time received, receivable or otherwise distributed with respect to or in exchange for any and all of the then existing Borrower Account Collateral;

(d) all other property relating to the Receivables that may from time to time hereafter be granted and pledged by the Borrower or by any Person on its behalf whether under this Agreement or otherwise, including any deposit with any Lender or the Administrative Agent of additional funds by the Borrower; and

(e) to the extent not otherwise included, all proceeds and products of the foregoing and all accessions to, substitutions and replacements for, and profits of, each of the foregoing Borrower Collateral (including proceeds that constitute property of the types described in *Sections 8.01(a)* through *(d)*).

Section 8.02. Borrower's Agreements. The Borrower hereby (a) assigns, transfer and conveys the benefits of the representations, warranties and covenants of each Originator made to the Borrower under the Sale Agreement to the Administrative Agent for the benefit of the Lenders hereunder; (b) acknowledges and agrees that the rights of the Borrower to require a capital contribution from the Member or to require payment of a Rejected Amount from an Originator under the Sale Agreement may be enforced by the Lenders and the Administrative Agent; and (c) certifies that the Sale Agreement provides that the representations, warranties and covenants described in *Sections 4.01, 4.02* and *4.03* thereof, the indemnification and payment provisions of *Article V* thereof and the provisions of *Sections 4.03(j), 8.03* and *8.14* thereof shall survive the sale of the Transferred Receivables (and undivided percentage ownership interests therein) and the termination of the Sale Agreement and this Agreement.

Section 8.03. Delivery of Collateral. All certificates or instruments representing or evidencing all or any portion of the Borrower Collateral shall be delivered to and held by or on behalf of the Administrative Agent and shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Administrative Agent. The Administrative Agent shall have the right (a) at any time to exchange certificates or instruments representing or evidencing Borrower Collateral for certificates or instruments of smaller or larger denominations and (b) at any time in its discretion following the occurrence and during the continuation of a Termination Event and without notice to the Borrower, to transfer to or to register in the name of the Administrative Agent or its nominee any or all of the Borrower Collateral.

Section 8.04. Borrower Remains Liable. It is expressly agreed by the Borrower that, anything herein to the contrary notwithstanding, the Borrower shall remain liable under any and all of the Transferred Receivables, the Contracts therefor, the Borrower Assigned Agreements and any other agreements constituting the Borrower Collateral to which it is a party to observe and perform all the conditions and obligations to be observed and performed by it thereunder. The Lenders and the Administrative Agent shall not have any obligation or liability under any such Receivables, Contracts or agreements by reason of or arising out of this Agreement or the granting herein or therein of a Lien thereon or the receipt by the Administrative Agent or the Lenders of any payment relating thereto pursuant hereto or thereto. The exercise by any Lender

or the Administrative Agent of any of its respective rights under this Agreement shall not release any Originator, the Borrower or the Servicer from any of their respective duties or obligations under any such Receivables, Contracts or agreements. None of the Lenders or the Administrative Agent shall be required or obligated in any manner to perform or fulfill any of the obligations of any Originator, the Borrower or the Servicer under or pursuant to any such Receivable, Contract or agreement, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any such Receivable, Contract or agreement, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 8.05. *Covenants of the Borrower and the Servicer Regarding the Borrower Collateral.*

(a) *Offices and Records.* The Borrower shall maintain its principal place of business and chief executive office and the office at which it stores its Records at the respective locations specified in *Schedule 4.01(b)* or, upon 30 days' prior written notice to the Administrative Agent, at such other location in a jurisdiction where all action requested by the Administrative Agent pursuant to *Section 14.14* shall have been taken with respect to the Borrower Collateral. Each of the Borrower and the Servicer shall, at its own cost and expense, maintain adequate and complete records of the Transferred Receivables and the Borrower Collateral, including records of any and all payments received, credits granted and merchandise returned with respect thereto and all other dealings therewith. Each of the Borrower and the Servicer shall, by no later than the Effective Date, mark

conspicuously with a legend, in form and substance satisfactory to the Administrative Agent, its books and records (including computer records) and credit files pertaining to the Borrower Collateral, and its file cabinets or other storage facilities where it maintains information pertaining thereto, to evidence this Agreement and the assignment and Liens granted pursuant to this *Article VIII*. Upon the occurrence and during the continuance of a Termination Event, the Borrower and the Servicer shall deliver and turn over such books and records to the Administrative Agent or its representatives at any time on demand of the Administrative Agent. Prior to the occurrence of a Termination Event and upon notice from the Administrative Agent, the Borrower and the Servicer shall permit any representative of the Administrative Agent to inspect such books and records and shall provide photocopies thereof to the Administrative Agent as more specifically set forth in *Section 8.05(b)*.

(b) *Access.* Each of the Borrower and the Servicer shall, at its own expense, during normal business hours, from time to time upon one Business Day's prior notice as frequently as the Administrative Agent determines to be appropriate: (i) provide the Lenders, the Administrative Agent and any of their respective officers, employees and agents access to its properties (including properties utilized in connection with the collection, processing or servicing of the Transferred Receivables), facilities, advisors and employees (including officers) and to the Borrower Collateral, (ii) permit the Lenders, the Administrative Agent and any of their respective officers, employees and agents to inspect, audit and make extracts from its books and records, including all Records, (iii) permit the Lenders or the Administrative Agent and their respective officers, employees and agents to inspect, review and evaluate the Transferred Receivables and the Borrower Collateral and (iv) permit the Lenders or the Administrative Agent and their respective officers, employees and agents to discuss matters relating to the Transferred Receivables or its performance under this Agreement or the other Related Documents or its affairs, finances and accounts with any of its officers, directors, employees, representatives or agents (in each case, with those persons having knowledge of such matters) and with its independent certified public accountants. If (i) the Administrative Agent in good faith deems any Lender's rights or interests in the Transferred Receivables, the Borrower Assigned Agreements or any other Borrower Collateral insecure or the Administrative Agent, in good faith believes that an Incipient Termination Event or a Termination Event is imminent or (ii) an Incipient Termination Event or a Termination Event shall have occurred and be continuing, then each of the Borrower and the Servicer shall, at its own expense, provide such access at all times without prior notice from the Administrative Agent and provide the Lenders or the Administrative Agent with access to its suppliers and customers. Each of the Borrower and the Servicer shall make available to the Administrative Agent and its counsel, as quickly as is possible under the circumstances, originals or copies of all books and records, including Records, that the Administrative Agent may request. Each of the Borrower and the Servicer shall deliver any document or instrument necessary for the Administrative Agent, as the Administrative Agent may from time to time request, to obtain records from any service bureau or other Person that maintains records for the Borrower or the Servicer, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by the

Borrower or the Servicer. For the avoidance of doubt, the Lenders and Administrative Agent and their respective officers, employees and agents shall only have the right to make environmental inspections once during any twelve (12) month period unless any Lender or the Administrative Agent has reason to believe that a condition exists or an event has occurred which could reasonably give rise to liability under environmental laws.

(c) *Communication with Accountants.* Each of the Borrower and the Servicer authorizes the Lenders and the Administrative Agent to communicate directly with its independent certified public accountants and authorizes and shall instruct those accountants and advisors to disclose and make available to the Lenders and the Administrative Agent any and all financial statements and other supporting financial documents, schedules and information relating to the Borrower or the Servicer (including copies of any issued management letters) and to discuss matters with respect to its business, financial condition and other affairs.

(d) *Collection of Transferred Receivables.* Except as otherwise provided in this *Section 8.05(d)*, the Servicer shall continue to collect or cause to be collected, at its sole cost and expense, all amounts due or to become due to the Borrower under the Transferred Receivables, the Borrower Assigned Agreements and any other Borrower Collateral. In connection therewith, the Borrower and the Servicer shall take such action as it, and from and after the occurrence and during the continuance of a Termination Event, the Administrative Agent, may deem necessary or desirable to enforce collection of the Transferred Receivables, the Borrower Assigned Agreements and the other Borrower Collateral; *provided* that the Borrower or the Servicer may, rather than commencing any such action or taking any other enforcement action, at its option, elect to pay to the Administrative Agent, for deposit into the Collection Account, an amount equal to the Outstanding Balance of any such Transferred Receivable; *provided, further*, that if (i) an Incipient Termination Event or a Termination Event shall have occurred and be continuing or (ii) the Administrative Agent, in good faith believes that an Incipient Termination Event or a Termination Event is imminent, then the Administrative Agent may, without prior notice to the Seller or the Servicer, notify any Obligor under any Transferred Receivable or obligors under the Borrower Assigned Agreements of the pledge of such Transferred Receivables or Borrower Assigned Agreements, as the case may be, to the Administrative Agent on behalf of the Lenders hereunder and direct that payments of all amounts due or to become due to the Borrower thereunder be made directly to the Administrative Agent or any servicer, collection agent or lockbox or other account designated by the Administrative Agent and, upon such notification and at the sole cost and expense of the Borrower, the Administrative Agent may enforce collection of any such Transferred Receivable or the Borrower Assigned Agreements and adjust, settle or compromise the amount or payment thereof. The Administrative Agent shall provide prompt notice to the Borrower and the Servicer of any such notification of pledge or direction of payment to the Obligors under any Transferred Receivables.

(e) *Performance of Borrower Assigned Agreements.* Each of the Borrower and the Servicer shall (i) perform and observe all the terms and provisions of the Borrower Assigned Agreements to be performed or observed by it, maintain the Borrower Assigned Agreements in full force and effect, enforce the Borrower Assigned Agreements in accordance with their terms and take all action as may from time to time be requested by the Administrative Agent in order to accomplish the foregoing, and (ii) upon the request of and as directed by the Administrative Agent, make such demands and requests to any other party to the Borrower Assigned Agreements as are permitted to be made by the Borrower or the Servicer thereunder.

(f) *License for Use of Software and Other Intellectual Property.* Unless expressly prohibited by the licensor thereof or any provision of applicable law, if any, each of the Borrower and the Servicer hereby grants to the Administrative Agent on behalf of the Lenders a limited license to use, without charge, the Borrower's and the Servicer's computer programs, software, printouts and other computer materials, technical knowledge or processes, data bases, materials, trademarks, registered trademarks, trademark applications, service marks, registered service marks, service mark applications, patents, patent applications, trade names, rights of use of any name, labels, fictitious names, inventions, designs, trade secrets, goodwill, registrations, copyrights, copyright applications, permits, licenses, franchises, customer lists, credit files, correspondence, and advertising materials or any property of a similar nature, as it pertains to the Borrower Collateral, or any rights to any of the foregoing, only as reasonably required in connection with the advertising for sale, and selling any of the Borrower Collateral, or exercising of any other remedies hereto, and each of the Borrower and the Servicer agrees that its rights under all licenses and franchise agreements shall inure to the Administrative Agent's benefit (on behalf of the Lenders) for purposes of the license granted herein.

Except upon the occurrence and during the continuation of a Termination Event, the Administrative Agent and the Lenders agree not to use any such license without giving the Borrower and the Servicer prior written notice.

ARTICLE IX.

TERMINATION EVENTS

Section 9.01. *Termination Events.* If any of the following events (each, a "*Termination Event*") shall occur (regardless of the reason therefor):

(a) the Borrower shall fail to make any payment of any monetary Borrower Obligation when due and payable and the same shall remain unremedied for one Business Day or more; or

(b) the Borrower, any Originator or Superior shall fail or neglect to perform, keep or observe any covenant or other provision of this Agreement or the other Related Documents (other than any provision embodied in or covered by any other clause of this *Section 9.01*) and the same shall remain unremedied for two (2) Business Days or more after written notice thereof shall have been given by the Administrative Agent to the Borrower; or

(c) (i) an Originator, the Borrower or the Parent or any of the Parent's Subsidiaries shall fail to make any payment with respect to any of its Debts which, except with respect to the Borrower, is in an aggregate principal amount in excess of \$500,000 (other than Borrower Obligations) when due, and the same shall remain unremedied after any applicable grace period with respect thereto; or (ii) a default or breach shall occur under any agreement, document or instrument to which an Originator, the Borrower or the Parent or any of the Parent's Subsidiaries is a party or by which any such Person or its property is bound (other than a Related Document), and such default or breach has not been waived or shall remain unremedied after any applicable grace period with respect thereto and involves a Debt which, except with respect to the Borrower, is in an aggregate principal amount in excess of \$500,000; or

(d) a case or proceeding shall have been commenced against the Borrower, the Member, the Parent or any of the Parent's Subsidiaries or any Originator seeking a decree or order in respect of any such Person under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, (i) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for any such Person or for any substantial part of such Person's assets, or (ii) ordering the winding-up or liquidation of the affairs of any such Person, and such case or proceeding continues for 60 days unless dismissed or discharged; *provided, however*, that such 60-day period shall be deemed terminated immediately if (x) a decree or order is entered by a court of competent jurisdiction with respect to a case or proceeding described in this *subsection (d)* or *(y)* any of the events described in *Section 9.01(e)* shall have occurred; or

(e) the Borrower, the Parent, the Member, any Subsidiary of the Parent or any Originator shall (i) file a petition seeking relief under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, (ii) consent or fail to object in a timely and appropriate manner to the institution of any proceedings under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or similar law or to the filing of any petition thereunder or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for any such Person or for any substantial part of such Person's assets, (iii) make an assignment for the benefit of creditors, or (iv) take any corporate action in furtherance of any of the foregoing; or

(f) (i) the fair value of the property of the Borrower or the Member is less than the total amount of its liabilities, including contingent liabilities, (ii) the present fair salable value of the assets of the Borrower or the Member is less than the amount that will be required to pay the probable liability on its debts as they become absolute and matured, (iii) either the Borrower or the Member has incurred debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) either the Borrower or the Member

Member, any Originator or any other Subsidiary of the Parent is generally not paying its debts as they become due or admits in writing its inability to, or is generally unable to, pay its debts as such debts become due; or

(g) the Credit Agreement in effect as of the date hereof shall (i) terminate or (ii) fail to be refinanced on terms acceptable to Administrative Agent in its sole discretion, at least ninety (90) days prior to the maturity date thereunder on terms and conditions no less favorable to the Parent, and in connection with which the lenders providing such refinancing shall have entered into an intercreditor agreement on terms and conditions no less favorable to the Administrative Agent and the Lenders than the Intercreditor Agreement; or

(h) a final judgment or judgments for the payment of money in excess of \$1,000,000 in the aggregate (net of insurance proceeds) at any time outstanding shall be rendered against any Originator, the Parent or any Subsidiary of the Parent (other than the Borrower or the Member) and either (i) enforcement proceedings shall have been commenced upon any such judgment or (ii) the same shall not, within 30 days after the entry thereof, have been discharged or execution thereof stayed or bonded pending appeal, or shall not have been discharged prior to the expiration of any such stay; or

(i) a judgment or order for the payment of money shall be rendered against the Borrower or the Member; or

(j) (i) any information contained in any Borrowing Base Certificate or any Borrowing Request is untrue or incorrect in any respect, or (ii) any representation or warranty of any Originator or the Borrower herein or in any other Related Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate or any Borrowing Request) made or delivered by or on behalf of such Originator or the Borrower to any Affected Party hereto or thereto is untrue or incorrect in any material respect as of the date when made or deemed made; or

(k) any Governmental Authority (including the IRS or the PBGC) shall file notice of a Lien with regard to any assets of any Originator, the Parent or any of the Parent's Subsidiaries (other than the Borrower or the Member) and the amount claimed by such Governmental Authority (other than a Lien (i) limited by its terms to assets other than Receivables and (ii) not materially adversely affecting the financial condition of such Originator, the Parent or such Subsidiary of the Parent or the ability of the Servicer to perform its duties hereunder); or

(l) any Governmental Authority (including the IRS or the PBGC) shall file notice of a Lien with regard to any of the assets of the Borrower or the Member; or

(m) (1) there shall have occurred any event which in the reasonable judgment of the Administrative Agent, materially adversely impairs (i) the ability of any Originator to originate Receivables of a credit quality which are at least of the credit quality of the Receivables as of the date of the initial Advance hereunder, (ii) the financial condition or operations of any Originator, the Borrower or the Parent, or (iii) the collectibility of Receivables, or (2) the Administrative Agent shall have determined (and so notified the Borrower) that any event or condition that has had or could reasonably be expected to have or result in a Material Adverse Effect has occurred; or

(n) (i) a default or breach shall occur under any provision of the Sale Agreement and the same shall remain unremedied for two (2) Business Days or more after written notice thereof shall have been given by the Administrative Agent to the Borrower or (ii) the Sale Agreement shall for any reason cease to evidence the transfer to the Borrower of the legal and equitable title to, and ownership of, the Transferred Receivables; or

(o) except as otherwise expressly provided herein, any Lockbox Account Agreement or the Sale Agreement shall have been modified, amended or terminated without the prior written consent of the Lenders and the Administrative Agent; or

(p) an Event of Servicer Termination shall have occurred; or

(q) (A) the Borrower shall cease to hold valid and properly perfected title to and sole record and beneficial ownership in the Transferred Receivables and the other Borrower Collateral or (B) the Administrative Agent (on behalf of the Lenders) shall cease to hold a first priority, perfected Lien in the Transferred Receivables or any of the Borrower Collateral; or

(r) a Change of Control shall occur; or

(s) the Borrower shall amend its certificate of formation or limited liability company agreement without the express prior written consent of the Requisite Lenders and the Administrative Agent; or

(t) the Borrower shall have received an Election Notice pursuant to *Section 2.01(d)* of the Sale Agreement; or

(u) (i) the Default Ratio shall exceed 3.50%; (ii) the Delinquency Ratio shall exceed 2.00%; (iii) the Dilution Trigger Ratio shall exceed 5.50%; or (iv) the Receivables Collection Turnover shall exceed 54.0 days; or

(v) a default or breach shall occur of any of the financial covenants of Superior and its Subsidiaries set forth in Sections 8.08 and 8.09 of the Credit Agreement as in effect on the Closing Date, each of which is hereby incorporated by reference together with all corresponding defined terms, *provided* that no modification to such covenants or defined terms used in such financial covenants (or any embedded defined term used or referred to in such definitions) shall be effective to amend such covenants and defined terms for purposes of this Agreement without the prior written consent of the Administrative Agent; to the extent such written consent is not obtained with respect to an amendment, the financial covenants (and any relevant defined terms) contained in the Credit Agreement without giving effect to such amendment shall remain in effect for purposes of this Agreement; or

(w) any material provision of any Related Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or any Originator or the Borrower shall challenge the enforceability of any Related Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Related Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms); or

(x) the incurrence of a liability to the PBGC under ERISA by the Parent, any Originator or the Servicer (except for premium payments arising in the ordinary course of business), in excess of \$1,000,000; or

(y) a Funding Excess exists at any time and the Borrower has not repaid the amount of such Funding Excess within one (1) Business Day in accordance with Section 2.11 hereof; or

(z) at any time, the amount which can then be borrowed (in excess of all then outstanding borrowings) under the Credit Agreement shall be less than \$3,000,000;

then, and in any such event, the Administrative Agent, may, with the consent of the Requisite Lenders, and shall, at the request of the Requisite Lenders, by notice to the Borrower, declare the Commitment Termination Date to have occurred without demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; *provided*, that the Commitment Termination Date shall automatically occur (i) upon the occurrence of any of the Termination Events described in *Sections*

9.01(c), (d), (f) or (t) or (ii) three days after the occurrence of the Termination Event described in Section 9.01(a) if the same shall not have been remedied by such time, in each case without demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. Upon the occurrence of the Commitment Termination Date, all Borrower Obligations shall automatically be and become due and payable in full, without any action to be taken on the part of any Person.

