ALJ REGIONAL HOLDINGS, INC.

244 Madison Avenue
PMB #358
New York, New York 10016

(212) 883-0083

Quarterly Report for the
Period Ended
June 30, 2009

sd-485312

ALJ REGIONAL HOLDINGS, INC.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

The statements included in this Quarterly Report for the quarterly period ended June 30, 2009 (the "Report") regarding future financial performance and results and other statements that are not historical facts, including the statements regarding the Company's ability to continue to fund its operations and service its indebtedness, the Company's ability to improve operating efficiencies at the steel mill, the potential benefits from the Company's financial and corporate restructuring and the Company's ability to offset future income against net operating loss carryovers ("NOLs") and use of the Company's rights plan to preserve such NOLs, constitute forward-looking statements. The words "believes," "intends," "expects," "anticipates," "projects," "estimates," "predicts," and similar expressions are also intended to identify forward-looking statements. These forward-looking statements are based on current expectations and are subject to risks and uncertainties. Actual results or events could differ materially from those set forth or implied by such forward-looking statements and related assumptions due to certain important factors, including, without limitation, the following: (i) cyclical changes in market supply and demand for steel, (ii) general economic conditions affecting steel consumption, (iii) U.S. or foreign trade policy affecting the price of imported steel, (iv) governmental monetary or fiscal policy, (v) increased price competition brought about by excess steelmaking capacity and imports of low priced steel, (vi) continued consolidation in the steel industry, resulting in larger producers with much greater market power to affect price and/or supply, (vii) changes in the availability or cost of steel scrap, (viii) periodic fluctuations in the availability and cost of electricity, natural gas or other utilities, (ix) the occurrence of unanticipated equipment failures and plant outages or the occurrences of extraordinary operating expenses, (x) actions by the Company's competitors, (xi) margin compression resulting from the Company's inability to pass through to its customers, price increases or surcharges, the increased cost of raw materials and supplies, (xii) loss of business from one or more major customers or end-users, (xiii) labor unrest, work stoppages and/or strikes involving the Company's workforce, those of its important suppliers or customers, or those affecting the steel industry in general, (xiv) the impact on the Company's production or upon the production or needs of its important suppliers or customers of the weather, (xv) the impact of, or changes in, environmental laws or in the application of other legal or regulatory requirements upon the Company's production processes or costs of production or upon those of its suppliers or customers, including actions by government agencies, such as the U.S. Environmental Protection Agency or the Kentucky Department for Environmental Protection, (xvi) private or governmental liability claims or litigation, or the impact of any adverse outcome of any litigation on the adequacy of the Company's reserves, the availability or adequacy of its insurance coverage, its financial well-being or its business and assets, (xvii) changes in interest rates or other borrowing costs, or the effect of existing loan covenants or restrictions upon the cost or availability of credit to fund operations or take advantage of other business opportunities, (xviii) changes in the Company's business strategies or development plans which it may adopt or which may be brought about in response to actions by its suppliers or customers, and any difficulty or inability to successfully consummate or implement as planned any planned or potential projects, acquisitions, joint ventures or strategic alliances; and (xix) the impact of regulatory or other governmental permits or approvals, litigation, construction delays, cost overruns, technology risk or operational complications upon the Company's ability to complete, start-up or continue to profitably operate a project or a new business, or to complete, integrate and operate any potential acquisitions as anticipated. The Company is also subject to general business risks, including management's success in continuing to settle the Company's outstanding obligations from its prior business activities, results of tax audits, adverse state, federal or foreign legislation and regulation, changes in general economic factors, the Company's ability to retain and attract key employees, acts of war or global terrorism, and unexpected natural disasters. Any forward-looking statements included in this Report are made as of the date hereof, based on information available to the Company as of the date hereof, and, subject to applicable law, the Company assumes no obligation to update any forward-looking statements.

TABLE OF CONTENTS

	Page
ITEM 1. EXACT NAME OF THE ISSUER AND THE ADDRESS OF ITS PRINCIPAL EXECUTIVE OFFICES	3
ITEM 2. SHARES OUTSTANDING	3
ITEM 3. INTERIM FINANCIAL STATEMENTS	4
CONDENSED CONSOLIDATED BALANCE SHEETS	4
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)	6
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' DEFICIENCY (UNAUDITED) NINE MONTHS ENDED JUNE 30, 2009	7
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)	8
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) JUNE 30, 2009	9
ITEM 4. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION	21
ITEM 5. LEGAL PROCEEDINGS	27
ITEM 6. DEFAULTS UPON SENIOR SECURITIES	27
ITEM 7. OTHER INFORMATION	27
RISK FACTORS	28
ITEM 8. EXHIBITS	35
ITEM 9. CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER	38

ITEM 1. EXACT NAME OF THE ISSUER AND THE ADDRESS OF ITS PRINCIPAL EXECUTIVE OFFICES

ALJ Regional Holdings, Inc. ("ALJ" or the "Company") has its principal offices at:

244 Madison Avenue, PMB 358
New York, NY 10016
Phone: (212) 883-0083
Fax: (606) 929-1261

References to the "Company," "we," "us" and "our" are to the consolidated operations of ALJ, including the operations of its subsidiaries, except to the extent the context is intended to refer only to ALJ. The Company was originally incorporated in the State of Delaware under the name Nuparent, Inc. on June 22, 1999. The Company's name was changed to YouthStream Media Networks, Inc. on June 24, 1999 and that name was used through October 23, 2006. The Company's name was changed to ALJ Regional Holdings, Inc. on October 23, 2006.

The Company's investor relations contact is Jess Ravich, the Chairman of the Board. Mr. Ravich can be reached at (310) 312-5606.

The Company's transfer agent is American Stock Transfer & Trust Company whose address and phone number are:

American Stock Transfer & Trust Company
Operations Center
6201 15th Avenue
Brooklyn, NY 11219
(718) 921-8293

ITEM 2. SHARES OUTSTANDING

The Company has only two classes of securities; common stock and preferred stock, the details of which are disclosed in the table below.

	Common Stock Period End Date			Preferred Stock Period End Date		
	June 30, 2009	September 30, 2008	September 30, 2007	June 30, 2009	September 30, 2008	September 30, 2007
Number of Shares Authorized	100,000,000	100,000,000	100,000,000	5,000,000	5,000,000	5,000,000
Number of Shares Outstanding	48,665,104	47,133,061	40,004,638	374,556	374,556	1,000,000

ITEM 3. INTERIM FINANCIAL STATEMENTS

ALJ REGIONAL HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS

	June 30, 2009	September 30, 2008
	(Unaudited)	(Unaudited)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 588,500	$ 951,803
Accounts receivable, less allowance for doubtful accounts of $676,651 at June 30, 2009 and $747,050 at September 30, 2008	6,497,094	18,326,250
Inventories	15,629,027	32,317,350
Prepaid expenses and other current assets	702,369	813,115
Income taxes receivable	10,786	--
Total current assets	23,427,776	52,408,518
Property, plant and equipment	5,107,203	6,630,012
Less accumulated depreciation and amortization	(1,699,375)	(3,220,239)
Property, plant and equipment, net	3,407,828	3,409,773
Other assets:		
Deposits	906,435	906,435
Investment in Bellator	212,500	212,500
Total other assets	1,118,935	1,118,935
Total assets	$ 27,954,539	$ 56,937,226

(continued)

ALJ REGIONAL HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS (continued)