Section 9.02. *Events of Servicer Termination.* If any of the following events (each, an "Event of Servicer Termination") shall occur (regardless of the reason therefor):

(a) the Servicer shall (i) fail to make any payment or deposit hereunder when due and payable, (ii) fail to deliver when due any of the reports required to be delivered pursuant to Section 5.02 and 7.08 or any other report related to the Receivables as required by the other Related Documents and the same shall remain unremedied for two (2) Business Days or more after written notice thereof shall have been given by the Lenders or the Administrative Agent to the Servicer or (iii) fail or neglect to perform, keep or observe any other provision of this Agreement or the other Related Documents (other than any provision embodied in or covered by any other clause of this Section 9.02) and the same shall remain unremedied for five (5) Business Days or more after written notice thereof shall have been given by the Administrative Agent to the Borrower; or

(b) (i) the Servicer shall fail to make any payment with respect to any of its Debts which is in an aggregate principal amount of \$500,000 when due, and the same shall remain unremedied for any applicable grace period with respect thereto; or (ii) a default or breach shall occur under any agreement, document or instrument to which the Servicer is a party or by which the Servicer or its property is bound (other than a Related Document), and such default or breach has not been waived or shall remain unremedied after any applicable grace period with respect thereto and which involves a Debt which is in an aggregate principal amount of \$500,000; or

(c) a case or proceeding shall have been commenced against the Servicer or any Affiliate which acts as a Sub-Servicer seeking a decree or order in respect of any such Person (i) under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, (ii) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for any such Person or for any substantial part of such Person's assets, or (iii) ordering the winding-up or liquidation of the affairs of any such Person, and such case or proceeding continues for 60 days unless dismissed or discharged; *provided, however*, that such 60-day period shall be deemed terminated immediately if (x) a decree or order is entered by a court of competent jurisdiction with respect to a case or proceeding described in this subsection (c), or (y) any of the events described in Section 9.02(d) shall have occurred; or

(d) the Servicer or any Affiliate which acts as a Sub-Servicer shall (i) file a petition seeking relief under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, (ii) consent or fail to object in a timely and appropriate manner to the institution of any proceedings under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or similar law or to the filing of any petition thereunder or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for any such Person or for any substantial part of such Person's assets, (iii) make an assignment for the benefit of creditors, or (iv) take any corporate action in furtherance of any of the foregoing; or

(e) the Servicer or any Affiliate which acts as a Sub-Servicer generally does not pay its debts as such debts become due or admits in writing its inability to, or is generally unable to, pay its debts as such debts become due; or

(f) a final judgment or judgments for the payment of money in excess of \$1,000,000 in the aggregate (net of insurance proceeds) at any time outstanding shall be rendered against the Servicer or any other Subsidiary of Superior which acts as a Sub-Servicer and either (i) enforcement proceedings shall have been commenced upon any such judgment or (ii) the same shall not,

within 30 days after the entry thereof, have been discharged or execution thereof stayed or bonded pending appeal, or shall not have been discharged prior to the expiration of any such stay; or

(g) (i) any information contained in any Borrowing Base Certificate is untrue or incorrect in any respect or (ii) any representation or warranty of the Servicer herein or in any other Related Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate) made or delivered by the Servicer to any Affected Party hereto or thereto is untrue or incorrect in any material respect as of the date when made or deemed made and such representation and warranty, if relating to any Transferred Receivable, has not been cured by the repurchase of any such Transferred Receivable pursuant to Section 4.04 of the Sale Agreement; or

(h) the Administrative Agent shall have determined that any event or condition that materially adversely affects the ability of the Servicer to collect the Transferred Receivables or to otherwise perform hereunder has occurred; or

(i) a Termination Event shall have occurred or this Agreement shall have been terminated; or

(j) a deterioration has taken place in the quality of servicing of Transferred Receivables or other Receivables serviced by the Servicer that the Administrative Agent, in its sole discretion, determines to be material, and such material deterioration has not been eliminated within 30 days after written notice thereof shall have been given by the Administrative Agent to the Servicer; or

(k) the Servicer shall assign or purport to assign any of its obligations hereunder without the prior written consent of the Administrative Agent; or

(l) a Change of Control shall occur with respect to the Servicer;

then, and in any such event, the Administrative Agent may, with the consent of the Requisite Lenders, and shall, at the request of the Requisite Lenders, by delivery of a Servicer Termination Notice to the Borrower and the Servicer, terminate the servicing responsibilities of the Servicer hereunder, without demand, protest or further notice of any kind, all of which are hereby waived by the Servicer. Upon the delivery of any such notice, all authority and power of the Servicer under this Agreement and the Sale Agreement shall pass to and be vested in the Successor Servicer acting pursuant to *Section 11.02*; *provided*, that notwithstanding anything to the contrary herein, the Servicer agrees to continue to follow the procedures set forth in *Section 7.02* with respect to Collections on the Transferred Receivables until a Successor Servicer has assumed the responsibilities and obligations of the Servicer in accordance with *Section 11.02*.

ARTICLE X.

REMEDIES

Section 10.01. *Actions Upon Termination Event.* If any Termination Event shall have occurred and be continuing and the Administrative Agent shall have declared the Commitment Termination Date to have occurred or the Commitment Termination Date shall be deemed to have occurred pursuant to *Section 9.01*, then the Administrative Agent may exercise in respect of the Borrower Collateral, in addition to any and all other rights and remedies granted to it hereunder, under any other Related Document or under any other instrument or agreement securing, evidencing or relating

to the Borrower Obligations or otherwise available to it, all of the rights and remedies of a secured party upon default under the UCC (such rights and remedies to be cumulative and nonexclusive), and, in addition, may take the following actions:

(a) The Administrative Agent may, without notice to the Borrower except as required by law and at any time or from time to time, charge, offset or otherwise apply amounts payable to the Borrower from the Collection Account, the Borrower Account or any Lockbox Account against all or any part of the Borrower Obligations.

(b) The Administrative Agent may, without notice except as specified below, solicit and accept bids for and sell the Borrower Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or any of the Lenders', or Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable. The Administrative Agent shall have the right to conduct such sales on the Borrower's premises or elsewhere and shall have the right to use any of the Borrower's premises without charge for such sales at such time or times as the Administrative Agent deems necessary or advisable. The Borrower agrees that, to the extent notice of sale shall be required by law, at least ten Business Days' notice to the Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Borrower Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed for such sale, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Every such sale shall operate to divest all right, title, interest, claim and demand whatsoever of the Borrower in and to the Borrower Collateral so sold, and shall be a perpetual bar, both at law and in equity, against each Originator, the Borrower, any Person claiming the Borrower Collateral sold through any Originator or the Borrower, and their respective successors or assigns. The Administrative Agent shall deposit the net proceeds of any such sale in the Collection Account and such proceeds shall be applied against all or any part of the Borrower Obligations.

(c) Upon the completion of any sale under *Section 10.01(b)*, the Borrower or the Servicer shall deliver or cause to be delivered to the purchaser or purchasers at such sale on the date thereof, or within a reasonable time thereafter if it shall be impracticable to make immediate delivery, all of the Borrower Collateral sold on such date, but in any event full title and right of possession to such property shall vest in such purchaser or purchasers upon the completion of such sale. Nevertheless, if so requested by the Administrative Agent or by any such purchaser, the Borrower shall confirm any such sale or transfer by executing and delivering to such purchaser all proper instruments of conveyance and transfer and releases as may be designated in any such request.

(d) At any sale under *Section 10.01(b)*, any Lender or the Administrative Agent may bid for and purchase the property offered for sale and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

(e) The Administrative Agent may (but in no event shall be obligated to) exercise, at the sole cost and expense of the Borrower, any and all rights and remedies of the Borrower under or in connection with the Borrower Assigned Agreements or the other Borrower Collateral, including any and all rights of the Borrower to demand or otherwise require payment of any amount under, or performance of any provisions of, the Borrower Assigned Agreements.

Section 10.02. Exercise of Remedies. No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege under this Agreement and no course of dealing between any Originator, the Borrower or the Servicer, on the one hand, and the Administrative

Agent or any Lender, on the other hand, shall operate as a waiver of such right, power or privilege, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies under this Agreement are cumulative, may be exercised singly or concurrently, and are not exclusive of any rights or remedies that the Administrative Agent or any Lender would otherwise have at law or in equity. No notice to or demand on any party hereto shall entitle such party to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the party providing such notice or making such demand to any other or further action in any circumstances without notice or demand.

Section 10.03. Power of Attorney. On the Closing Date, each of the Borrower and the Servicer shall execute and deliver a power of attorney substantially in the form attached hereto as *Exhibit 10.03* (each, a "*Power of Attorney*"). The power of attorney granted pursuant to each Power of Attorney is a power coupled with an interest and shall be irrevocable until this Agreement has terminated in accordance with its terms and all of the Borrower Obligations are indefeasibly paid or otherwise satisfied in full. The powers conferred on the Administrative

Agent under each Power of Attorney are solely to protect the Liens of the Administrative Agent and the Lenders upon and interests in the Borrower Collateral and shall not impose any duty upon the Administrative Agent to exercise any such powers. The Administrative Agent shall not be accountable for any amount other than amounts that it actually receives as a result of the exercise of such powers and none of the Administrative Agent's officers, directors, employees, agents or representatives shall be responsible to the Borrower, any Originator, the Servicer or any other Person for any act or failure to act, except to the extent of damages attributable to their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

Section 10.04. *Continuing Security Interest.* This Agreement shall create a continuing Lien in the Borrower Collateral until the Termination Date.

ARTICLE XI.

SUCCESSOR SERVICER PROVISIONS

Section 11.01. *Servicer Not to Resign.* The Servicer shall not resign from the obligations and duties hereby imposed on it except upon a determination that (a) the performance of its duties hereunder has become impermissible under applicable law or regulation and (b) there is no reasonable action that the Servicer could take to make the performance of its duties hereunder become permissible under applicable law. Any such determination shall (i) with respect to *clause (a)* above, be evidenced by an opinion of counsel to such effect and (ii) with respect to *clause (b)* above, be evidenced by an Officer's Certificate to such effect, in each case delivered to the Administrative Agent. No such resignation shall become effective until a Successor Servicer shall have assumed the responsibilities and obligations of the Servicer in accordance with *Section 11.02*.

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Section 11.02. *Appointment of the Successor Servicer.* In connection with the termination of the Servicer's responsibilities or the resignation by the Servicer under this Agreement pursuant to *Sections 9.02* or *11.01*, the Administrative Agent (a) shall succeed to and assume all of the Servicer's responsibilities, rights, duties and obligations as Servicer (but not in any other capacity, including specifically not the obligations of the Servicer set forth in *Section 12.02*) under this Agreement (and except that the Administrative Agent makes no representations and warranties pursuant to *Section 4.02*) and (b) may at any time appoint a successor servicer to the Servicer that shall be acceptable to the Administrative Agent and shall succeed to all rights and assume all of the responsibilities, duties and liabilities of the Servicer under this Agreement (the Administrative Agent, in such capacity, or such successor servicer being referred to as the "*Successor Servicer*"); *provided*, that the Successor Servicer shall have no responsibility for any actions of the Servicer prior to the date of its appointment or assumption of duties as Successor Servicer. In selecting a Successor Servicer, the Administrative Agent may obtain bids from any potential Successor Servicer and may agree to any bid it deems appropriate. The Successor Servicer shall accept its appointment by executing, acknowledging and delivering to the Administrative Agent an instrument in form and substance acceptable to the Administrative Agent.

Section 11.03. *Duties of the Servicer.* The Servicer covenants and agrees that, following the appointment of, or assumption of duties by, a Successor Servicer:

(a) The Servicer shall terminate its activities as Servicer hereunder in a manner that facilitates the transfer of servicing duties to the Successor Servicer and is otherwise acceptable to the Administrative Agent and, without limiting the generality of the foregoing, shall timely deliver (i) any funds to the Administrative Agent that were required to be remitted to the Administrative Agent for deposit in the Collection Account and (ii) all Servicing Records and other information with respect to the Transferred Receivables to the Successor Servicer at a place selected by the Successor Servicer. The Servicer shall account for all funds and shall execute and deliver such instruments and do such other things as may be reasonably required to vest and confirm in the Successor Servicer all rights, powers, duties, responsibilities, obligations and liabilities of the Servicer.

(b) The Servicer shall terminate each existing Sub-Servicing Agreement and the Successor Servicer shall not be deemed to have assumed any of the Servicer's interests therein or to have replaced the Servicer as a party thereto.

Section 11.04. *Effect of Termination or Resignation.* Any termination of or resignation by the Servicer hereunder shall not affect any claims that the Borrower, the Lenders or the Administrative Agent may have against the Servicer for events or actions taken or not taken by the Servicer arising prior to any such termination or resignation.

ARTICLE XII.

INDEMNIFICATION

Section 12.01. *Indemnities by the Borrower.*

(a) Without limiting any other rights that the Lenders or the Administrative Agent or any of their respective officers, directors, employees, attorneys, agents or representatives (each, an "*Indemnified Person*") may have hereunder or under applicable law, the Borrower hereby agrees to indemnify and hold harmless each Indemnified Person from and against any and all Indemnified Amounts that may be claimed or asserted against or incurred by any such Indemnified Person in connection with or arising out of the transactions contemplated under this Agreement or under any other Related Document or any actions or failures to act in connection therewith, including any and all reasonable legal costs and reasonable expenses arising out of or incurred in connection with disputes between or among any parties to any of the Related Documents; *provided*, that the Borrower shall not be liable for any

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indemnification to an Indemnified Person to the extent that any such Indemnified Amount (x) results from such Indemnified Person's gross negligence or willful misconduct, in each case as finally determined by a court of competent jurisdiction or (y) constitutes recourse for uncollectible or uncollected Transferred Receivables as a result of the insolvency, bankruptcy or the failure (without cause or justification) or inability on the part of the related Obligor to perform its obligations thereunder. Without limiting the generality of the foregoing, the Borrower shall pay on demand to each Indemnified Person any and all Indemnified Amounts relating to or resulting from:

(i) reliance on any representation or warranty made or deemed made by the Borrower (or any of its officers) under or in connection with this Agreement or any other Related Document or on any other information delivered by the Borrower pursuant hereto or thereto that shall have been incorrect when made or deemed made or delivered;

(ii) the failure by the Borrower to comply with any term, provision or covenant contained in this Agreement, any other Related Document or any agreement executed in connection herewith or therewith, any applicable law, rule or regulation with respect to any Transferred Receivable or the Contract therefor, or the nonconformity of any Transferred Receivable or the Contract therefor with any such applicable law, rule or regulation; or

(iii) (1) the failure to vest and maintain vested in the Borrower valid and properly perfected title to and sole record and beneficial ownership of the Receivables that constitute Transferred Receivables, together with all Collections in respect thereof and all other Borrower Collateral, free and clear of any Adverse Claim and (2) the failure to maintain or transfer to the Administrative Agent, for the benefit of itself and the Lenders, a first priority, perfected Lien in any portion of the Borrower Collateral;

(iv) any dispute, claim, offset or defense of any Obligor (other than its discharge in bankruptcy) to the payment of any Transferred Receivable or which would constitute recourse for uncollectible or uncollected Transferred Receivables (including a defense based on such Receivable or the Contract therefor not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the sale of the merchandise or services giving rise to such Receivable or the furnishing of or failure to furnish such merchandise or services or relating to collection activities with respect to such Receivable (if such collection activities were performed by any of its Affiliates acting as Servicer), except to the extent that such dispute, claim, offset or defense results solely from any action or inaction on the part of any Indemnified Person;

(v) any products liability claim or other claim arising out of or in connection with merchandise, insurance or services that is the subject of any Contract with respect to any Transferred Receivable;

(vi) the commingling of Collections with respect to Transferred Receivables by the Borrower at any time with its other funds or the funds of any other Person;

(vii) any failure by the Borrower to cause the filing of, or any delay in filing, financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or any other applicable laws with respect to any Transferred Receivable hereunder or any other Borrower Collateral, whether at the time of the Borrower's acquisition thereof or any Advance made hereunder or at any subsequent time; or

(viii) any failure of a Lockbox Bank to comply with the terms of the applicable Lockbox Account Agreement; or

(ix) any withholding, deduction or Charge imposed upon any payments with respect to any Transferred Receivable, any Borrower Assigned Agreement or any other Borrower Collateral.

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- (b) Any Indemnified Amounts subject to the indemnification provisions of this *Section 12.01* not paid in accordance with *Section 2.08* shall be paid by the Borrower to the Indemnified Person entitled thereto within five Business Days following demand therefor.

Section 12.02. *Indemnities by the Servicer.*

(a) Without limiting any other rights that an Indemnified Person may have hereunder or under applicable law, the Servicer hereby agrees to indemnify and hold harmless each Indemnified Person from and against any and all Indemnified Amounts that may be claimed or asserted against or incurred by any such Indemnified Person in connection with or arising out of any breach by the Servicer of its obligations hereunder or under any other Related Document; *provided*, that the Servicer shall not be liable for any indemnification to an Indemnified Person to the extent that any such Indemnified Amount (x) results from such Indemnified Person's gross negligence or willful misconduct, in each case as finally determined by a court of competent jurisdiction, or (y) constitutes recourse for uncollectible or uncollected Transferred Receivables as a result of the insolvency, bankruptcy or lack of creditworthiness of any Obligor. Without limiting the generality of the foregoing, the Servicer shall pay on demand to each Indemnified Person any and all Indemnified Amounts relating to or resulting from:

(i) reliance on any representation or warranty made or deemed made by the Servicer (or any of its officers) under or in connection with this Agreement or any other Related Document or on any other information delivered by the Servicer pursuant hereto or thereto that shall have been incorrect when made or deemed made or delivered;

(ii) the failure by the Servicer to comply with any term, provision or covenant contained in this Agreement, any other Related Document or any agreement executed in connection herewith or therewith, any applicable law, rule or regulation with respect to any Transferred Receivable or the Contract therefor, or the nonconformity of any Transferred Receivable or the Contract therefor with any such applicable law, rule or regulation;

(iii) the imposition of any Adverse Claim with respect to any Transferred Receivable or the Borrower Collateral as a result of any action taken by the Servicer; or

(iv) the commingling of Collections with respect to Transferred Receivables by the Servicer at any time with its other funds or the funds of any other Person.

(b) Any Indemnified Amounts subject to the indemnification provisions of this *Section 12.02* shall be paid by the Servicer to the Indemnified Person entitled thereto within five Business Days following demand therefor.

ARTICLE XIII.

ADMINISTRATIVE AGENT

(a) The Administrative Agent may take such action and carry out such functions under this Agreement as are authorized to be performed by it pursuant to the terms of this Agreement, any other Related Document or otherwise contemplated hereby or thereby or are reasonably incidental thereto; *provided*, that the duties of the Administrative Agent hereunder shall be determined solely by the express provisions of this Agreement, and, other than the duties set forth in *Section 13.02*, any permissive right of the Administrative Agent hereunder shall not be construed as a duty.