	June 30, 2009 (Unaudited)	September 30, 2008 (Unaudited)
LIABILITIES AND STOCKHOLDERS' DEFICIENCY		
Current liabilities:		
Accounts payable	$ 4,084,249	$ 14,976,957
Accrued expenses	2,255,955	4,100,319
Accrued interest payable	1,605,725	2,136,561
Income taxes payable	--	528,494
Secured Line of Credit	4,996,755	18,205,749
Note Payable - A- Ableco	--	1,043,412
Note Payable - B- Ableco	6,092,011	3,000,000
Current portion of capital lease obligation	154,750	378,406
Liabilities related to discontinued operations	2,984,660	2,984,660
Total current liabilities	22,174,105	47,354,558
Non-current liabilities:		
4% note payable, $1.9 million plus cumulative interest of $896,026 at June 30, 2009 and $2.4 million, plus accumulated interest of $1,050,746 at September 30, 2008	2,796,026	3,450,746
8% subordinated term loans	27,857,522	25,665,441
Note Payable –B – Ableco	--	6,500,000
Capital lease obligation, less current portion	335,705	---
Series A Preferred stock of subsidiary subject to mandatory redemption; 13% cumulative, non-convertible, redeemable preferred stock, mandatory redemption and liquidation value of $1,000 per share; 12,500 shares issued and outstanding at June 30, 2009 plus cumulative dividends of $7,060,959, 12,500 shares issued and outstanding at September 30, 2008 plus cumulative dividends of $5,845,548	19,560,959	18,345,548
Series A Preferred stock subject to mandatory redemption; 4% cumulative, non-convertible, redeemable preferred stock, mandatory redemption and liquidation value of $4.00 per share; 374,556 shares issued and outstanding at June 30, 2009 plus cumulative dividends of $700,920, 374,556 shares issued and outstanding at September 30, 2008 plus cumulative dividends of $655,932	2,199,144	2,154,156
Minority interest – related parties	2,676,027	2,715,456
Total liabilities	77,599,488	106,185,905
Commitments and contingencies		
Stockholders' deficiency:		
Preferred stock, $0.01 par value; authorized - 5,000,000 shares; issued and outstanding and 374,556 shares of Series A preferred stock, at June 30, 2009 and September 30, 2008 (classified in long-term liabilities as preferred stock subject to mandatory redemption)		
Common stock, $0.01 par value; authorized - 100,000,000 shares; 48,665,104 issued and outstanding at June 30, 2009; 47,133,061 issued and outstanding at September 30, 2008	486,651	465,335
Additional paid-in capital	283,603,340	282,956,049
Accumulated deficit	(332,905,364)	(331,840,487)
Treasury stock – 607,500 shares, at cost	(829,576)	(829,576)
Total stockholders' deficiency	(49,644,949)	(49,248,679)
Total liabilities and stockholders' deficiency	$ 27,954,539	$ 56,937,226

See accompanying notes to condensed consolidated financial statements.

ALJ REGIONAL HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2009	**2008**	**2009**	**2008**
NET SALES	$19,381,341	$51,063,145	$85,778,622	$133,396,838
COSTS AND EXPENSES				
Cost of sales	17,373,423	43,170,858	77,563,830	113,497,806
Selling	393,705	475,999	1,315,880	1,256,154
General and administrative	1,368,234	2,469,713	3,814,597	6,430,162
Total cost of operations	19,135,362	46,116,570	82,694,307	121,184,122
Income from operations	245,979	4,946,575	3,084,315	12,212,716
OTHER INCOME (EXPENSE)				
Interest income	2,014	1,266	15,350	25,097
Interest expense:				
13% Series A Preferred Stock	(405,136)	(405,137)	(1,215,410)	(1,219,863)
Subordinated Notes payable	(638,148)	(511,903)	(1,596,544)	(1,541,333)
Other – Ableco/PNC	(263,547)	(505,463)	(1,340,825)	(1,953,833)
Other income (expense), net	4,551	49,669	96,865	3,756,006
Total other income (expense)	(1,300,266)	(1,371,568)	(4,040,564)	(933,926)
INCOME (LOSS) BEFORE INCOME TAXES AND MINORITY INTEREST	(1,054,287)	3,575,007	(956,249)	11,278,790
Income taxes	(2,142)	(193,997)	(148,057)	364,364
INCOME (LOSS) BEFORE MINORITY INTEREST	(1,056,429)	3,381,010	(1,104,306)	10,914,426
MINORITY INTEREST – related parties	(122,237)	643,855	(39,429)	1,374,436
NET INCOME (LOSS)	(934,192)	2,737,155	(1,064,877)	9,539,990
NET INCOME (LOSS) PER COMMON SHARE -				
Basic	($0.02)	$0.06	($0.02)	$0.23
Dilutive	($0.02)	$0.06	($0.02)	$0.21
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING				
Basic	48,491,494	43,921,530	47,899,083	41,601,042
Dilutive	49,291,494	47,072,629	49,535,194	44,484,254

See accompanying notes to condensed consolidated financial statements.