Section 13.02. *Reliance.* None of the Administrative Agent, any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or the other Related Documents, except for damages solely caused by its or their own gross negligence or willful misconduct as finally

determined by a court of competent jurisdiction. Without limiting the generality of the foregoing, and notwithstanding any term or provision hereof to the contrary, the Borrower, the Servicer, and each Lender hereby acknowledge and agree that the Administrative Agent as such (a) has no duties or obligations other than as set forth expressly herein, and has no fiduciary obligations to any person, (b) acts as a representative hereunder for the Lenders and has no duties or obligations to, shall incur no liabilities or obligations to, and does not act as an agent in any capacity for, the Borrower (other than, with respect to the Administrative Agent, under the Power of Attorney with respect to remedial actions) or the Originators, (c) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts, (d) makes no representation or warranty hereunder to any Affected Party and shall not be responsible to any such Person for any statements, representations or warranties made in or in connection with this Agreement or the other Related Documents, (e) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Related Documents on the part of the Borrower, the Servicer, any Originator, Superior or any Lender, or to inspect the property (including the books and records) of the Borrower, the Servicer, any Originator, Superior or any Lender, (f) shall not be responsible to the Borrower, the Servicer, any Lender or any other Person for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Related Documents or any other instrument or document furnished pursuant hereto or thereto, (g) shall incur no liability under or in respect of this Agreement or the other Related Documents by acting upon any notice, consent, certificate or other instrument or writing believed by it to be genuine and signed, sent or communicated by the proper party or parties and (h) shall not be bound to make any investigation into the facts or matters stated in any notice or other communication hereunder and may conclusively rely on the accuracy of such facts or matters.

Section 13.03. *GE Capital and Affiliates.* GE Capital and its Affiliates may generally engage in any kind of business with any Obligor, the Parent, the Originators, the Borrower, the Servicer, any Lender, any of their respective Affiliates and any Person who may do business with or own securities of such Persons or any of their respective Affiliates, all as if GE Capital were not the Administrative Agent and without the duty to account therefor to any Obligor, the Parent, any Originator, the Borrower, the Servicer, any Lender or any other Person.

Section 13.04. *Lender Credit Decision.* Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based upon such documents and information as it has deemed appropriate, made its own credit and financial analysis of Borrower and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

Section 13.05. *Indemnification.* Each of the Lenders severally agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligations of the Borrower hereunder), ratably according to their respective Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent in any

way relating to or arising out of this Agreement or any other Related Document or any action taken or omitted by the Administrative Agent in connection herewith or therewith; *provided, however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the Administrative Agent's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limiting the foregoing, each Lender

agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including counsel fees) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Related Document, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrower.

Section 13.06. *Successor Administrative Agent.* The Administrative Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to each of the Lenders and the Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within 30 days after the resigning the Administrative Agent's giving notice of resignation, then the resigning Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution which commercial bank or financial institution is organized under the laws of the United States of America or of any State thereof which has a long-term debt rating from S&P of "A-" or better and has a combined capital and surplus of at least \$300,000,000. If no successor Administrative Agent has been appointed pursuant to the foregoing, by the 30th day after the date such notice of resignation was given by the resigning Administrative Agent, such resignation shall become effective and the Requisite Lenders shall thereafter perform all the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Administrative Agent as provided above. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent. Upon the earlier of the acceptance of any appointment as the Administrative Agent hereunder by a successor Administrative Agent or the effective date of the resigning Administrative Agent's resignation, the resigning Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Related Documents, except that any indemnity rights or other rights in favor of such resigning Agent shall continue. After any resigning Administrative Agent's resignation hereunder, the provisions of this *Article XIII* shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the other Related Documents.

Section 13.07. *Setoff and Sharing of Payments.* In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Termination Event, each Lender and each holder of any Revolving Note is hereby authorized at any time or from time to time, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived (but subject to *Section 2.03(b)(i)*), to set off and to appropriate and to apply any and all balances held by it at any of its offices for the account of the Borrower (regardless of whether such balances are then due to the Borrower) and any other properties or assets any time held or owing by that Lender or that holder to or for the credit or for the account of the Borrower against and on account of any of the Borrower Obligations which are not paid when due. Any Lender or holder of any Revolving Note exercising a right to set off or otherwise receiving any payment on account of the Borrower Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Borrower Obligations as would be necessary to cause such Lender to share the amount so set off or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares. The Borrower agrees, to the fullest extent permitted by law, that (a) any Lender or holder may exercise its right to set off with respect to amounts in excess of its Pro Rata Share of the Borrower Obligations and may sell participations in such amount so set off to other Lenders and holders and (b) any Lender or holders so purchasing a participation in the

Advances made or other Borrower Obligations held by other Lenders or holders may exercise all rights of set-off, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Advances and the other Borrower Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the set-off amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of set-off, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

ARTICLE XIV.

MISCELLANEOUS

Section 14.01. *Notices.* Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon transmission, when sent by facsimile (with such facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this *Section 14.01*), (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number set forth below or to such other address (or facsimile number) as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than any Lender and the Administrative Agent) designated in any written notice provided hereunder to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication. Notwithstanding the foregoing, whenever it is provided herein that a notice is to be given to any other party hereto by a specific time, such notice shall only be effective if actually received by such party prior to such time, and if such notice is received after such time or on a day other than a Business Day, such notice shall only be effective on the immediately succeeding Business Day.

Borrower:

1403 Foulk Rd.
Suite 106-J
Wilmington, Delaware 19803
Attention: Craig Badya
Telephone: (302) 651-8332
Facsimile: (302) 651-8423

Servicer:

150 North Interstate Parkway
Suite 300
Atlanta, Georgia 30339
Attention: Chief Financial Officer
Telephone: (770) 953-8338
Facsimile: (770) 303-8890

Administrative Agent:

201 High Ridge Road
Stamford, Connecticut 06927
Attention: Senior Vice President–Portfolio/Underwriting
Telephone: (203) 357-4065
Facsimile: (203) 316-7821

Section 14.02. *Binding Effect; Assignability.*

(a) This Agreement shall be binding upon and inure to the benefit of the Borrower, the Servicer, each Lender and the Administrative Agent and their respective successors and permitted assigns. Neither the Borrower nor the Servicer may assign, transfer, hypothecate or otherwise convey any of their respective rights or obligations hereunder or interests herein without the express prior written consent of the Requisite Lenders and the Administrative Agent. Any such purported assignment, transfer, hypothecation or other conveyance by the Borrower or the Servicer without the prior express written consent of the Requisite Lenders and the Administrative Agent shall be void.

(b) The Borrower hereby consents to any Lender's assignment of, and/or sale of participations in, at any time or times after the Effective Date, the Related Documents, Advances, and any Commitment or of any portion thereof or interest therein, including any Lender's rights, title, interests, remedies, powers or duties thereunder, whether evidenced by a writing or not, made in accordance with this *Section 14.02(b)*. Any assignment by a Lender shall (i) require the consent of (A) the Administrative Agent and the execution of an assignment agreement (an "Assignment Agreement") substantially in the form attached hereto as *Exhibit 14.02(b)* and otherwise in form and substance satisfactory to, and acknowledged by, the Administrative Agent and (B) so long as no Termination Event has occurred and is continuing, the Borrower (which consent shall not be unreasonably withheld or delayed); (ii) if a partial assignment, be in an amount at least equal to \$5,000,000 and, after giving effect to any such partial assignment, the assigning Lender shall have retained Commitments in an amount at least equal to \$5,000,000; and (iv) include a payment to the Administrative Agent by the assignor or assignee Lender of an assignment fee of \$3,500. In the case of an assignment by a Lender under this *Section 14.02*, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as it would if it were a Lender hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitments or assigned portion thereof from and after the date of such assignment. The Borrower hereby acknowledges and agrees that any assignment made in accordance with this *Section 14.02(b)* will give rise to a direct obligation of the Borrower to the assignee and that the assignee shall thereupon be a "Lender" for all purposes. In all instances, each Lender's liability to make Advances hereunder shall be several and not joint and shall be limited to such Lender's Pro Rata Share of the applicable Commitment. In the event any Lender assigns or otherwise transfers all or any part of a Revolving Note, such Lender shall so notify the Borrower and the Borrower shall, upon the request of such Lender, execute new Revolving Notes in exchange for the Revolving Notes being assigned. Notwithstanding the foregoing provisions of this *Section 14.02(b)*, any Lender may at any time pledge or assign all or any portion of such Lender's rights under this Agreement and the other Related Documents to a Federal Reserve Bank; *provided, however*, that no such pledge or assignment shall release such Lender from such Lender's obligations hereunder or under any other Related Document.

(c) Any participation by a Lender of all or any part of its Commitments shall be in an amount at least equal to \$5,000,000, and with the understanding that all amounts payable by the Borrower hereunder shall be determined as if that Lender had not sold such participation, and that the holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except actions directly affecting (i) any reduction in the principal amount of, or interest rate or Fees payable with respect to, any Advance in which such holder participates, (ii) any extension of

any scheduled payment of the principal amount of any Advance in which such holder participates or the final maturity date thereof, and (iii) any release of all or substantially all of the Borrower Collateral (other than in accordance with the terms of this Agreement or the other Related Documents). Solely for purposes of *Sections 2.08, 2.09, 2.10, 12.01*, Borrower acknowledges and agrees that a participation shall give rise to a direct obligation of the Borrower to the participant and the participant shall be considered to be a "Lender" for purposes of such

sections (except that, unless the Borrower otherwise consents, no amounts shall be payable to such participant under *Section 2.09* or *2.10* to the extent that such amounts would have been required to have been paid under the circumstances in existence on the effective date of such participation). Except as set forth in the preceding sentence the Borrower shall have no obligation or duty to any participant. Neither the Administrative Agent nor any Lender (other than the Lender selling a participation) shall have any duty to any participant and may continue to deal solely with the Lender selling a participation as if no such sale had occurred.

(d) Except as expressly provided in this *Section 14.02*, no Lender shall, as between the Borrower and that Lender, or between the Administrative Agent and that Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment, transfer or negotiation of, or granting of participation in, all or any part of the Advances, the Revolving Notes or other Borrower Obligations owed to such Lender.

(e) The Borrower shall assist any Lender permitted to sell assignments or participations under this *Section 14.02* as reasonably required to enable the assigning or selling Lender to effect any such assignment or participation, including the execution and delivery of any and all agreements, notes and other documents and instruments as shall be reasonably requested and the participation of management in meetings with, potential assignees or participants. The Borrower shall, if the Administrative Agent so requests in connection with an initial syndication of the Advances hereunder, assist in the preparation of informational materials for such syndication.

(f) A Lender may furnish any information concerning the Borrower in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants). Each Lender shall obtain from all prospective and actual assignees or participants confidentiality covenants substantially equivalent to those contained in *Section 14.05*.

Section 14.03. Termination; Survival of Borrower Obligations Upon Commitment Termination Date.

(a) This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms, and shall remain in full force and effect until the Termination Date.

(b) Except as otherwise expressly provided herein or in any other Related Document, no termination or cancellation (regardless of cause or procedure) of any commitment made by any Affected Party under this Agreement shall in any way affect or impair the obligations, duties and liabilities of the Borrower or the Servicer or the rights of any Affected Party relating to any unpaid portion of the Borrower Obligations, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Related Document, all undertakings, agreements, covenants, warranties and representations of or binding upon the Borrower or the Servicer, and all rights of any Affected Party hereunder, all as contained in the Related Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Termination Date; *provided*, that the rights and remedies provided for herein with respect to any breach of any representation or warranty made by the Borrower or the Servicer pursuant to *Article IV*, the indemnification and payment provisions of *Article XII* and *Sections 14.04, 14.05* and *14.06* shall be continuing and shall survive the Termination Date.

Section 14.04. Costs, Expenses and Taxes. (a) The Borrower shall reimburse each Lender and the Administrative Agent for all reasonable out-of-pocket expenses incurred in connection with the negotiation and preparation of this Agreement and the other Related Documents (including the reasonable fees and expenses of all of its special counsel, advisors, consultants and auditors retained in connection with the transactions contemplated thereby and advice in connection therewith). The Borrower shall reimburse each Lender and the Administrative Agent for all fees, costs and expenses, including the reasonable fees, costs and expenses of counsel or other advisors (including management consultants and appraisers) for advice, assistance, or other representation in connection with:

(i) the forwarding to the Borrower or any other Person on behalf of the Borrower by any Lender of any proceeds of Advances made by such Lender hereunder;

(ii) any amendment, modification or waiver of, consent with respect to, or termination of this Agreement or any of the other Related Documents or advice in connection with the administration hereof or thereof or their respective rights hereunder or thereunder;

(iii) any Litigation, contest or dispute (whether instituted by the Borrower, any Lender, the Administrative Agent or any other Person as a party, witness, or otherwise) in any way relating to the Borrower Collateral, any of the Related Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any Litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against the Borrower, the Servicer or any other Person that may be obligated to any Lender or the Administrative Agent by virtue of the Related Documents, including any such Litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the transactions contemplated hereby during the pendency of one or more Termination Events;

(iv) any attempt to enforce any remedies of a Lender or the Administrative Agent against the Borrower, the Servicer or any other Person that may be obligated to them by virtue of any of the Related Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the transactions contemplated hereby during the pendency of one or more Termination Events;

(v) any work-out or restructuring of the transactions contemplated hereby during the pendency of one or more Termination Events; and

(vi) efforts to (A) monitor the Advances or any of the Borrower Obligations, (B) evaluate, observe or assess the Originators, the Parent, the Borrower, the Member or the Servicer or their respective affairs, and (C) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Borrower Collateral;

including all reasonable attorneys' and other professional and service providers' fees arising from such services, including those in connection with any appellate proceedings, and all reasonable expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this *Section 14.04*, all of which shall be payable, on demand, by the Borrower to the applicable Lender or the Administrative Agent, as applicable. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or facsimile charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

(b) In addition, the Borrower shall pay on demand any and all stamp, sales, excise and other taxes (excluding income taxes), gross receipts or franchise taxes and fees payable or determined to be payable in connection with the execution, delivery, filing or recording of this Agreement or any other

Related Document, and the Borrower agrees to indemnify and save each Indemnified Person harmless from and against any and all liabilities with respect to or resulting from any delay or failure to pay such taxes and fees.

Section 14.05. *Confidentiality.*

(a) Except to the extent otherwise required by applicable law or as required to be filed publicly with the Securities and Exchange Commission, or unless the Administrative Agent shall otherwise consent in writing, the Borrower and the Servicer each agrees to maintain the confidentiality of this Agreement (and all drafts hereof and documents ancillary hereto), in its communications with third parties other than any Affected Party or any Indemnified Person and otherwise and not to disclose, deliver or otherwise make available to any third party (other than its directors, officers, employees, accountants or counsel) the original or any copy of all or any part of this Agreement (or any draft hereof

and documents ancillary hereto) except to an Affected Party or an Indemnified Person or any financial institution party to the Credit Agreement.

(b) The Borrower and the Servicer each agrees that it shall not (and shall not permit any of its Subsidiaries to) issue any news release or make any public announcement pertaining to the transactions contemplated by this Agreement and the other Related Documents without the prior written consent of the Requisite Lenders and the Administrative Agent (which consent shall not be unreasonably withheld) unless such news release or public announcement is required by law, in which case the Borrower or the Servicer, as applicable, shall consult with the Lenders and the Administrative Agent prior to the issuance of such news release or public announcement. The Borrower may, however, (i) disclose the general terms of the transactions contemplated by this Agreement and the other Related Documents to trade creditors, suppliers and other similarly-situated Persons so long as such disclosure is not in the form of a news release or public announcement and (ii) give copies of this Agreement and the other Related Documents to the lenders party to the Credit Agreement.

(c) The Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), and will not use such confidential Information for any purpose or in any matter except in connection with this Agreement, except that Information may be disclosed (1) to (i) each Affected Party and (ii) its and each Affected Party's and their respective Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and to not disclose or use such Information in violation of Regulation FD (17 C.F.R. § 243.100-243.103)), (2) any regulatory authority (it being understood that it will to the extent reasonably practicable provide the Borrower with an opportunity to request confidential treatment from such regulatory authority), (3) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (4) to any other party to this Agreement, (5) to the extent required in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Related Document or the enforcement of rights hereunder or thereunder, (6) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of (or participant in), or any prospective assignee of (or participant in), any of its rights or obligations under this Agreement, (7) with the consent of the Borrower or (8) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or any other confidentiality agreement to which it is party with the Borrower or the Parent or any subsidiary thereof or (ii) becomes available to the Administrative Agent, or any Lender on a nonconfidential basis from a source other than the Parent or any subsidiary thereof. For the purposes of this Section, "*Information*" means all information received from the Borrower and Servicer relating to the Borrower, the Servicer, the Parent or any subsidiary thereof or their businesses, or any Obligor, other than any such information that is available to Administrative Agent, or any Lender on a nonconfidential basis prior to disclosure by Borrower or Servicer. Any Person required to maintain the confidentiality of Information as provided in this Section

shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 14.06. *Complete Agreement; Modification of Agreement.* This Agreement and the other Related Documents constitute the complete agreement among the parties hereto with respect to the subject matter hereof and thereof, supersede all prior agreements and understandings relating to the subject matter hereof and thereof, and may not be modified, altered or amended except as set forth in Section 14.07.

Section 14.07. *Amendments and Waivers.*

(a) Except for actions expressly permitted to be taken by the Administrative Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any of the Revolving Notes, or any consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and by the Requisite Lenders or, to the extent required under clause (b) below, by all affected Lenders, and, to the extent required under clause (b) or clause (c) below, by the Administrative Agent. Except as set forth in clause (b) below, all amendments, modifications, terminations or waivers requiring the consent of any Lenders without specifying the required percentage of Lenders shall require the written consent of the Requisite Lenders.

(b) No amendment, modification, termination or waiver shall, unless in writing and signed by each Lender directly affected thereby, do any of the following: (i) increase the principal amount of any Lender's Commitment; (ii) reduce the principal of, rate of interest on or Fees payable with respect to any Advance of any affected Lender; (iii) extend any scheduled payment date or final maturity date of the principal amount of any Advance of any affected Lender; (iv) waive, forgive, defer, extend or postpone any payment of interest or Fees as to any affected Lender; (v) change the percentage of the Aggregate Commitments or of the aggregate unpaid principal amount of the Advances which shall be required for Lenders or any of them to take any action hereunder; (vi) release all or substantially all of the Borrower Collateral; or (vii) amend or waive this *Section 14.07* or the definition of the term "Requisite Lenders" insofar as such definition affects the substance of this *Section 14.07*. Furthermore, no amendment, modification, termination or waiver affecting the rights or duties of the Administrative Agent under this Agreement or any other Related Document shall be effective unless in writing and signed by the Administrative Agent. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination or waiver shall be required for the Administrative Agent to take additional Borrower Collateral pursuant to any Related Document. No amendment, modification, termination or waiver of any provision of any Revolving Note shall be effective without the written concurrence of the holder of that Revolving Note. No notice to or demand on the Borrower in any case shall entitle the Borrower 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 14.07* shall be binding upon each holder of the Revolving Notes at the time outstanding and each future holder of the Revolving Notes.

(c) If, in connection with any proposed amendment, modification, waiver or termination (a "*Proposed Change*"):

(i) requiring the consent of all affected Lenders, the consent of Requisite Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described this clause (i) or in *clause (ii)* below being referred to as a "*Non-Consenting Lender*"), or

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(ii) requiring the consent of Requisite Lenders, the consent of Lenders holding 51% or more of the Aggregate Commitments is obtained, but the consent of Requisite Lenders is not obtained,

then, so long as the Administrative Agent is not a Non-Consenting Lender, at the Borrower's request the Administrative Agent, or a Person acceptable to the Administrative Agent, shall have the right with the Administrative Agent's consent and in the Administrative Agent's sole discretion (but shall have no obligation) to purchase from such Non-Consenting Lenders, and such Non-Consenting Lenders agree that they shall, upon the Administrative Agent's request, sell and assign to the Administrative Agent or such Person, all of the Commitments of such Non-Consenting Lender for an amount equal to the principal balance of all Advances held by the Non-Consenting Lender and all accrued interest and Fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.

(d) Upon indefeasible payment in full in cash and performance of all of the Borrower Obligations (other than indemnification Borrower Obligations under *Section 12.01*), termination of the Aggregate Commitment and a release of all claims against the Administrative Agent and Lenders, and so long as no suits, actions, proceedings or claims are pending or threatened against any Indemnified Person asserting any damages, losses or liabilities that are Indemnified Liabilities, the Administrative Agent shall deliver to the Borrower termination statements and other documents necessary or appropriate to evidence the termination of the Liens securing payment of the Borrower Obligations.

Section 14.08. No Waiver; Remedies. The failure by any Lender or the Administrative Agent, at any time or times, to require strict performance by the Borrower or the Servicer of any provision of this Agreement, any Receivables Assignment or any other Related Document shall not waive, affect or diminish any right of any Lender or the Administrative Agent thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of any breach or default hereunder shall not suspend, waive or affect any other breach or default whether the same is prior or subsequent thereto and whether the same or of a different type. None of the undertakings, agreements, warranties, covenants and representations of the Borrower or the Servicer contained in this Agreement, any Receivables Assignment or any other Related Document, and no breach or default by the Borrower or the Servicer hereunder or thereunder, shall be deemed to have been suspended or waived by any Lender or the Administrative Agent unless such waiver or suspension is by an instrument in

writing signed by an officer of or other duly authorized signatory of the applicable Lenders and the Administrative Agent and directed to the Borrower or the Servicer, as applicable, specifying such suspension or waiver. The rights and remedies of the Lenders and the Administrative Agent under this Agreement and the other Related Documents shall be cumulative and nonexclusive of any other rights and remedies that the Lenders and the Administrative Agent may have hereunder, thereunder, under any other agreement, by operation of law or otherwise. Recourse to the Borrower Collateral shall not be required.

Section 14.09. **GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.**

(a) **THIS AGREEMENT AND EACH OTHER RELATED DOCUMENT (EXCEPT TO THE EXTENT THAT ANY RELATED DOCUMENT EXPRESSLY PROVIDES TO THE CONTRARY) AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES) EXCEPT TO THE EXTENT THAT THE PERFECTION, EFFECT OF PERFECTION OR PRIORITY OF THE INTERESTS OF THE ADMINISTRATIVE AGENT IN THE RECEIVABLES OR REMEDIES HEREUNDER OR THEREUNDER, IN RESPECT THEREOF, ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF DELAWARE, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

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(b) **EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN DELAWARE SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THEM PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT; PROVIDED, THAT EACH PARTY HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF DELAWARE; PROVIDED FURTHER THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ANY LENDER OR THE ADMINISTRATIVE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE BORROWER COLLATERAL OR ANY OTHER SECURITY FOR THE BORROWER OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDERS OR THE ADMINISTRATIVE AGENT. EACH PARTY HERETO SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR *FORUM NON CONVENIENS* AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS PROVIDED FOR IN SECTION 14.01 HEREOF AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH PARTY'S ACTUAL RECEIPT THEREOF OR THREE DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.**

(c) **BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH,**

RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 14.10. *Counterparts.* This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one agreement.

Section 14.11. *Severability.* Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 14.12. *Section Titles.* The section, titles and table of contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

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Section 14.13. *Further Assurances.*

(a) Each of the Borrower and the Servicer shall, at its sole cost and expense, upon request of any of the Lenders or the Administrative Agent, promptly and duly execute and deliver any and all further instruments and documents and take such further action that may be necessary or desirable or that any of the Lenders or the Administrative Agent may request to (i) perfect, protect, preserve, continue and maintain fully the Liens granted to the Administrative Agent for the benefit of itself and the Lenders under this Agreement, (ii) enable the Lenders or the Administrative Agent to exercise and enforce its rights under this Agreement or any of the other Related Documents or (iii) otherwise carry out more effectively the provisions and purposes of this Agreement or any other Related Document. Without limiting the generality of the foregoing, the Borrower shall, upon request of any of the Lenders or the Administrative Agent, (A) execute and file such financing or continuation statements, or amendments thereto or assignments thereof, and such other instruments or notices that may be necessary or desirable or that any of the Lenders or the Administrative Agent may request to perfect, protect and preserve the Liens granted pursuant to this Agreement, free and clear of all Adverse Claims, (B) mark, or cause the Servicer to mark, each Contract (other than invoices) evidencing each Transferred Receivable with a legend, acceptable to each Lender and the Administrative Agent evidencing that the Borrower has purchased such Transferred Receivables and that the Administrative Agent, for the benefit of the Lenders, has a security interest in and lien thereon, (C) mark, or cause the Servicer to mark, its master data processing records evidencing such Transferred Receivables with such a legend and (D) from and after the occurrence of a Termination Event, notify or cause the Servicer to notify Obligors of the Liens on the Transferred Receivables granted hereunder.

(b) Without limiting the generality of the foregoing, the Borrower hereby authorizes the Lenders and the Administrative Agent, and each of the Lenders hereby authorizes the Administrative Agent, to file one or more financing or continuation statements, or amendments thereto or assignments thereof, relating to all or any part of the Transferred Receivables, including Collections with respect thereto, or the Borrower Collateral without the signature of the Borrower or, as applicable, the Lenders, as applicable, to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement or of any notice or financing statement covering the Transferred Receivables, the Borrower Collateral or any part thereof shall be sufficient as a notice or financing statement where permitted by law.

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IN WITNESS WHEREOF, the parties have caused this Receivables Funding Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SUPERIOR ESSEX FUNDING LLC, as the Borrower

By _____
Name _____
Title _____

SUPERIOR TELECOMMUNICATIONS INC., as the
Servicer By Name Title

By _____
Name _____
Title _____

GENERAL ELECTRIC CAPITAL CORPORATION, as a
Lender

By _____
Name _____
Duly Authorized Signatory

GENERAL ELECTRIC CAPITAL CORPORATION, as
Administrative Agent

By _____
Name _____
Duly Authorized Signatory

FORM OF REVOLVING NOTE

\$ _____

[_____, 20__]

FOR VALUE RECEIVED, the undersigned, SUPERIOR ESSEX FUNDING LLC, a Delaware limited liability company (the "Borrower"), HEREBY PROMISES TO PAY to the order of [_____] (the "Lender"), at the offices of GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, as agent for the Lender (the "Administrative Agent"), at its address at 201 High Ridge Road, Stamford, CT 06927, or at such other place as the Administrative Agent may designate from time to time in writing, in lawful money of the United States of America and in immediately available funds, the amount of _____ DOLLARS AND _____ CENTS (\$ _____) or, if less, the aggregate unpaid amount of all Advances made to the undersigned under the "Funding Agreement" (as

hereinafter defined). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Funding Agreement or in *Annex X* thereto.

This Revolving Note is one of the Revolving Notes issued pursuant to that certain Receivables Funding Agreement dated as of November 6, 2002 by and among the Borrower, the Lender (and any other "Lender" party thereto), Superior Telecommunications Inc., as servicer, and the Administrative Agent (including all annexes, exhibits and schedules thereto, and as from time to time amended, restated, supplemented or otherwise modified, the "Funding Agreement"), and is entitled to the benefit and security of the Funding Agreement and all of the other Related Documents referred to therein. Reference is hereby made to the Funding Agreement for a statement of all of the terms and conditions under which the Advances evidenced hereby are made and are to be repaid. The date and amount of each Advance made by the Lender to the Borrower, the rates of interest applicable thereto and each payment made on account of the principal thereof, shall be recorded by the Administrative Agent on its books; provided that the failure of the Administrative Agent to make any such recordation shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Funding Agreement or this Revolving Note in respect of the Advances actually made by the Lender to the Borrower.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Funding Agreement, the terms of which are hereby incorporated herein by reference. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Funding Agreement.

If any payment on this Revolving Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

Upon and after the occurrence of any Termination Event, this Revolving Note may, as provided in the Funding Agreement, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

Time is of the essence of this Revolving Note. Demand, presentment, protest and notice of nonpayment and protest are hereby waived by the Borrower.

Except as provided in the Funding Agreement, this Revolving Note may not be assigned by the Lender to any Person.

THIS REVOLVING NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE.

SUPERIOR ESSEX FUNDING LLC

By: _____

Name:

Title:

General Electric Capital Corporation,
as Administrative Agent
201 High Ridge Road
Stamford, Connecticut 06927
Attention: Vice President–Portfolio/Underwriting

Re: Receivables Funding Agreement
dated as of November 6, 2002

Ladies and Gentlemen:

This notice is given pursuant to *Section 2.02(a)* of that certain Receivables Funding Agreement dated as of November 6, 2002 (the "**Funding Agreement**"), by and among Superior Essex Funding LLC (the "**Borrower**"), Superior Telecommunications Inc. (the "**Servicer**"), the financial institutions party thereto as lenders (the "**Lenders**") and General Electric Capital Corporation, as Lender and as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Funding Agreement.

Pursuant to *Section 2.02(a)* of the Funding Agreement, the Borrower hereby irrevocably notifies the Lenders and the Administrative Agent of its election to permanently reduce the Maximum Facility Amount to [\$_____], effective as of [_____], [_____] (which is a Business Day). [[This reduction is the [first/second] reduction [for the current calendar year] permitted by *Section 2.02(a)* of the Funding Agreement.]] After such reduction, the Maximum Facility Amount will not be less than the Outstanding Principal Amount.

Very truly yours,

SUPERIOR ESSEX FUNDING LLC

By:

Name:

Title:

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Exhibit 2.02(b) to Funding Agreement

FORM OF COMMITMENT TERMINATION NOTICE

[Insert Date]

General Electric Capital Corporation,
as Administrative Agent
201 High Ridge Road
Stamford, Connecticut 06927
Attention: Vice President–Portfolio/Underwriting

Re: Receivables Funding Agreement
dated as of November 6, 2002

Ladies and Gentlemen:

This notice is given pursuant to *Section 2.02(b)* of that certain Receivables Funding Agreement dated as of November 6, 2002 (the "**Funding Agreement**"), by and among Superior Essex Funding LLC (the "**Borrower**"), Superior Telecommunications Inc. (the "**Servicer**"), the financial institutions party thereto as lenders (the "Lenders") and General Electric Capital Corporation, as a Lender and as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Funding Agreement.

Pursuant to *Section 2.02(b)* of the Funding Agreement, the Borrower hereby irrevocably notifies the Lenders and the Administrative Agent of its election to terminate the Maximum Facility Amount effective as of [____], [____]¹. In connection therewith, the Borrower shall reduce Outstanding Principal Amount to zero on or prior to such date and make all other payments required by *Section 2.03(h)* and pay any other fees that are due and payable pursuant to the Fee Letter at the time and in the manner specified therein.

Very truly yours,

SUPERIOR ESSEX FUNDING LLC

By: _____

Name: _____

Title: _____

¹ Which day shall be a Business Day at least 20 days after the date this notice is given

FORM OF BORROWING REQUEST

[Insert Date]

General Electric Capital Corporation,
as Administrative Agent
201 High Ridge Road
Stamford, Connecticut 06927
Attention: Vice President–Portfolio/Underwriting

Re: Receivables Funding Agreement
dated as of November 6, 2002

Ladies and Gentlemen:

This notice is given pursuant to *Section 2.03(a)* of that certain Receivables Funding Agreement dated as of November 6, 2002 (the "**Funding Agreement**"), by and among Superior Essex Funding LLC (the "**Borrower**"), Superior Telecommunications Inc. (the "**Servicer**"), the financial institutions party thereto as lenders (the "Lender") and General Electric Capital Corporation, as a lender and as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Funding Agreement.

Pursuant to *Section 2.01* of the Funding Agreement, the Borrower hereby requests that a Borrowing be made to the Borrower on [____], [____], in the amount of [\$____] which shall consist of [Index Rate Advances] [LIBOR Rate Advances with a LIBOR Period of [1][2][3] months], to be disbursed to the Borrower in accordance with *Section 2.04(a)* of the Funding Agreement. The Borrower hereby represents and warrants that the conditions set forth in *Section 3.02* of the Funding Agreement have been satisfied. Attached hereto is a certificate setting forth a pro forma calculation of the Borrowing Base after giving effect to the acquisition by the Borrower of new Transferred Receivables and the receipt of Collections since the date of the most recent Borrowing Base Certificate, and the making of such Borrowing.

Very truly yours,
SUPERIOR ESSEX FUNDING LLC

By: _____
Name: _____
Title: _____

Exhibit 2.03(h) to Funding Agreement

FORM OF REPAYMENT NOTICE

[Insert Date]

General Electric Capital Corporation,
as Administrative Agent
201 High Ridge Road
Stamford, Connecticut 06927
Attention: Vice President–Portfolio/Underwriting

Re: Receivables Funding Agreement
dated as of November 6, 2002

Ladies and Gentlemen:

This notice is given pursuant to *Section 2.03(h)* of that certain Receivables Funding Agreement dated as of November 6, 2002 (the "**Funding Agreement**"), by and among Superior Essex Funding LLC (the "**Borrower**"), Superior Telecommunications Inc. (the "**Servicer**"), the financial institutions party thereto as lenders (the "**Lenders**"), and General Electric Capital Corporation, as a lender (in such capacity, the "**Lender**") and as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Funding Agreement.

Pursuant to *Section 2.03(h)* of the Funding Agreement, the Borrower hereby notifies the Lenders and the Administrative Agent of its request to repay the principal amount of outstanding Advances in an amount equal to [\$____] on [____], [____] (which is a Business Day), from [Collections/other sources]. In connection therewith, the Borrower will pay to the Administrative Agent (1) all interest accrued on the outstanding principal balance of Advances being repaid through but excluding the date of such repayment and (2) any and all Breakage Costs payable under *Section 2.10* of the Funding Agreement by virtue thereof.

Very truly yours,

SUPERIOR ESSEX FUNDING LLC

By: _____
Name: _____
Title: _____

Exhibit 2.06(c) to Funding Agreement

FORM OF CONVERSION/CONTINUATION NOTICE

TO: General Electric Capital Corporation, in its capacity as administrative agent for the Lenders (the "*Administrative Agent*") under that certain Receivables Funding Agreement dated as of November 6, 2002 (the "*Funding Agreement*") by and among Superior Essex Funding LLC (the "*Borrower*"), Superior Telecommunications Inc., as Servicer, the financial institutions from time to time parties thereto and the Agent (such Funding Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Funding Agreement*")

The Borrower hereby gives to the Administrative Agent a notice of Conversion/Continuation pursuant to *Section 2.06(c)* of the Funding Agreement, and the Borrower hereby requests to [convert] [continue] on _____, ____ (the "*[Conversion]/[Continuation] Date*") from the Lenders on a pro rata basis an aggregate principal amount of:

\$_____ in Advances [identify as necessary] as a(n)

_____ Index Rate Advances

LIBOR Rate Advances

(which Advances shall be (a) in an aggregate amount equal to \$1,000,000 or an integral multiple of \$500,000 in excess thereof, and (b) for a LIBOR Period equal to [1][2][3] months

The undersigned hereby certifies that (i) the representations and warranties of the undersigned contained in *Article IV* of the Funding Agreement are and shall be true and correct in all respects on and as of the date hereof and on and as of the [Conversion][Continuation] Date; (ii) no Termination Event or Incipient Termination event has occurred and is continuing on the date hereof or on the [Conversion][Continuation] Date or will result from the [conversion] [continuation] of the Advances; and (iii) the conditions set forth in *Section 3.02* of the Funding Agreement have been satisfied.

Unless otherwise defined herein, terms defined in *Annex X* to the Funding Agreement shall have the same meanings in this [Conversion][Continuation] Notice.

Dated: _____, 20__

Very truly yours,

SUPERIOR ESSEX FUNDING LLC

By: _____

Name:

Title:

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Exhibit 5.02(b) to Funding Agreement

Form of

BORROWING BASE CERTIFICATE

Attached

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Exhibit 10.03 to Funding Agreement

Form of

POWER OF ATTORNEY

This Power of Attorney is executed and delivered by [Superior Essex Funding LLC, as Borrower] [Superior Telecommunications Inc., as Servicer] ("*Grantor*") under the Funding Agreement (as defined below), to General Electric Capital Corporation, as Administrative Agent under the Funding Agreement (hereinafter referred to as "**Attorney**"), pursuant to that certain Receivables Funding Agreement dated as of November 6, 2002 (the "**Funding Agreement**"), by and among Grantor, the other parties thereto and Attorney and the other Related Documents. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Funding Agreement. No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and Grantor irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity that acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest and may not be revoked or cancelled by Grantor until all Borrower Obligations under the Related Documents have been indefeasibly paid in full and Attorney has provided its written consent thereto.

Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in its place and stead and in its name or in Attorney's own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments that may be necessary or desirable to accomplish the purposes of the Funding Agreement, and, without limiting the generality of the foregoing, hereby grants to Attorney the power and right, on its behalf, without notice to or assent by it, upon the occurrence and during the continuance of any Termination Event, to do the following: (a) open mail for it, and ask, demand, collect, give acquittances and receipts for, take possession of, or endorse and receive payment of, any checks, drafts, notes, acceptances, or other instruments for the payment of moneys due in respect of Transferred Receivables, and sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any Borrower Collateral; (b) effect any repairs to any Borrower Collateral, or continue or obtain any insurance in respect of any Borrower Collateral and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, Liens, or other encumbrances levied or placed on or threatened against any Borrower Collateral; (d) defend any suit, action or proceeding brought against it or any Borrower Collateral if the Grantor does not defend such suit, action or proceeding or if Attorney believes that it is not pursuing such defense in a manner that will

maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, Litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due with respect to any Borrower Collateral or otherwise with respect to the Related Documents whenever payable and to enforce any other right in respect of its property; (f) sell, transfer, pledge, make any agreement with respect to, or otherwise deal with, any Borrower Collateral, and execute, in connection with such sale or action, any endorsements, assignments or other instruments of conveyance or transfer in connection therewith; and (g) cause the certified public accountants then engaged by it to prepare

and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, any and all financial statements or other reports required to be delivered by or on behalf of Grantor under the Related Documents, all as though Attorney were the absolute owner of its property for all purposes, and to do, at Attorney's option and its expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve, or realize upon the Borrower Collateral and the Lenders' Liens thereon, all as fully and effectively as it might do. Grantor hereby ratifies, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, this Power of Attorney is executed by Grantor, and Grantor has caused its seal to be affixed pursuant to the authority of its board of directors this day of November, 2002.

Grantor
ATTEST: _____

By: _____ (SEAL)
Title: _____

[Notarization in appropriate form for the state of execution is required.]

Exhibit 14.02(b) to Funding Agreement

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Agreement") is made as of _____, _____ by and between _____ ("Assignor Lender") and _____ ("Assignee Lender") and acknowledged and consented to by GENERAL ELECTRIC CAPITAL CORPORATION, as administrative agent ("Administrative Agent"). All capitalized terms used in this Agreement and not otherwise defined herein will have the respective meanings set forth in the Funding Agreement as hereinafter defined.