ALJ REGIONAL HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' DEFICIENCY (UNAUDITED)
NINE MONTHS ENDED JUNE 30, 2009

	Common Stock		Additional Paid-in	Accumulated	Treasury	
	Shares	Amount	Capital	Deficit	Stock	Total
Balances at September 30, 2008	47,133,061	$ 465,335	$ 282,956,049	$ (331,840,487)	$ (829,576)	$ (49,248,679)
Stock options exercised	663,637	12,632	1,161	--	--	13,793
Restructuring November 10, 2008	500,000	5,000	458,810	--	--	463,810
Share-based compensation:						
Restricted Stock	368,406	3,684	48,700	--	--	48,700
Stock Options			138,620	--	--	138,620
Net income (Loss)	--	--	--	(1,064,877)	--	(1,064,877)
Balances at June 30, 2009	48,665,104	$ 486,651	$ 283,603,340	$ (332,905,364)	$ (829,576)	$ (49,644,949)

See accompanying notes to condensed consolidated financial statements

sd-485312

ALJ REGIONAL HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

	Nine Months Ended June 30,	
	2009	**2008**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income (loss)	$ (1,064,877)	$ 9,539,990
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Net change in liabilities related to discontinued operations	---	(2,984,660)
Depreciation and amortization	580,865	579,298
Stock-based compensation	138,620	94,768
Amortization of original issue discount on subordinated notes payable		---
Amortization of deferred loan costs	---	---
Provision for bad debts	90,986	
Minority interest – related parties	(39,429)	1,374,437
Changes in operating assets and liabilities:		
Decrease (increase) in -		
Accounts receivable, net	11,738,170	(5,315,279)
Inventories	16,688,323	(1,669,909)
Income taxes receivable	110,745	--
Prepaid expenses	(10,786)	855,135
Deposits		9,000
Increase (decrease) in -		
Accounts payable	(10,892,708)	6,221,102
Accrued expenses	(1,810,186)	539,333
Income taxes payable	(528,494)	--
Deferred rent		(72,180)
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES	15,001,231	9,171,035
CASH FLOWS FROM INVESTING ACTIVITIES		
Acquisition of capital lease equipment	(578,921)	--
NET CASH USED IN INVESTING ACTIVITIES	(578,921)	--
CASH FLOWS FROM FINANCING ACTIVITIES		
Additional borrowings under 4% notes payable	59,090	(766,489)
Partial repayment of 4% notes payable	(250,000)	--
Proceeds from exercise of stock options	32,000	266,475
Net borrowings (repayments) under equipment capital lease obligation	112,048	(369,075)
Net borrowings (repayments) under 8% notes payable	1,661,245	1,874,958
Accrued dividends (repayments) of Preferred Stock	1,260,399	115,973
Repayments on term loans	(4,451,401)	(5,500,000)
Net repayments under secured line of credit	(13,208,994)	(5,391,940)
NET CASH USED IN FINANCING ACTIVITIES	(14,785,613)	(9,770,098)
NET CASH USED IN OPERATING, INVESTING AND FINANCING ACTIVITIES	(363,303)	(599,063)
CASH AND CASH EQUIVALENTS		
Net decrease	(363,303)	(599,063)
Balance at beginning of period	951,803	599,063
Balance at end of period	588,500	---
SUPPLEMENTAL CASH FLOW INFORMATION		
Cash paid for -		
Interest	1,373,265	1,231,338
Income taxes	--	366,503

Noncash investing and financing transactions:
The Company repurchased $500,000 of its 4% note payable, plus $213,810 of accrued interest in exchange for $250,000 of cash and 500,000 shares of common stock.
The Company simultaneously retired and re-issued new 8% Subordinated Notes in July 2009.

See accompanying notes to condensed consolidated financial statements.

ALJ REGIONAL HOLDINGS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
JUNE 30, 2009

1. Organization and Basis of Presentation

Basis of Presentation

The accompanying consolidated financial statements include the accounts of ALJ Regional Holdings, Inc. ("ALJ" or the "Company"), and its direct and indirect wholly and majority-owned subsidiaries. The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America. All inter-company items and transactions have been eliminated in consolidation.

Commencing March 1, 2005, the Company has included the operations of a steel mini-mill (the "Mill") owned and operated by its majority owned subsidiary, KES Acquisition Company, a Delaware corporation fka YouthStream Acquisition Corp ("KES"), in its consolidated financial statements (see Note 2 to Consolidated Financial Statements), which represents the only business segment in which the Company currently operates.

The accompanying condensed consolidated financial statements are unaudited, but in the opinion of Company management, contain all adjustments, which include normal recurring accruals, necessary to present fairly the financial position at June 30, 2009 and September 30, 2008, the results of operations for the nine months ended June 30, 2009 and 2008, and the cash flows for the nine months ended June 30, 2009 and 2008.