RECITALS:

WHEREAS, Superior Essex Funding LLC, a Delaware limited liability company (the "Borrower"), Superior Telecommunications Inc., a Delaware corporation (the "Servicer"), the financial institutions signatory thereto from time to time as lenders (the "Lenders"), and the Administrative Agent have entered into that certain Receivables Funding Agreement dated as of November 6, 2002 (as amended, restated, supplemented or otherwise modified from time to time, the "Funding Agreement") pursuant to which the Lenders (including the Assignor Lender) have agreed to make certain Advances to Borrower;

WHEREAS, Assignor Lender desires to assign to Assignee Lender [all/a portion] of its interest in the Advances (as described below) and the Borrower Collateral and to delegate to Assignee Lender [all/a portion] of its Commitment and other duties with respect to such Advances and Borrower Collateral;

WHEREAS, Assignee Lender desires to become a Lender under the Funding Agreement and to accept such assignment and delegation from Assignor Lender; and

WHEREAS, Assignee Lender desires to appoint the Administrative Agent to serve as agent for Assignee Lender under the Funding Agreement;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions, and covenants herein contained, Assignor Lender and Assignee Lender agree as follows:

1. ASSIGNMENT, DELEGATION, AND ACCEPTANCE

1.1 *Assignment.* Assignor Lender hereby transfers and assigns to Assignee Lender, without recourse and without representations or warranties of any kind (except as set forth in *Section 3.2 below*), [all/such percentage] of Assignor Lender's right, title, and interest in the Advances, Related Documents and Borrower Collateral as will result in Assignee Lender having as of the Effective Date (as hereinafter defined) a Pro Rata Share thereof, as follows:

<u>Assignee Lender's Loans</u>	<u>Principal Amount</u>	<u>Pro Rata Share</u>
Advances	\$	%

1.2 *Delegation.* Assignor Lender hereby irrevocably assigns and delegates to Assignee Lender [all/a portion] of its Commitments and its other duties and obligations as a Lender under the Related Documents equivalent to [100%/____%] of Assignor Lender's Commitment (such percentage representing a commitment of \$_____).

1.3 *Acceptance by Assignee Lender.* By its execution of this Agreement, Assignee Lender irrevocably purchases, assumes and accepts such assignment and delegation and agrees to be a Lender with respect to the delegated interest under the Related Documents and to be bound by the terms and conditions thereof. By its execution of this Agreement, Assignor Lender agrees, to the extent provided

herein, to relinquish its rights and be released from its obligations and duties under the Funding Agreement.

1.4 *Effective Date.* Such assignment and delegation by Assignor Lender and acceptance by Assignee Lender will be effective and Assignee Lender will become a Lender under the Related Documents as of the date of this Agreement ("Effective Date") and upon payment of the Assigned Amount and the Assignment Fee (as each term is defined below).

2. INITIAL PAYMENT AND DELIVERY OF NOTES

2.1 *Payment of the Assigned Amount.* Assignee Lender will pay to Assignor Lender, in immediately available funds, not later than 12:00 noon (New York City time) on the Effective Date, an amount equal to its Pro Rata Share of the then outstanding principal amount of the Advances as set forth above in *Section 1.1* together with accrued interest, fees and other amounts as set forth on *Schedule 2.1* (the "Assigned Amount").

2.2 *Payment of Assignment Fee.* [Assignor Lender] [Assignee Lender] will pay to the Administrative Agent, for its own account in immediately available funds, not later than 12:00 noon (New York City time) on the Effective Date, an assignment fee in the amount of \$3,500 (the "Assignment Fee") as required pursuant to Section 14.02(b) of the Funding Agreement.

- 2.3 Execution and Delivery of Notes. Following payment of the Assigned Amount and the Assignment Fee, Assignor Lender will deliver to the Administrative Agent the Revolving Notes previously delivered to Assignor Lender for redelivery to Borrower and the Administrative Agent will obtain from Borrower for delivery to [Assignor Lender and] Assignee Lender, new executed Revolving Notes evidencing Assignee Lender's [and Assignor Lender's respective] Pro Rata Share[s] in the Advances after giving effect to the assignment described in *Section I*. Each new Revolving Note will be issued in the aggregate maximum principal amount of the Commitment of [the Assignee Lender] [and the Assignor Lender].

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 *Assignee Lender's Representations, Warranties and Covenants.* Assignee Lender hereby represents, warrants, and covenants the following to Assignor Lender and the Administrative Agent:

- (a) This Agreement is a legal, valid, and binding agreement of Assignee Lender, enforceable according to its terms;
- (b) The execution and performance by Assignee Lender of its duties and obligations under this Agreement and the Related Documents will not require any registration with, notice to, or consent or approval by any Governmental Authority;
- (c) Assignee Lender is familiar with transactions of the kind and scope reflected in the Related Documents and in this Agreement;
- (d) Assignee Lender has made its own independent investigation and appraisal of the financial condition and affairs of the Borrower and its Affiliates, has conducted its own evaluation of the Advances, the Related Documents and the Borrower's and its Affiliate's creditworthiness, has made its decision to become a Lender to Borrower under the Funding Agreement independently and without reliance upon Assignor Lender, any other Lender or the Administrative Agent, and will continue to do so;
- (e) Assignee Lender is entering into this Agreement in the ordinary course of its business, and is acquiring its interest in the Advances for its own account and not with a view to or for sale in connection with any subsequent distribution; provided, however, that at all times the distribution of Assignee Lender's property shall, subject to the terms of the Funding Agreement, be and remain within its control;

(f) No future assignment or participation granted by Assignee Lender pursuant to Section 14.02 of the Funding Agreement will require Assignor Lender, the Administrative Agent, or Borrower to file any registration statement with the Securities and Exchange Commission or to apply to qualify under the blue sky laws of any state;

(g) Assignee Lender will not enter into any written or oral agreement with, or acquire any equity or other ownership interest in, the Borrower or any of its Affiliates without the prior written consent of the Administrative Agent; and

(h) As of the Effective Date, Assignee Lender is entitled to receive payments of principal and interest under the Funding Agreement without deduction for or on account of any taxes imposed by the United States of America or any political subdivision thereof and Assignee Lender will indemnify the Administrative Agent from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or expenses that are not paid by the Borrower pursuant to the terms of the Funding Agreement.

3.2 *Assignor Lender's Representations, Warranties and Covenants.* Assignor Lender hereby represents, warrants and covenants the following to Assignee Lender:

- (a) Assignor Lender is the legal and beneficial owner of the Assigned Amount;
- (b) This Agreement is a legal, valid and binding agreement of Assignor Lender, enforceable according to its terms;

(c) The execution and performance by Assignor Lender of its duties and obligations under this Agreement will not require any registration with, notice to or consent or approval by any Governmental Authority;

(d) Assignor Lender has full power and authority, and has taken all action necessary to execute and deliver this Agreement and to fulfill the obligations hereunder and to consummate the transactions contemplated hereby;

(e) Assignor Lender is the legal and beneficial owner of the interests being assigned hereby, free and clear of any adverse claim, lien, encumbrance, security interest, restriction on transfer, purchase option, call or similar right of a third party; and

(f) This Agreement complies, in all material respects, with the terms of the Related Documents.

4. LIMITATIONS OF LIABILITY

Neither Assignor Lender (except as provided in *Section 3.2*) nor the Administrative Agent makes any representations or warranties of any kind, nor assumes any responsibility or liability whatsoever, with regard to (a) the Related Documents or any other document or instrument furnished pursuant thereto or the Advances or other Borrower Obligations, (b) the creation, validity, genuineness, enforceability, sufficiency, value or collectibility of any of them, (c) the amount, value or existence of the Borrower Collateral, (d) the perfection or priority of any Lien upon the Borrower Collateral, or (e) the financial condition of Borrower or any of its Affiliates or other obligor or the performance or observance by Borrower or any of its Affiliates of its obligations under any of the Related Documents. Neither Assignor Lender nor the Administrative Agent has or will have any duty, either initially or on a continuing basis, to make any investigation, evaluation, appraisal of, or any responsibility or liability with respect to the accuracy or completeness of, any information provided to Assignee Lender which has been provided to Assignor Lender or the Administrative Agent by Borrower or any of its Affiliates. Nothing in this Agreement or in the Related Documents shall impose upon the Assignor Lender or the Administrative Agent any fiduciary relationship in respect of the Assignee Lender.

5. FAILURE TO ENFORCE

No failure or delay on the part of the Administrative Agent or Assignor Lender in the exercise of any power, right, or privilege hereunder or under any Related Document will impair such power, right, or privilege or be construed to be a waiver of any default or acquiescence therein. No single or partial exercise of any such power, right, or privilege will preclude further exercise thereof or of any other right, power, or privilege. All rights and remedies existing under this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise available.

6. NOTICES

Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given will be in writing and addressed to the respective party as set forth below its signature hereunder, or to such other address as the party may designate in writing to the other.

7. AMENDMENTS AND WAIVERS

No amendment, modification, termination, or waiver of any provision of this Agreement will be effective without the written concurrence of Assignor Lender, the Administrative Agent and Assignee Lender.

8. SEVERABILITY

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. In the event any provision of this Agreement is or is held to be invalid, illegal, or unenforceable under applicable law, such provision will be ineffective only to the extent of such invalidity, illegality, or unenforceability, without invalidating the remainder of such provision or the remaining provisions of the Agreement. In addition, in the event any provision of or obligation under this Agreement is or is held to be

invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions or obligations in any other jurisdictions will not in any way be affected or impaired thereby.

9. SECTION TITLES

Section and Subsection titles in this Agreement are included for convenience of reference only, do not constitute a part of this Agreement for any other purpose, and have no substantive effect.

10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. APPLICABLE LAW

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

12. COUNTERPARTS

This Agreement and any amendments, waivers, consents, or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, will be deemed an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

Assignee Lender

Assignor Lender

By:

By:

Title:

Title:

Notice Address

Notice Address

Account Information:

Account Information

Acknowledged and Consented to:

GENERAL ELECTRIC CAPITAL CORPORATION

By:

Its Duly Authorized Signatory

SUPERIOR ESSEX FUNDING LLC

By: _____

Name:

Title:

SCHEDULE 2.1

Assignor Lender's Loans

Principal Amount

Revolving Loans \$ _____

Accrued Interest \$ _____

Unused Line Fee \$ _____

Other + or- \$ _____

Total \$

All determined as of the Effective Date

ANNEX 5.02(a)
to
FUNDING AGREEMENT

REPORTING REQUIREMENTS OF THE BORROWER

The Borrower shall furnish, or cause to be furnished, to each Lender and the Administrative Agent:

(a) *Monthly Report.* As soon as available, and in any event no later than 11:00 a.m. (New York time) on the fifteenth day of each fiscal month, a Monthly Report in the form attached hereto prepared by the Borrower as of the last day of the previous fiscal month, together with an unaudited monthly balance sheet of the Borrower certified by an officer of the Borrower.

(b) *Annual Audited Financials.* As soon as available, and in any event within 90 days after the end of each fiscal year, a copy of (1) the audited consolidated financial statements for such year for each of the Borrower and the Parent and its Subsidiaries, certified in each case without qualification in a manner satisfactory to the Administrative Agent by Deloitte & Touche (or its successor) or other nationally recognized independent public accountants reasonably acceptable to the Administrative Agent, with such financial statements being prepared in accordance with GAAP applied consistently throughout the period involved (except as approved by such accountants and disclosed therein) and (2) the unaudited consolidating financial statements for the Parent and its Subsidiaries.

(c) *Quarterly Financials.* As soon as available, and in any event within 45 days after the end of each fiscal quarter (other than the last quarter of such fiscal year), financial information regarding the Parent and its Subsidiaries, certified by the Chief Financial Officer of the Parent, consisting of consolidated unaudited balance sheets as of the close of such fiscal quarter and the related statements of income and cash flows for that portion of the fiscal year ending as of the close of such fiscal quarter, all prepared in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes. Such financial information shall be accompanied by the certification of the Chief Financial Officer of the Parent that (A) such financial information presents fairly in accordance with GAAP the financial position and results of operations of the Parent and its Subsidiaries, on a consolidated and

consolidating basis, in each case as at the end of such quarter and for the period then ended and (B) any other information presented is true, correct and complete in all material respects and that there was no Incipient Termination Event or Termination Event in existence as of such time or, if an Incipient Termination Event or Termination Event shall have occurred and be continuing, describing the nature thereof and all efforts undertaken to cure such Incipient Termination Event or Termination Event. In addition, the Borrower shall furnish, or cause to be furnished, to the Administrative Agent and the Lenders, within 50 days after the end of each fiscal quarter, (y) a statement in reasonable detail (each, a "*Compliance Certificate*") showing the calculations used in determining compliance with each financial covenant described in Sections 9.01(v) and (x) of the Funding Agreement and (z) a management discussion and analysis that includes a comparison of performance for the fiscal year to date as of the end of that fiscal quarter to the corresponding period in the prior year, as set forth in the quarterly filings made by the Parent with the Securities and Exchange Commission.

(d) *Monthly Financials*. As soon as available, and in any event within 30 days after the end of each fiscal month (unless such month is also the end of a calendar quarter), financial information regarding the Borrower and the Parent and its Subsidiaries, certified by the Chief Financial Officer of the Parent, consisting of consolidated unaudited balance sheets as of the close of such fiscal month and the related statements of income and cash flows for that portion of the fiscal year ending as of the close of such fiscal month, all prepared in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes. Such financial information shall be accompanied by the certification of the Chief Financial Officer of the Parent that (A) such financial information presents fairly in accordance with GAAP the financial position and results of operations of the Borrower, the Parent and its Subsidiaries, on a consolidated and consolidating

basis, in each case as at the end of such month and for the period then ended and (B) any other information presented is true, correct and complete in all material respects and that there was no Incipient Termination Event or Termination Event in existence as of such time or, if an Incipient Termination Event or Termination Event shall have occurred and be continuing, describing the nature thereof and all efforts undertaken to cure such Incipient Termination Event or Termination Event.

(e) *Operating Plan*. As soon as available, but not later than 30 days after the end of each fiscal year, an annual operating plan for such fiscal year for the Parent, which will (i) include a statement of the material assumptions on which such plan is based, (ii) include monthly balance sheets and monthly projections for such year and (iii) integrate sales, gross profits, operating expenses, operating profit, cash flow projections and Borrowing Base projections, all prepared on the same basis and in similar detail as that on which operating results are reported (and in the case of cash flow projections, representing management's good faith estimates of future financial performance based on historical performance), and including plans for personnel, capital expenditures and facilities.

(f) *Management Letters*. Within 10 Business Days after receipt thereof by the Borrower, copies of all management letters, exception reports or similar letters or reports received by the Borrower from its independent certified public accountants.

(g) *Default Notices*. As soon as practicable, and in any event within five Business Days after an Authorized Officer of the Borrower has actual knowledge of the existence thereof, telephonic or telecopied notice of each of the following events, in each case specifying the nature and anticipated effect thereof and what action, if any, the Borrower proposes to take with respect thereto, which notice, if given telephonically, shall be promptly confirmed in writing on the next Business Day:

- (i) any Incipient Termination Event or Termination Event;
- (ii) any Adverse Claim made or asserted against any of the Borrower Collateral of which it becomes aware;
- (iii) the occurrence of any event that would have a material adverse effect on the aggregate value of the Borrower Collateral or on the assignments and Liens granted by the Borrower pursuant to the Funding Agreement;
- (iv) the occurrence of any event of the type described in *Sections 4.02(h)(i), (ii) or (iii)* of the Sale Agreement involving any Obligor obligated under Transferred Receivables with an aggregate Outstanding Balance at such time of \$500,000 or more;

(v) the commencement of a case or proceeding by or against the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor seeking a decree or order in respect of the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor (A) under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar law, (B) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor or for any substantial part of its respective assets, or (C) ordering the winding-up or liquidation of the affairs of the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor;

(vi) the receipt of notice that (A) the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor is being placed under regulatory supervision, (B) any license, permit, charter, registration or approval necessary for the conduct of the business of the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor is to be, or may be, suspended or revoked, or (C) the Borrower, the Parent, the Servicer, any Originator, any other Subsidiary of the Parent or any Obligor is

to cease and desist any practice, procedure or policy employed by it in the conduct of its business if such cessation could reasonably be expected to have a Material Adverse Effect;

(vii) the commencement of litigation against the Parent or any Subsidiary of the Parent alleging infringement or interference with any intellectual property of another Person; or

(viii) any other event, circumstance or condition that has had or could reasonably be expected to have a Material Adverse Effect.

(h) *SEC Filings and Press Releases.* Promptly upon their becoming available, copies of: (i) all financial statements, reports, notices and proxy statements made publicly available by the Borrower, the Parent or any Originator to its security holders; (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by the Borrower, the Parent or any Originator with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority; and (iii) all press releases and other statements made available by the Borrower, the Parent or any Originator to the public concerning material adverse changes or developments in the business of any such Person.

(i) *Litigation.* Promptly upon learning thereof, written notice of any Litigation affecting the Borrower, the Transferred Receivables or the Borrower Collateral, whether or not fully covered by insurance, and regardless of the subject matter thereof that (i) seeks damages in excess of \$250,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries (in their capacity as a fiduciary of any such Plan) or its assets or against the Borrower or any ERISA Affiliate of the Borrower in connection with any Plan, (iv) alleges criminal misconduct by the Borrower or (v) would, if determined adversely, have a Material Adverse Effect.

(j) *Other Documents.* Such other financial and other information respecting the Transferred Receivables, the Contracts therefor or the condition or operations, financial or otherwise, of the Borrower, any Originator, the Parent or any of its other Subsidiaries as any Lender or Administrative Agent shall, from time to time, reasonably request.

(k) *Credit Agreement Reports.* As soon as available, and in any event when the same shall be required to be delivered in accordance with the terms of the Credit Agreement, copies of each of the reports described in Section 7.01 of the Credit Agreement.

(l) *Miscellaneous Certifications.* As soon as available, and in any event within 90 days after the end of each fiscal year, (i) a Bringdown Certificate in the form attached hereto, (ii) a Servicer's Certificate in the form attached hereto, and (iii) if requested, an opinion or opinions of counsel, in form and substance satisfactory to the Lenders and the Administrative Agent, reaffirming as of the date of such opinion the opinions of counsel with respect to the Borrower and the Originators delivered to the Lenders and the Administrative Agent on the Closing Date.

[See attached]

ANNEX W
ADMINISTRATIVE AGENT'S ACCOUNT/
LENDERS' ACCOUNTS

Deutsche Bank Trust Company Americas
130 Liberty Street
New York, New York 10006

ABA# 021-001-033
Account Name: GECC CAF Depository
Account # 50-232-854
Reference: Superior Essex Funding LLC

ANNEX X

to

RECEIVABLES SALE AGREEMENT

and

RECEIVABLES FUNDING AGREEMENT

each dated as of

November 6, 2002

Definitions and Interpretation

SECTION 1. *Definitions and Conventions.* Capitalized terms used in the Sale Agreement and the Funding Agreement shall have (unless otherwise provided elsewhere therein) the following respective meanings:

"*Accounting Changes*" shall mean, with respect to any Person, (a) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or any successor thereto or any agency with similar functions); (b) changes in accounting principles concurred in by such Person's certified public accountants; (c) purchase accounting adjustments under A.P.B. 16 or 17 and EITF 88-16, and the application of the accounting principles set forth in FASB 109, including the establishment of reserves pursuant thereto and any subsequent reversal (in whole or in part) of such reserves; and (d) the reversal of any reserves established as a result of purchase accounting adjustments.

"*Additional Amounts*" shall mean any amounts payable to any Affected Party under *Sections 2.09* or *2.10* of the Funding Agreement.

"*Additional Costs*" shall have the meaning assigned to it in *Section 2.09(b)* of the Funding Agreement.

"Administrative Agent" shall have the meaning set forth in the Preamble of the Funding Agreement.

"Administrative Services Agreement" shall mean that certain Administrative Services Agreement dated as of the date hereof between the Borrower and the Parent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Advance" shall have the meaning assigned to it in Section 2.01 of the Funding Agreement.

"Advance Date" shall mean each day on which any Advance is made.

"Adverse Claim" shall mean any claim of ownership or any Lien, other than any ownership interest or Lien created under the Sale Agreement or the Funding Agreement.

"Affected Party" shall mean each of the following Persons: each Lender, the Administrative Agent, the Depository and each Affiliate of the foregoing Persons.

"Affiliate" shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, or (c) each of such Person's officers, directors, joint venturers and partners. For the purposes of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Aggregate Commitment" shall mean as to all Lenders, the aggregate commitment of all Lenders to make Advances, which aggregate commitment shall be One Hundred Sixty Million Dollars (\$160,000,000) on the Closing Date, as such amount may be adjusted, if at all, from time to time in accordance with the Funding Agreement.

"ANICOM" shall mean ANICOM, Inc.

"Appendices" shall mean, with respect to any Related Document, all exhibits, schedules, annexes and other attachments thereto, or expressly identified thereto.

"Assignment Agreement" shall mean an assignment agreement in the form of Exhibit 14.02 attached to the Funding Agreement.

"Authorized Officer" shall mean, with respect to any corporation or limited liability company, the Chairman or Vice-Chairman of the Board, the President, any Vice President, the General

Counsel, the Secretary, the Treasurer, the Controller any Assistant Secretary, any Assistant Treasurer, any manager or managing member and each other officer of such corporation or limited liability company specifically authorized to sign agreements, instruments or other documents on behalf of such corporation or limited liability company in connection with the transactions contemplated by the Sale Agreement, the Funding Agreement and the other Related Documents.

"Availability Block" shall mean \$5,000,000.

"Bankruptcy Code" shall mean the provisions of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*

"Billed Amount" shall mean, with respect to any Receivable, the amount billed on the Billing Date to the Obligor thereunder.

"Billing Date" shall mean, with respect to any Receivable, the date on which the invoice with respect thereto was generated.

"Borrower" shall mean Superior Essex Funding LLC, a Delaware limited liability company, in its capacity as Borrower under the Funding Agreement.

"Borrower Account" shall mean account number 00-424-794 maintained by the Borrower at the Borrower Account Bank, which account shall be subject to a blocked account agreement pursuant to which the Administrative Agent shall have control of such account.

"Borrower Account Bank" shall mean the bank or other financial institution at which the Borrower Account is maintained.

"Borrower Account Collateral" shall have the meaning assigned to it in Section 8.01(c) of the Funding Agreement.

"Borrower Assigned Agreements" shall have the meaning assigned to it in Section 8.01(b) of the Funding Agreement.

"Borrower Collateral" shall have the meaning assigned to it in Section 8.01 of the Funding Agreement.

"Borrower Obligations" shall mean all loans, advances, debts, liabilities, indemnities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by the Borrower to any Affected Party under the Funding Agreement and any document or instrument delivered pursuant thereto, and all amendments, extensions or renewals thereof, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising thereunder, including the Outstanding Principal Amount, interest, Unused Facility Fees, amounts in reduction of Funding Excess, Successor Servicing Fees and Expenses, Additional Amounts and Indemnified Amounts. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against the Borrower in bankruptcy, whether or not allowed in such case or proceeding), fees, charges, expenses, reasonable attorneys' fees and any other sum chargeable to the Borrower under any of the foregoing, whether now existing or hereafter arising, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations that are paid to the extent all or any portion of such payment is avoided or recovered directly or indirectly from any Lender or the Administrative Agent or any assignee of any Lender or the Administrative Agent as a preference, fraudulent transfer or otherwise.

"Borrowing" shall have the meaning assigned to it in Section 2.01(a) of the Funding Agreement.

"Borrowing Base" means, as of any date of determination, the amount equal to

the lesser of:

(a) the Maximum Facility Amount,

and

(b) an amount equal to the positive difference, if any, of:

(i) the product of (1) the Dynamic Advance Rate *multiplied by* (2) the Net Receivables Balance,

minus

(ii) the sum of (W) an amount equal to the Availability Block, *plus* (X) the Interest Reserve, *plus* (Y) \$250,000, *plus* (Z) such other reserves as the Administrative Agent may determine from time to time based upon its reasonable credit judgment;

in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"*Borrowing Base Certificate*" shall have the meaning assigned to it in *Section 5.02(b)* of the Funding Agreement.

"*Borrowing Request*" shall have the meaning assigned to it in *Section 2.03(a)* of the Funding Agreement.

"*Breakage Costs*" shall have the meaning assigned to it in *Section 2.10* of the Funding Agreement.

"*Business Day*" shall mean any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York, the State of Georgia or, with respect to any remittances to be made by a Lockbox Account Bank or to any related Lockbox Account, in the jurisdiction(s) in which the Lockbox Account(s) maintained by such Lockbox Account Bank is located.

"*Buyer*" shall mean Superior Essex Funding LLC a Delaware limited liability company, in its capacity as Buyer under the Sale Agreement.

"*Buyer Indemnified Person*" shall have the meaning assigned to it in *Section 5.01* of the Sale Agreement.

"*Capital Lease*" shall mean, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

"*Capital Lease Obligation*" shall mean, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

"*Change of Control*" shall mean any event, transaction or occurrence as a result of which (a) any person or group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as amended) of 20% or more of the issued and outstanding shares of capital Stock of the Parent having the right to vote for the election of directors of the respective entity under ordinary circumstances; (b) during any twelve (12) consecutive calendar months ending after the Closing Date, individuals who at the beginning of such twelve-month period constituted the board of directors of the Parent (together with any new directors whose election by such board or whose nomination for election by the shareholders of the Parent was approved by a vote of a majority of the directors still in office

who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) shall cease for any reason to constitute a majority of the board of directors of the Parent then in office; (c) the Parent shall cease to own and control all of the economic and voting rights associated with all of the outstanding Stock of any Originator (other than as a result of the sale of the capital Stock of any Originator in accordance with the terms of the Funding Agreement) or, directly or indirectly, of the Borrower; (d) the Member shall cease to own directly or indirectly and control all of the economic and voting rights associated with the outstanding Stock of the Borrower; (e) the Parent has sold, transferred, conveyed, assigned or otherwise disposed of all or substantially all of the assets of the Parent; or (f) any Person or group acquires direct or indirect control of the Parent.

"*Charges*" shall mean (i) all federal, state, provincial, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to the PBGC at the time due and payable); (ii) all levies, assessments, charges, or claims of any governmental entity or any claims of statutory lienholders, the nonpayment of which could give rise by operation of law to a Lien on Borrower

Collateral or any other property of the Borrower or any Originator and (iii) any such taxes, levies, assessment, charges or claims which constitute a lien or encumbrance on any property of the Borrower or any Originator.

"*Closing Date*" shall mean November 6, 2002.

"*Collection Account*" shall mean account number 50-232-854 with the Depository in the name of the Administrative Agent.

"*Collections*" shall mean, with respect to any Receivable, all cash collections and other proceeds of such Receivable (including late charges, fees and interest arising thereon, and all recoveries with respect thereto that have been written off as uncollectible).

"*Commitment*" shall mean as to any Lender, the aggregate commitment of such Lender to make Advances as set forth in the signature page to the Funding Agreement or in the most recent Assignment Agreement executed by such Lender, as such amount may be adjusted, if at all, from time to time in accordance with the Funding Agreement.

"*Commitment Reduction Notice*" shall have the meaning assigned to it in *Section 2.02(a)* of the Funding Agreement.

"*Commitment Termination Date*" shall mean the earliest of (a) the date so designated pursuant to *Section 9.01* of the Funding Agreement, (b) the Final Advance Date, and (c) the date of termination of the Maximum Facility Amount specified in a notice from the Borrower to the Lenders delivered pursuant to and in accordance with *Section 2.02(b)* of the Funding Agreement.

"*Commitment Termination Notice*" shall have the meaning assigned to it in *Section 2.02(b)* of the Funding Agreement.

"*Concentration Percentage*" shall mean, with respect to an Obligor as of any date of determination, the General Concentration Percentage or, if applicable, the Special Concentration Percentage for such Obligor at such date of determination.

"*Contract*" shall mean any agreement or invoice pursuant to, or under which, an Obligor shall be obligated to make payments with respect to any Receivable.

"*Contributed Receivables*" shall have the meaning assigned to it in *Section 2.01(d)* of the Sale Agreement.

"*Credit Agreement*" shall mean that certain Credit Agreement, dated as of November 27, 1998, among Superior/Essex Corp., Essex Group, Inc., the guarantors named therein, the lending institutions party thereto, Merrill Lynch & Co, as documentation agent, Fleet National Bank, as syndication agent and Deutsche Bank Trust Company Americas, as administrative agent and collateral agent, and as in effect on Closing Date together with, subject to Section 4.03(m) of the

Sale Agreement, such amendments, restatements, supplements or modifications thereto, or any refinancings, replacements or refundings thereof.

"*Credit and Collection Policies*" shall mean the written credit, collection, customer relations and service policies of the Originators in effect on the Closing Date and attached as Exhibit A to the Funding Agreement, as the same may from time to time be amended, restated, supplemented or otherwise modified with the written consent of the Administrative Agent.

"*Debt*" of any Person shall mean, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services payment for which is deferred 90 days or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are not overdue by more than 90 days unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations, (f) all obligations of such Person under commodity purchase or option agreements or

other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all Guaranteed Indebtedness of such Person, (i) all indebtedness referred to in *clauses (a)* through *(i)* above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; *provided, however*, that in the event that the liability of such Person is non-recourse to such Person and is recourse only to specific assets of such Person and so long as no other Person has guaranteed such debt or otherwise provided support for such debt, for purposes of this definition, the amount of such debt shall not exceed the greater of the market value of such assets and the book value of such assets, (j) all "Indebtedness" as such term is defined in the Credit Agreement, (k) all "Loans" and other obligations of the Parent under the Credit Agreement, and (l) the Borrower Obligations.

"*Defaulted Receivable*" shall mean any Receivable (a) with respect to which any payment, or part thereof, remains unpaid for more than 90 days after its Maturity Date, (b) with respect to which the Obligor thereunder has taken any action, or suffered any event to occur, of the type described in *Sections 9.01(d)* or *9.01(e)* of the Funding Agreement or (c) that otherwise has been or should be written off in accordance with the Credit and Collection Policies.

"*Default Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Outstanding Balance of all Defaulted Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) as of the last day of the three Settlement Periods immediately preceding such date;

to

(b) the aggregate Outstanding Balance of all Transferred Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) as of the last day of the three Settlement Periods immediately preceding such date.

"*Delinquency Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Outstanding Balance of all Receivables with respect to which any payment, or part thereof, is between 61 and 90 days past due as of the last day of the three Settlement Periods immediately preceding such date

to

(b) the aggregate Outstanding Balance of all Transferred Receivables as of the last day of the three Settlement Periods immediately preceding such date.

"*Depository*" has the meaning given such term in *Section 6.01(b)(i)* of the Funding Agreement.

"*Dilution Factors*" shall mean, with respect to any Receivable (other than Receivables owing by Grand Eagle and ANICOM as of the Closing Date), any portion of which (a) was reduced, canceled or written-off as a result of (i) any credits, rebates, freight charges, cash discounts, volume discounts, cooperative advertising expenses, royalty payments, warranties, cost of parts required to be maintained by agreement (either express or implied), allowances for early payment, warehouse and other allowances, defective, rejected, returned or repossessed merchandise or services, or any failure by any Originator to deliver any merchandise or services or otherwise perform under the underlying Contract or invoice, or (ii) any setoff in respect of any claim by the Obligor thereof (whether such claim arises out of the same or a related transaction or an unrelated transaction) or (b) is subject to any specific dispute, offset, counterclaim or defense whatsoever (except discharge in bankruptcy of the Obligor thereof); *provided*, that, in

respect of any Receivable the full amount of which is credited and then rebilled for a lesser amount but otherwise on the same terms, including the original invoice date, the "Dilution Factors" for such Receivable in connection for such "credit-rebills" shall be, if such credit and rebill occurs within one Business Day, zero, and otherwise the difference, if positive, between the original balance of such Receivable *minus* the balance of the re-billed Receivable.

"*Dilution Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) of:

(a) the aggregate Dilution Factors for all Transferred Receivables during the Settlement Period immediately preceding such date

to

(b) the aggregate Billed Amount of all Transferred Receivables (other than the Receivables owing by Grand Eagle and ANICOM as of the Closing Date) originated during the Settlement Period immediately preceding such date.

"*Dilution Reserve Ratio*" shall mean, as of any date of determination, the ratio (expressed as a percentage) equal to the sum of (i) two times the average of the Dilution Ratios as of the last day of each of the three Settlement Periods immediately preceding such date, *plus* (ii) 5%.

"*Dilution Trigger Ratio*" shall mean, as of any date of determination, the average of the Dilution Ratios for the three most recently ended Settlement Periods.

"*Dollars*" or "\$" shall mean lawful currency of the United States of America.

"*Dynamic Advance Rate*" shall mean, as of any date of determination, the lesser of (i) 85% and (ii) a percentage equal to 100% minus the Dilution Reserve Ratio as of such date.

"*Effective Date*" shall have the meaning given to such term in *Section 3.01* of the Funding Agreement.

"*Election Notice*" shall have the meaning assigned to it in *Section 2.01(d)* of the Sale Agreement.

"*Eligible Receivable*" shall mean, as of any date of determination, a Transferred Receivable:

F. (i) that is due and payable within 120 days of the Billing Date thereof and does not have cash on delivery or C.O.D. payment terms and (ii) with respect to which no payment or part thereof remains unpaid for more than 60 days after its Maturity Date or more than 121 days after its Billing Date;

G. that is not a liability of an Excluded Obligor or an Obligor with respect to which more than 50% of the aggregate Outstanding Balance of all Receivables owing by such Obligor are more than 60 days past due from the Maturity Date thereof or more than 121 days past due from the Billing Date thereof;

H. that is not a liability of an Obligor organized under the laws of any jurisdiction outside of the United States of America (including the District of Columbia but otherwise excluding its territories and possessions), Canada or Mexico; provided, however, that if it is organized under the laws of Mexico, such Obligor's parent must be organized under the laws of a State in the United States of America;

I. that is denominated and payable in Dollars in the United States of America or Canadian dollars and is not represented by a note or other negotiable instrument or by chattel paper;

J. that is not subject to any right of rescission, dispute, offset (including, without limitation, as a result of customer promotional allowances, discounts, rebates, or claims for damages), hold back defense, adverse claim or other claim (with only the portion of any such Receivable subject to any such right of rescission, dispute, offset (including, without limitation, as a result of customer promotional allowances, discounts, rebates, or claims for damages), hold back defense, adverse claim or other claim being considered an Ineligible Receivable by virtue of this clause (e)), whether arising out of transactions concerning the Contract therefor or otherwise;

K. with respect to which the Obligor thereunder is not: (i) bankrupt or insolvent, (ii) unable to make payment of its obligations when due, (iii) a debtor in a voluntary or involuntary bankruptcy proceeding, or (iv) the subject of a comparable receivership or insolvency proceeding; *provided, however*, that if a Receivable is not eligible as a result of this clause (f) but would otherwise constitute an Eligible Receivable hereunder, such Receivable shall be an Eligible Receivable so long as it arose post-petition and the Obligor thereof has designated the applicable Originator as a "critical vendor" and obtained the requisite court approval to pay the post-petition claims of such Originator on an administrative priority basis;

L. that is not an Unapproved Receivable;

M. that does not represent "billed but not yet shipped" goods or merchandise, partially performed or unperformed services, consigned goods or "sale or return" goods and does not arise from a transaction for which any additional performance by the Originator thereof, or acceptance by or other act of the Obligor thereunder, including any required submission of documentation, remains to be performed as a condition to any payments on such Receivable or the enforceability of such Receivable under applicable law;

N. as to which the representations and warranties of *Sections 4.01(v)(ii)* through *(iv)* of the Sale Agreement are true and correct in all respects as of the Transfer Date therefor;

O. that is not the liability of an Obligor that has any claim of a material nature against or affecting the Originator thereof or the property of such Originator (with only that portion of Receivables owing by such Obligor equal to the amount of such claim being an Ineligible Receivable);

P. that was originated in accordance with and satisfies in all material respects all applicable requirements of the Credit and Collection Policies;

Q. that represents the genuine, legal, valid and binding obligation of the Obligor thereunder enforceable by the holder thereof in accordance with its terms;

R. that is entitled to be paid pursuant to the terms of the Contract therefor, has not been paid in full or been compromised, adjusted, extended, satisfied, subordinated, rescinded or modified (except for adjustments to the Outstanding Balance thereof to reflect Dilution Factors made in accordance with the Credit and Collection Policies);

S. that does not contravene in any material respect any laws, rules or regulations applicable thereto (including laws, rules and regulations relating to usury, consumer protection, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) and with respect to which no party to the Contract therefor is in violation of any such law, rule or regulation that could reasonably be expected to have a material adverse effect on the collectibility, value or payment terms of such Receivable;

T. with respect to which no proceedings or investigations are pending or threatened before any Governmental Authority (i) asserting the invalidity of such Receivable or the Contract therefor, (ii) asserting the bankruptcy or insolvency of the Obligor thereunder; *provided, however*, that if a Receivable is not eligible as a result of this clause (ii) but would otherwise constitute an Eligible Receivable hereunder, such Receivable shall be an Eligible Receivable so long

as it arose post-petition and the Obligor thereof has designated the applicable Originator as a "critical vendor" and obtained the requisite court approval to pay the post-petition claims of such Originator on an administrative priority basis, (iii) seeking payment of such Receivable or payment and performance of such Contract or (iv) seeking any determination or ruling that could reasonably be expected to materially and adversely affect the validity or enforceability of such Receivable or such Contract;

U. (i) that is an "account" within the meaning of the UCC (or any other applicable legislation) of the jurisdictions in which the each of the Originators, the Parent and the Borrower are organized and in which chief executive offices of each of the Originators, the Parent and the Borrower are located and (ii) under the terms of the related Contract, the right to payment thereof may be freely assigned (or with respect to which, the prohibition on the assignment of rights to payment are made fully ineffective under applicable law);

V. that is payable solely and directly to an Originator and not to any other Person (including any shipper of the merchandise or goods that gave rise to such Receivable), except to the extent that payment thereof may be made to a Lockbox or otherwise as directed pursuant to *Article VI* of the Funding Agreement;

W. with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any Governmental Authority required to be obtained, effected or given in connection with the creation of such Receivable or the Contract therefor have been duly obtained, effected or given and are in full force and effect;

X. that is created through the provision of merchandise, goods or services by the Originator thereof in the ordinary course of its business in a current transaction;

Y. that is not the liability of an Obligor that, under the terms of the Credit and Collection Policies, is receiving or should receive merchandise, goods or services on a "cash on delivery" basis;

Z. that does not constitute a rebilled amount arising from a deduction taken by an Obligor with respect to a previously arising Receivable;

AA. that is not subject to any Lien, right, claim, security interest or other interest of any other Person, other than Liens in favor of the Administrative Agent for the benefit of the Lenders;

A. to the extent such Transferred Receivable represents sales tax such portion of such Receivable shall not be an Eligible Receivable;

BB. that does not represent the balance owed by an Obligor on a Receivable in respect of which the Obligor has made partial payment;

B. with respect to which no check, draft or other item of payment was previously received that was returned unpaid or otherwise; and

CC. that complies with such other criteria and requirements as the Administrative Agent, using its good faith and commercially reasonable credit judgment following a detailed analysis of the Transferred Receivables (or upon receipt of additional information with respect thereto), may from time to time specify to the Borrower or the Originator thereof upon not less than three (3) Business Days prior written notice; provided that, as long as no Termination Event has occurred, the Administrative Agent shall give advance written notice to the Seller with respect to such modification.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974 and any regulations promulgated thereunder.

"ERISA Affiliate" shall mean, with respect to any Originator, any trade or business (whether or not incorporated) that, together with such Originator, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

"ERISA Event" shall mean, with respect to any Originator or any ERISA Affiliate, the occurrence of one or more of the following events: (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan unless the 30-day notice requirement with respect thereto has been waived pursuant to the regulations under Section 4043 of ERISA; (b) the withdrawal of any Originator or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a "substantial employer," as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Originator or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by any Originator or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within 30 days; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 of ERISA; or (i) the loss of a Qualified Plan's qualification or tax exempt status.

"ESOP" shall mean a Plan that is intended to satisfy the requirements of Section 4975(e)(7) of the IRC.

"Event of Servicer Termination" shall have the meaning assigned to it in Section 9.02 of the Funding Agreement.

"Excess Concentration Amount" shall mean, with respect to any Obligor of a Receivable and as of any date of determination after giving effect to all Eligible Receivables to be transferred on such date, the amount by which the Outstanding Balance of Eligible Receivables owing by such Obligor exceeds (i) the Concentration Percentage for such Obligor multiplied by (ii) the Outstanding Balance of all Eligible Receivables on such date.

"Excluded Obligor" shall mean any Obligor (a) that is an Affiliate of any Originator, the Parent or the Borrower, (b) that is a Governmental Authority (unless approved by the Administrative Agent as a result of satisfactory compliance with all assignment of claims statutes and regulations applicable to such Governmental Authority's Receivables or such other agreements

have been entered into which are satisfactory to the Administrative Agent in its absolute discretion), or (c) that is designated as an Excluded Obligor upon ten (10) Business Days' prior written notice from the Administrative Agent to the Borrower, the Servicer and the Parent.

"Existing Securitization" shall mean that certain Loan and Security Agreement dated as of April 29, 1998, as amended, between Essex Funding, Inc. and Three Rivers Funding Corporation.

"Federal Funds Rate" means, for any day, a floating rate equal to the weighted average of the rates on overnight federal funds transactions among members of the Federal Reserve System, as determined by the Administrative Agent.

"Federal Reserve Board" shall mean the Board of Governors of the Federal Reserve System.

"Fees" shall mean any and all fees payable to the Administrative Agent or any Lender pursuant to the Funding Agreement or any other Related Document.

"Fee Letter" shall mean that certain letter agreement dated the November 6, 2002 between the Parent and the Administrative Agent.

"Final Advance Date" shall mean February 27, 2004.

"Funding Agreement" shall mean that certain Receivables Funding Agreement dated as of November 6, 2002, among the Borrower, the Lenders, the Servicer and the Administrative Agent as amended, supplemented, restated or otherwise modified from time to time.

"Funding Availability" shall mean, as of any date of determination, the amount, if any, by which the Borrowing Base exceeds the Outstanding Principal Amount, in each case as of the end of the immediately preceding day.

"Funding Excess" shall mean, as of any date of determination, the extent to which the Outstanding Principal Amount exceeds the Borrowing Base, in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time, consistently applied as such term is further defined in Section 2(a) of this Annex X.

"GE Capital" shall mean General Electric Capital Corporation, a Delaware corporation, and its successors and assigns.

"General Concentration Percentage" shall mean at any time of determination with respect to any Obligor, the percentage corresponding to such Obligor based upon the Obligor Rating of such Obligor by S&P and Moody's at the time of such determination, as set forth below; *provided*, that, (i) in the case of any split Obligor Rating between S&P and Moody's, the General Concentration Percentage for the lower Obligor Rating shall be used to determine the applicable General Concentration Percentage, and (ii) an Obligor may be deemed to have the long term unsecured

debt rating of its parent so long as the Administrative Agent has received evidence that the debts of such Obligor are guaranteed by its parent:

<u>Obligor Rating of Such Obligor</u>	<u>General Concentration Percentage</u>
AA- and Aa3 or higher	10%
At least A and A2 but less than AA- and Aa3	8%
At least BBB and Baa2 but less than A and A2	6%
Less than BBB or Baa2 (or Obligors without an Obligor Rating from S&P or Moody's)	5%

"General Trial Balance" shall mean, with respect to any Originator and as of any date of determination, such Originator's accounts receivable trial balance (whether in the form of a computer printout, magnetic tape or diskette) as of such date, listing Obligors and the Receivables owing by such Obligors as of such date together with the aged Outstanding Balances of such Receivables, in form and substance reasonably satisfactory to the Borrower and the Administrative Agent.

"Governmental Authority" shall mean any nation or government, any state, province or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Grand Eagle" shall mean Grand Eagle Corporation.

"Guaranteed Indebtedness" shall mean, as to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation ("*primary obligation*") of any other Person (the "*primary obligor*") in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at any time shall be deemed to be the amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness; or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"Incipient Servicer Termination Event" shall mean any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Servicer Termination.

"Incipient Termination Event" shall mean any event that, with the passage of time or notice or both, would, unless cured or waived, become a Termination Event.

"Indemnified Amounts" shall mean, with respect to any Person, any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable expenses (including, but not limited to, reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal).

"Indemnified Person" shall have the meaning assigned to it in *Section 12.01(a)* of the Funding Agreement.

"Indemnified Taxes" shall have the meaning assigned to it in *Section 2.08(b)* of the Funding Agreement.

"Index Rate" shall mean, for any day, a floating rate equal to the sum of (a) the higher of (i) the rate publicly quoted from time to time by *The Wall Street Journal* as the "base rate on corporate loans at large U.S. money center commercial banks" (or, if *The Wall Street Journal* ceases quoting a base rate of the type described, the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled "Selected Interest Rates" as the Bank prime loan rate or its equivalent), and (ii) the Federal Funds Rate plus fifty (50) basis points per annum, plus (b) 0.75% per annum. Each change in any interest rate provided for in the Funding Agreement based upon the Index Rate shall take effect at the time of such change in the Index Rate.

"Index Rate Advance" shall mean an Advance or portion thereof bearing interest by reference to the Index Rate.

"Ineligible Receivable" shall mean any Receivable (or portion thereof) which fails to satisfy all of the requirements of an "Eligible Receivable" set forth in the definition thereof.

"Interest Payment Date" shall mean (a) as to any Index Rate Advance, the first Business Day of each month to occur while such Index Rate Advance is outstanding, (b) as to any LIBOR Rate Advance, the last day of the applicable LIBOR Period; *provided, further*, that, in addition to the foregoing, each of (x) the date upon which all of the Commitments have been terminated and the

aggregate Outstanding Principal Amount has been paid in full and (y) the Commitment Termination Date shall be deemed to be an "Interest Payment Date" with respect to any interest which is then accrued under the Funding Agreement.

"*Interest Reserve*" shall mean, as of any date of determination, the greater of (1) the product of (a) the Index Rate as of such date, (b) the Outstanding Principal Amount as of such date and (c) a fraction, the numerator of which is equal to the higher of (i) 30 and (ii) the Receivable Collection Turnover as of such date, and the denominator of which is 360, and (2) \$1,000,000.

"*Investment Company Act*" shall mean the provisions of the Investment Company Act of 1940, 15 U.S.C. § 80a *et seq.*, and any regulations promulgated thereunder.

"*Investments*" shall mean, with respect to any Borrower Account Collateral, the certificates, instruments, investment property or other investments in which amounts constituting such collateral are invested from time to time.

"*IRC*" shall mean the Internal Revenue Code of 1986 and any regulations promulgated thereunder.

"*IRS*" shall mean the Internal Revenue Service.

"*Lender*" shall mean each financial institution party to the Funding Agreement in the capacity as a lender together with the successors and assigns of any of the foregoing.

"*LIBOR Business Day*" shall mean a *Business Day* on which banks in the city of London are generally open for interbank or foreign exchange transactions.

"*LIBOR Period*" shall mean, with respect to any LIBOR Rate Advance, each period commencing on a LIBOR Business Day selected by the Borrower pursuant to the Funding Agreement and ending one, two or three months thereafter, as selected by Borrower's irrevocable notice to the Administrative Agent in a Borrowing Request as set forth in *Section 2.03(a)* of the Funding Agreement or a Notice of Continuation/Conversion as set forth in *Section 2.06(c)* of the

Funding Agreement; *provided* that the foregoing provision relating to LIBOR Periods is subject to the following:

- (a) if any LIBOR Period would otherwise end on a day that is not a LIBOR Business Day, such LIBOR Period shall be extended to the next succeeding LIBOR Business Day unless the result of such extension would be to carry such LIBOR Period into another calendar month in which event such LIBOR Period shall end on the immediately preceding LIBOR Business Day;
- (b) any LIBOR Period that would otherwise extend beyond the Commitment Termination Date shall end two (2) LIBOR Business Days prior to such date;
- (c) any LIBOR Period pertaining to a LIBOR Rate Advance that begins on the last LIBOR Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such LIBOR Period would otherwise end) shall end on the last LIBOR Business Day of the calendar month during which such LIBOR Period would otherwise end;
- (d) Borrower shall select LIBOR Periods so as not to require a payment or prepayment of any LIBOR Rate Advance during a LIBOR Period for such Revolving Advance; and
- (e) Borrower shall select LIBOR Periods so that there shall be no more than ten (10) Borrowings consisting of LIBOR Rate Advances in existence at any one time.

"*LIBOR Rate*" shall mean for each LIBOR Period, a rate of interest determined by the Administrative Agent equal to the sum of 2.50% plus:

(a) the offered rate for deposits in United States Dollars for the applicable LIBOR Period which appears on Telerate Page 3750 as of 11:00 a.m., London time, on the second full LIBOR Business Day next preceding the first day of each LIBOR Period (unless the first day of such Settlement Period is not a Business Day, in which event the next succeeding Business Day will be used); *divided by*

(b) a number equal to 1.0 *minus* the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day which is two (2) LIBOR Business Days prior to the beginning of such LIBOR Period (including basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve system or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) which are required to be maintained by a member bank of the Federal Reserve System;

provided, that if the introduction of or any change in any law or regulation (or any change in the interpretation thereof) shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for a Lender to agree to make or to make or to continue to fund or maintain any Advances at the LIBOR Rate, then, unless that Lender is able to make or to continue to fund or to maintain such Advances at another branch or office of such Lender without, in such Lender's good faith opinion, adversely affecting it or its Outstanding Principal Amount or the income obtained therefrom, the LIBOR Rate shall in all such cases be equal to the Index Rate.

If such interest rates shall cease to be available from Telerate News Service, the LIBOR Rate shall be determined from such financial reporting service or other information as shall be mutually acceptable to the Administrative Agent and the Borrower.

"*LIBOR Rate Advance*" shall mean an Advance or portion thereof bearing interest by reference to the LIBOR Rate.

"*Lien*" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever

(including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction).

"*Litigation*" shall mean, with respect to any Person, any action, claim, lawsuit, demand, investigation or proceeding pending or threatened against such Person before any court, board, commission, agency or instrumentality of any federal, state, local or foreign government or of any agency or subdivision thereof or before any arbitrator or panel of arbitrators.

"*Lockbox*" shall have the meaning assigned to it in *Section 6.01(a)(ii)* of the Funding Agreement.

"*Lockbox Account*" shall mean any deposit account established by or assigned to the Borrower for the deposit of Collections pursuant to and in accordance with *Section 6.01(a)* of the Funding Agreement.

"*Lockbox Account Agreement*" shall mean any agreement among an Originator, the Borrower, GE Capital, as Administrative Agent, and a Lockbox Account Bank with respect to a Lockbox and Lockbox Account that provides, among other things, that (a) all items of payment deposited in such Lockbox and Lockbox Account are held by such Lockbox Account Bank as custodian for GE Capital, as Administrative Agent, (b) such Lockbox Account Bank has no rights of setoff or recoupment or any other claim against such Lockbox Account, as the case may be, other than for payment of its service fees and other charges directly related to the administration of such Lockbox Account and for returned checks or other items of payment and (c) such Lockbox Account Bank agrees to forward all Collections received in such Lockbox Account to the Collection Account within one Business Day of receipt (other than with respect to Lockbox Accounts maintained in Canada, with respect to which Collections received therein must be

forwarded to the Collection Account within two Business Days of receipt), and is otherwise in form and substance acceptable to the Administrative Agent.

"*Lockbox Account Bank*" shall mean any bank or other financial institution at which one or more Lockbox Accounts are maintained.

"*Material Adverse Effect*" shall mean a material adverse effect on (a) the business, assets, liabilities, operations, prospects or financial or other condition of (i) any Originator or the Originators considered as a whole, (ii) the Borrower, (iii) the Servicer or (iv) the Parent and its Subsidiaries considered as a whole, (b) the ability of any Originator, the Borrower, the Parent or the Servicer to perform any of its obligations under the Related Documents in accordance with the terms thereof, (c) the validity or enforceability of any Related Document or the rights and remedies of the Borrower, the Lenders or the Administrative Agent under any Related Document, (d) the federal income tax attributes of the sale, contribution or pledge of the Transferred Receivables pursuant to any Related Document or (e) the Transferred Receivables, the Contracts therefor, the Borrower Collateral or the ownership interests or Liens of the Borrower or the Lenders or the Administrative Agent thereon or the priority of such interests or Liens.

"*Maturity Date*" shall mean, with respect to any Receivable, the due date for payment therefor specified in the Contract therefor, or, if no date is so specified, 30 days from the Billing Date.

"*Maximum Facility Amount*" shall mean \$160,000,000, as such amount may be reduced in accordance with *Section 2.02(a)* of the Funding Agreement.

"*Member*" shall have the meaning given to such term in the Recitals to the Funding Agreement.

"*Monthly Report*" shall have the meaning assigned to it in *paragraph (a)* of *Annex 5.02(a)* to the Funding Agreement.

"*Moody's*" shall mean Moody's Investors Service, Inc. or any successor thereto.

"*Multiemployer Plan*" shall mean a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA with respect to which any Originator or ERISA Affiliate is making, is obligated to make, or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

"*Net Receivables Balance*" means, as of any date of determination, the amount equal to:

(a) the Outstanding Balance of Eligible Receivables,

minus

(b) the sum of (i) the Excess Concentration Amount, *plus* (ii) the Specified Reserves;

in each case as disclosed in the most recently submitted Borrowing Base Certificate or Borrowing Request or as otherwise determined by the Administrative Agent based on Borrower Collateral information available to it, including any information obtained from any audit or from any other reports with respect to the Borrower Collateral, which determination shall be final, binding and conclusive on all parties to the Funding Agreement (absent manifest error).

"*Notice of Continuation/Conversion*" shall have the meaning assigned to such term in *Section 2.06(c)* of the Funding Agreement.

"*Obligor*" shall mean, with respect to any Receivable, the Person primarily obligated to make payments in respect thereof.

"*Obligor Rating*" shall mean, with respect to any Rating Agency for an Obligor, if available, the long term unsecured and unguaranteed debt rating of such Obligor by such Rating Agency.

"*Officer's Certificate*" shall mean, with respect to any Person, a certificate signed by an Authorized Officer of such Person.

"*Originator*" shall mean each of the Subsidiaries of Parent which is a party to the Sale Agreement and any other Person approved by the Administrative Agent in writing.

"*Outstanding Balance*" shall mean, with respect to any Receivable, as of any date of determination, the amount (which amount shall not be less than zero) equal to (a) the Billed Amount thereof, *minus* (b) all Collections received from the Obligor thereunder, *minus* (c) all discounts to, or any other modifications by, the Originator, the Borrower or the Servicer that reduce such Billed Amount; *provided*, that if the Administrative Agent or the Servicer makes a good faith determination that all payments by such Obligor with respect to such Billed Amount have been made, the Outstanding Balance shall be zero.

"*Outstanding Principal Amount*" shall mean, as of any date of determination, the amount equal to (a) the aggregate Advances made by the Lenders under the Funding Agreement on or before such date, *minus* (b) the aggregate amounts disbursed to any Lender in reduction of the principal of such Advances pursuant to the Funding Agreement on or before such date; *provided*, that references to the Outstanding Principal Amount of any Lender shall mean an amount equal to (x) the aggregate Advances made by such Lender pursuant to the Funding Agreement on or before such date, *minus* (b) the aggregate amounts disbursed to such Lender in reduction of the principal of such Advances pursuant to the Funding Agreement on or before such date.

"*Parent*" shall mean Superior Telecom Inc., a Delaware corporation.

"*Parent Agreement*" shall mean certain Parent Agreement dated as of November 6, 2002 between the Parent and the Administrative Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Parent Group*" shall mean the Parent and each of its Affiliates other than The Alpine Group, Inc. and the Borrower.

"*PBGC*" shall mean the Pension Benefit Guaranty Corporation.

"*Pension Plan*" shall mean a Plan described in Section 3(2) of ERISA.

"*Permitted Encumbrances*" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges or levies not yet due and payable; (b) pledges or deposits securing obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) pledges or deposits securing bids, tenders, government contracts, contracts (other than contracts for the payment of money) or leases to which any Originator, the Borrower or the Servicer is a party as lessee made in the ordinary course of business; (d) deposits securing statutory obligations of any Originator, the Borrower or the Servicer; (e) inchoate and unperfected workers', mechanics', suppliers' or similar Liens arising in the ordinary course of business; (f) carriers', warehousemen's or other similar possessory Liens arising in the ordinary course of business; (g) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which any Originator, the Borrower or the Servicer is a party; (h) any attachment or judgment Lien not constituting a Termination Event under *Section 9.01(f)* of the Funding Agreement; (i) licenses, leases or subleases granted to third Persons not interfering in any material respect with the business of Superior Telecom, the Parent, the Borrower, any Originator or any other Subsidiary of the Parent, (j) easements, zoning restrictions, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of Superior Telecom, the Parent, the Borrower, any Originator or any other Subsidiary of the Parent, (k) Liens arising as a result of the filing of precautionary UCC financing statements in connection with operating leases, (l) any interest or title of a licensor, lessor or sublessor under any license or lease, (m) Liens created in connection with Capital Leases to the extent such Capital Leases are permitted pursuant to the terms of the Funding Agreement, (n) Liens arising pursuant to purchase money mortgages or security interests securing Debt representing the purchase price (or financing of the purchase price within 90 days after the applicable purchase) of assets acquired after the Closing Date; *provided* that (i) any such

Liens attach only to the assets so purchased, (ii) the Debt secured by such Lien (including refinancings thereof) does not exceed 100% of the lesser of fair market value of such assets and the purchase price of such assets, in each case, at the time of the incurrence of such Debt and (iii) the Debt secured thereby is permitted pursuant to the terms of the Funding Agreement, (o) Liens arising as a result of the filing of precautionary UCC financing statements in connection with consigned goods, (p) Liens arising as a result of the pre-filing of UCC financing statements against DNE Systems, Inc. and its Subsidiaries by the lender or lenders financing the transaction described on *Schedule 2.02* to the Funding Agreement so long as such Liens do not cover any Borrower Collateral, (q) Liens existing on the Closing Date and listed on *Schedule 4.03(b)* of the Sale Agreement or *Schedule 5.03(b)* of the Funding Agreement; and (r) presently existing or hereinafter created Liens in favor of the Buyer, the Borrower, the Lenders or the Administrative Agent or the Collateral Agent.

"*Permitted Investments*" shall mean any of the following:

(a) obligations of, or guaranteed as to the full and timely payment of principal and interest by, the United States of America or obligations of any agency or instrumentality thereof if such obligations are backed by the full faith and credit of the United States of America, in each case with maturities of not more than 90 days from the date acquired;

(b) repurchase agreements on obligations of the type specified in *clause (a)* of this definition; *provided*, that the short-term debt obligations of the party agreeing to repurchase are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's;

(c) federal funds, certificates of deposit, time deposits and bankers' acceptances of any depository institution or trust company incorporated under the laws of the United States of America or any state, in each case with original maturities of not more than 90 days or, in the case of bankers' acceptances, original maturities of not more than 365 days; *provided*, that the short-term obligations of such depository institution or trust company are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's;

(d) commercial paper of any corporation incorporated under the laws of the United States of America or any state thereof with original maturities of not more than 30 days that on the date of acquisition are rated at least A-1+ or the equivalent by S&P and P-1 or the equivalent by Moody's; and

(e) securities of money market funds rated at least Aam or the equivalent by S&P and P-1 or the equivalent by Moody's.

"*Person*" shall mean any individual, sole proprietorship, partnership, joint venture, unincorporated organization, trust, association, corporation (including a business trust), limited liability company, institution, public benefit corporation, joint stock company, Governmental Authority or any other entity of whatever nature.

"*Plan*" shall mean, at any time during the preceding five years, an "employee benefit plan," as defined in Section 3(3) of ERISA, that any Originator or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any Originator or ERISA Affiliate.

"*Prepayment Premium*" shall mean (I) with respect to any reduction of the Aggregate Commitment by the Borrower pursuant to Section 2.02(a) of the Funding Agreement, an amount equal to the product of (x) the amount by which the Borrower elects to reduce the Aggregate Commitment and (y) (i) 2%, if such reduction of the Aggregate Commitment occurs during the first year following the Closing Date, (ii) 1% if such reduction of the Aggregate Commitment occurs during the second year following the Closing Date, and (iii) $\frac{1}{2}\%$, if such reduction in the Aggregate Commitment occurs during the third year following the Closing Date, and (II) in the event the Borrower terminates the Aggregate Commitment pursuant to Section 2.02(b) of the Funding Agreement or voluntarily causes a Termination Event to occur, an amount equal to the product of (a) the Maximum Facility Amount as of the date the Borrower delivers a Commitment Termination Notice in accordance with Section 2.02(b) of the Funding

Agreement or as of the date such Termination Event occurs, as the case may be, and (b) (i) 2%, if the Aggregate Commitment is so terminated during the first year following the Closing Date; *provided* that the percentage set forth in this clause (i) shall be 1% if the Aggregate Commitment is terminated in connection with a debtor-in-possession financing, (ii) 1% if the Aggregate Commitment is so terminated or such Termination Event occurs during the second year following the Closing Date, and (iii) 1/2%, if the Aggregate Commitment is so terminated or such Termination Event occurs during the third year following the Closing Date.

"*Pro Rata Share*" shall mean with respect to all matters relating to any Lender, the percentage obtained by dividing (i) the Commitment of that Lender by (ii) the Aggregate Commitment, as such percentage may be adjusted by assignments permitted pursuant to *Section 14.02* of the Funding Agreement.

"*Projections*" shall mean the Parent's forecasted consolidated: (a) balance sheets; (b) profit and loss statements; (c) cash flow statements; and (d) capitalization statements, all prepared on a Subsidiary-by-Subsidiary or division-by-division basis, if applicable, and otherwise consistent with the historical financial statements of the Parent, together with appropriate supporting details and a statement of underlying assumptions.

"*Qualified Plan*" shall mean a Pension Plan that is intended to be tax-qualified under Section 401(a) of the IRC.

"*Rating Agency*" shall mean Moody's or S&P.

"*Ratios*" shall mean, collectively, the Default Ratio, the Delinquency Ratio, the Dilution Ratio, the Receivables Collection Turnover and the Dilution Reserve Ratio.

"*Receivable*" shall mean, with respect to any Obligor:

- (a) indebtedness of such Obligor (whether constituting an account, chattel paper, document, instrument or general intangible (under which the Obligor's principal obligation is a monetary obligation)) arising from the provision of merchandise, goods or services by an Originator, or other Person approved by the Administrative Agent in its sole discretion, to such Obligor, including the right to payment of any interest or finance charges and other obligations of such Obligor with respect thereto;
- (b) all Liens and property subject thereto from time to time securing or purporting to secure any such indebtedness of such Obligor;
- (c) all guaranties, indemnities and warranties, insurance policies, financing statements and other agreements or arrangements of whatever character from time to time supporting or securing payment of any such indebtedness;
- (d) all right, title and interest of any Originator, the Parent or the Borrower in and to any goods (including returned, repossessed or foreclosed goods) the sale of which gave rise to a Receivable; *provided*, that "Receivable" will not include returned goods to the extent that all amounts required to be paid pursuant to the Sale Agreement in respect of such returned goods have been paid;
- (e) all Collections with respect to any of the foregoing;
- (f) all Records with respect to any of the foregoing; and
- (g) all proceeds with respect to any of the foregoing.

"*Receivables Assignment*" shall have the meaning assigned to such term in *Section 2.01(a)* of the Sale Agreement.

"*Receivables Collection Turnover*" shall mean, as of any date of determination, the amount (expressed in days) equal to:

(a) a fraction, (i) the numerator of which is equal to the aggregate Outstanding Balance of Transferred Receivables on the first day of the three (3) Settlement Periods immediately preceding such date and (ii) the denominator of which is equal to aggregate Collections received during such three (3) Settlement Periods with respect to all Transferred Receivables,

multiplied by

(b) the average number of days contained in such three (3) Settlement Periods.

"Records" shall mean all Contracts and other documents, books, records and other information (including customer lists, credit files, computer programs, tapes, disks, data processing software and related property and rights) prepared and maintained by any Originator, the Servicer, any Sub-Servicer or the Borrower with respect to the Receivables and the Obligors thereunder and the Borrower Collateral.

"Regulatory Change" shall mean any change after the Closing Date in any federal, state or foreign law or regulation (including Regulation D of the Federal Reserve Board) or the adoption or making after such date of any interpretation, directive or request under any federal, state or foreign law or regulation (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof that, in each case, is applicable to any Affected Party.

"Rejected Amount" shall have the meaning assigned to it in Section 4.04 of the Sale Agreement.

"Related Documents" shall mean each Lockbox Account Agreement, the Sale Agreement, the Funding Agreement, each Receivables Assignment, the Subordinated Notes, the Parent Agreement and all other agreements, instruments, documents and certificates identified in the Schedule of

Documents and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Person, or any employee of any Person, and delivered in connection with the Sale Agreement, the Funding Agreement or the transactions contemplated thereby. Any reference in the Sale Agreement, the Funding Agreement or any other Related Document to a Related Document shall include all Appendices thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to such Related Document as the same may be in effect at any and all times such reference becomes operative.

"Repayment Notice" shall have the meaning assigned to it in Section 2.03(h) of the Funding Agreement.

"Reportable Event" shall mean any of the events set forth in Section 4043(c) of ERISA.

"Requisite Lenders" shall mean (a) Lenders having more than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Aggregate Commitment, or (b) if the Commitments have been terminated, Lenders having more than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) aggregate Outstanding Principal Amount.

"Retiree Welfare Plan" shall mean, at any time, a Welfare Plan that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant's termination of employment, other than continuation coverage provided pursuant to Section 4980B of the IRC and at the sole expense of the participant or the beneficiary of the participant.

"Revolving Note" shall have the meaning assigned to such term in Section 2.01(b) of the Funding Agreement.

"Revolving Period" shall mean the period from and including the Closing Date through and including the day immediately preceding the Commitment Termination Date.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"Sale" shall mean with respect to a sale of receivables under the Sale Agreement, a sale of Receivables by an Originator to the Borrower in accordance with the terms of the Sale Agreement.

"Sale Agreement" shall mean that certain Receivables Sale Agreement dated as of November 6, 2002, among each Originator, the Parent and the Borrower, as the Buyer thereunder, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

"Sale Price" shall mean, with respect to any Sale of Sold Receivables, a price calculated by the Borrower and approved from time to time by the Administrative Agent equal to:

- (a) the Outstanding Balance of such Sold Receivables, *minus*
- (b) the expected costs to be incurred by the Borrower in financing the purchase of such Sold Receivables until the Outstanding Balance of such Sold Receivables is paid in full, *minus*
- (c) the portion of such Sold Receivables that are reasonably expected by such Originator on the Transfer Date to become Defaulted Receivables by reason of *clause (b)* of the definition thereof, *minus*
- (d) the portion of such Sold Receivables that are reasonably expected by such Originator on the Transfer Date to be reduced by means other than the receipt of Collections thereon or pursuant to *clause (c)* above, *minus*
- (e) amounts expected to be paid to the Servicer with respect to the servicing, administration and collection of such Sold Receivables;

provided, that such calculations shall be determined based on the historical experience of (y) such Originator, with respect to the calculations required in each of *clauses (c)* and *(d)* above, and (z) the Borrower, with respect to the calculations required in *clauses (b)* and *(e)* above.

"Schedule of Documents" shall mean the schedule, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with the Sale Agreement, the Funding Agreement and the other Related Documents and the transactions contemplated thereunder, substantially in the form attached as *Annex Y* to the Funding Agreement and the Sale Agreement.

"Securities Act" shall mean the provisions of the Securities Act of 1933, 15 U.S.C. Sections 77a *et seq.*, and any regulations promulgated thereunder.

"Securities Exchange Act" shall mean the provisions of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a *et seq.*, and any regulations promulgated thereunder.

"Servicer" shall mean Superior Telecommunications Inc., a Delaware corporation, in its capacity as the Servicer under the Funding Agreement, or any other Person designated as a Successor Servicer in accordance with the terms of the Funding Agreement.

"Servicer Termination Notice" shall mean any notice by the Administrative Agent to the Servicer that (a) an Event of Servicer Termination has occurred and (b) the Servicer's appointment under the Funding Agreement has been terminated.

"Servicing Fee" shall mean, for any day within a Settlement Period, the amount equal to (a) (i) the Servicing Fee Rate *divided* by (ii) 360, *multiplied* by (b) the Outstanding Principal Amount on such day.

"Servicing Fee Rate" shall mean 1.00%.

"*Servicing Officer*" shall mean any officer of the Servicer involved in, or responsible for, the administration and servicing of the Transferred Receivables and whose name appears on any Officer's Certificate listing servicing officers furnished to the Administrative Agent by the Servicer, as such certificate may be amended from time to time.

"*Servicing Records*" shall mean all Records prepared and maintained by the Servicer with respect to the Transferred Receivables and the Obligors thereunder.

"*Settlement Date*" shall mean the tenth Business Day following the end of each Settlement Period.

"*Settlement Period*" shall mean (a) solely for purposes of determining the Ratios, (i) with respect to all Settlement Periods other than the final Settlement Period, each calendar month, whether occurring before or after the Closing Date, and (ii) with respect to the final Settlement Period, the period ending on the Termination Date and beginning with the first day of the calendar month in which the Termination Date occurs, and (b) for all other purposes, (i) with respect to the initial Settlement Period, the period from and including the Closing Date through and including the last day of the calendar month in which the Closing Date occurs, (ii) with respect to the final Settlement Period, the period ending on the Termination Date and beginning with the first day of the calendar month in which the Termination Date occurs, and (iii) with respect to all other Settlement Periods, each calendar month.

"*Sold Receivable*" shall have the meaning assigned to it in *Section 2.01(b)* of the Sale Agreement.

"*Special Concentration Percentage*" shall mean, with respect to any Obligor, that percentage, if any, designated by the Administrative Agent in its sole discretion with respect to such Obligor in *Annex Z* to the Funding Agreement or otherwise in a written notification to the Borrower (provided that the Administrative Agent retains the discretion to change or eliminate any such Special Concentration Percentage at any time).

"*Specified Reserves*" shall mean, at any time, the sum of (a) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables which are due and payable more than 90 days (but less than 121 days) after the Billing Date therefor, *over* fifteen percent (15%) of the aggregate

Outstanding Balance of all Eligible Receivables, *plus* (b) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables the Obligor with respect thereto is organized under the laws of Canada or any province thereof, *over* five percent (5%) of the aggregate Outstanding Balance of all Eligible Receivables, *plus* (c) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables which are payable in Canadian dollars, *over* five percent (5%) of the aggregate Outstanding Balance of all Eligible Receivables, *plus* (d) the excess, if any, of the aggregate Outstanding Balance of Eligible Receivables the Obligor with respect thereto is organized under the laws of Mexico, *over* \$1,000,000.

"*Stock*" shall mean all shares, options, warrants, member interests, general or limited partnership interests or other equivalents (regardless of how designated) of or in a corporation, limited liability company, partnership or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act).

"*Stockholder*" shall mean, with respect to any Person, each holder of Stock of such Person.

"*Subordinated Loan*" shall have the meaning given such term in *Section 2.01(c)* of Sale Agreement.

"*Subordinated Note*" shall have the meaning given such term in *Section 2.01(c)* of Sale Agreement.

"*Sub-Servicer*" shall mean any Person with whom the Servicer enters into a Sub-Servicing Agreement.

"*Sub-Servicing Agreement*" shall mean any written contract entered into between the Servicer and any Sub-Servicer pursuant to and in accordance with *Section 7.01* of the Funding Agreement relating to the servicing, administration or collection of the Transferred Receivables.

"*Subsidiary*" shall mean, with respect to any Person, any corporation or other entity (a) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such Person or (b) that is directly or indirectly controlled by such Person within the meaning of control under Section 15 of the Securities Act.

"*Successor Servicer*" shall have the meaning assigned to it in *Section 11.02* of the Funding Agreement.

"*Successor Servicing Fees and Expenses*" shall mean the fees and expenses payable to the Successor Servicer as agreed to by the Borrower, the Lenders and the Administrative Agent.

"*Superior*" shall mean Superior Telecommunications Inc., a Delaware corporation.

"*Termination Date*" shall mean the date on which (a) the Outstanding Principal Amount has been permanently reduced to zero, (b) all other Borrower Obligations under the Funding Agreement and the other Related Documents have been indefeasibly repaid in full and completely discharged and (c) the Aggregate Commitment has been irrevocably terminated in accordance with the provisions of *Section 2.02(b)* of the Funding Agreement.

"*Termination Event*" shall have the meaning assigned to it in *Section 9.01* of the Funding Agreement.

"*Title IV Plan*" shall mean a Pension Plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA and that any Originator or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

"*Transfer*" shall mean any Sale or contribution of Transferred Receivables by any Originator to the Borrower pursuant to the terms of the Sale Agreement.

"*Transfer Date*" shall have the meaning assigned to it in *Section 2.01(a)* of the Sale Agreement.

"*Transferred Receivable*" shall mean any Sold Receivable or Contributed Receivable; *provided*, that any Receivable repurchased by an Originator thereof pursuant to *Section 4.04* of the Sale Agreement shall not be deemed to be a Transferred Receivable from and after the date of such repurchase unless such Receivable has subsequently been repurchased by or contributed to the Borrower.

"*UCC*" shall mean, with respect to any jurisdiction, the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in such jurisdiction.

"*Unapproved Receivable*" shall mean any receivable (a) with respect to which the obligor thereunder is not an Obligor on any Transferred Receivable and whose customer relationship with an Originator arises as a result of the acquisition by such Originator of another Person or (b) that was originated in accordance with standards established by another Person acquired by an Originator, in each case, solely with respect to any such acquisitions that have not been approved in writing by the Administrative Agent and then only for the period prior to any such approval.

"*Underfunded Plan*" shall mean any Plan that has an Underfunding.

"Underfunding" shall mean, with respect to any Title IV Plan, the excess, if any, of (a) the present value of all benefits under the Title IV Plan (based on the assumptions used to fund the Title IV Plan pursuant to Section 412 of the IRC) as of the most recent valuation date over (b) the fair market value of the assets of such Title IV Plan as of such valuation date.

"Unfunded Pension Liability" shall mean, at any time, the aggregate amount, if any, of the sum of (a) the amount by which the present value of all accrued benefits under each Title IV Plan exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, all determined as of the most recent valuation date for each such Title IV Plan using the actuarial assumptions for funding purposes in effect under such Title IV Plan, and (b) for a period of five years following a transaction that might reasonably be expected to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could be avoided by any Originator or any ERISA Affiliate as a result of such transaction.

"Unused Commitment Fee" shall mean a fee equal to the product of (i) the amount by which the Maximum Facility Amount exceeds the Outstanding Principal Amount (in each case, as of any date of determination) and (ii) 0.50%.

"Welfare Plan" shall mean a Plan described in Section 3(1) of ERISA.

SECTION 2. *Other Terms and Rules of Construction.*

(a) *Accounting Terms.* Unless otherwise specifically provided therein, any accounting term used in any Related Document shall have the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed in accordance with GAAP consistently applied. That certain items or computations are explicitly modified by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing.

(b) *Other Terms.* All other undefined terms contained in any of the Related Documents shall, unless the context indicates otherwise, have the meanings provided for by the UCC as in effect in the State of New York to the extent the same are used or defined therein.

(c) *Rules of Construction.* Unless otherwise specified, references in any Related Document or any of the Appendices thereto to a Section, subsection or clause refer to such Section, subsection or clause as contained in such Related Document. The words "herein," "hereof" and "hereunder" and other words of similar import used in any Related Document refer to such Related Document as a whole, including all annexes, exhibits and schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in such Related Document or any such annex, exhibit or schedule. Any reference to or definition of any

document, instrument or agreement shall, unless expressly noted otherwise, include the same as amended, restated, supplemented or otherwise modified from time to time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Related Documents) or, in the case of Governmental Authorities, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations.

(d) *Rules of Construction for Determination of Ratios.* The Ratios as of the last day of the Settlement Period immediately preceding the Closing Date shall be established by the Administrative Agent on or prior to the Closing Date and the underlying calculations for periods immediately preceding the Closing Date to be used in future calculations of the Ratios shall be established by the Administrative Agent on or prior to the Closing Date in accordance with the form of Monthly Report. For purposes of calculating the Ratios, (i) averages shall be computed by rounding to the second decimal place and (ii) the Settlement Period in which the date of determination thereof occurs shall not be included in the computation thereof and the first Settlement Period immediately preceding such date of determination shall be deemed to be the Settlement Period immediately preceding the Settlement Period in which such date of determination occurs.

ANNEX Y

SCHEDULE OF DOCUMENTS

Attached

ANNEX Z

SPECIAL CONCENTRATION PERCENTAGES

OBLIGOR PERCENTAGE

Obligor	Special Concentration Percentage
Graybar Electric Company	8.0%
A. O. Smith	8.0%
Sprint North Supply Inc. Sprint Products Group Inc.	8.0% in the aggregate, so long as Sprint Corporation's long-term unsecured debt is rated at least BBB- by S&P and Baa3 by Moody's

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Exhibit 99.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the accompanying quarterly report on Form 10-Q of Superior Telecom Inc. (the "*Company*") for the quarterly period ended September 30, 2002 (the "*Periodic Report*"), I, Steven S. Elbaum, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief, that the Periodic 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 Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ STEVEN S. ELBAUM

Date: November 14, 2002

Steven S. Elbaum

Chief Executive Officer

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[Exhibit 99.1](#)

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350](#)

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Exhibit 99.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the accompanying quarterly report on Form 10-Q of Superior Telecom Inc. (the "*Company*") for the quarterly period ended September 30, 2002 (the "*Periodic Report*"), I, David S. Aldridge, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief, that the Periodic 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 Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DAVID S. ALDRIDGE

Date: November 14, 2002

David S. Aldridge

Chief Financial Officer

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[Exhibit 99.2](#)

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350](#)