Certain information and footnote disclosures normally included in financial statements that have been prepared in accordance with generally accepted accounting principles have been condensed or omitted, although management of the Company believes that the disclosures contained in these financial statements are adequate to make the information presented therein not misleading.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The results of operations for the nine months ended June 30, 2009 are not necessarily indicative of the results of operations to be expected for the full fiscal year ending September 30, 2009.

Liquidity and Capital Resources

The Company recognized a net loss of $1,064,877 for the nine month period ended June 30, 2009. The Company generated a positive cash flow from operating activities of $15.0 million for the nine months ended June 30, 2009, however the Company used $14.8 million in financing activities and $578,921 in investing activities and had an accumulated deficit of $333 million and a stockholders' deficiency of $49.7 million at June 30, 2009.

On March 9, 2005, the Company completed the acquisition of the Mill. The Company utilized substantially all of its available cash resources to fund this acquisition and requires additional operating capital to fund corporate general and administrative expenses, which the Company obtains primarily through periodic tax sharing payments from KES. The Mill restarted operations in late January 2004 after being acquired by KES Holdings, LLC, a Delaware limited liability company ("KES Holdings"). For the year ended September 30, 2008, operating income was $14.2 million exclusive of interest expense and taxes. For the nine months ended June 30, 2009, operating income was $3.1 million exclusive of interest expense and taxes. The Mill relies on cash flows from operations to support a secured credit facility with PNC Bank, National Association and Ableco Finance LLC to fund its operations.

On July 20, 2009, KES entered into the Third Amendment to the Financing Agreement and First Amendment to Security Agreement (the "Amendment") by and among KES, the lenders a party thereto (the "Senior Lenders"), Ableco Finance LLC, as collateral agent, and PNC Bank, National Association, as administrative agent. The Amendment modifies the Financing Agreement by and among KES, the lenders a party thereto, Ableco Finance and

PNC which provides for KES' revolving line of credit and senior term loan and modifies the related Security Agreement (together, the "Credit Facility"). The Amendment provides for an extension of the final maturity date of one year to February 22, 2011. Additionally, certain financial covenants and metrics, including the EBITDAM covenant were reduced and the borrowing base multiplier was increased. The interest rate was increased by one percentage point and the quarterly principal payments under the term loan were reduced from $750,000 to $500,000 given the longer term.

On July 20, 2009, KES also entered into the Subordinated Financing Agreement by and among KES, the lenders a party thereto and Ableco, LLC as collateral and administrative agent (the "Subordinated Financing Agreement"). Pursuant to the Subordinated Financing Agreement those certain 8% Secured Subordinated Notes dated February 23, 2007 (the "Sub Notes") were exchanged for term loans in the same amounts (including interest paid-in-kind) issued pursuant to the Subordinated Financing Agreement (the "Subordinated Loans"). The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the subordinated lenders, subject to the rights of the senior lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Sub Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The subordinated lenders include Ableco, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on ALJ's board. Ableco required that the Sub Notes be exchanged as a condition to the modifications to the Credit Facility.

Based on its current level of operations, the Company believes that its current cash resources provided by operations and the Credit Facility will be adequate to fund its operations through June 30, 2010. However, to the extent the Company's estimates are inaccurate or its assumptions are incorrect, the Company may not have sufficient cash resources to fund its operations. In such event, the Company may have to seek additional financing for the business.

The Company's management may also consider various strategic alternatives in the future, including the acquisition of new business opportunities, which may be from related or unrelated parties. However, there can be no assurances that such efforts will ultimately be successful. The Company may finance any acquisitions through a combination of debt and/or the issuance of equity securities.

2. Nature of Operations and Summary of Significant Accounting Policies

Nature of Operations

ALJ is a holding company, whose primary asset is a majority share of the outstanding common stock and 100% of the voting securities of KES, the owner and operator of the Mill, which manufactures and sells steel bar flats.

Cash and Cash Equivalents

Cash and equivalents include all cash, demand deposits and money market accounts with original maturities of three months or less.

Accounts Receivable

The Company grants credit to its customers generally in the form of short-term trade accounts receivable. Management evaluates the credit risk of its customers utilizing historical data and estimates of future performance.

Accounts receivable are stated at the amount management expects to collect from outstanding balances. When appropriate, management provides for probable uncollectible amounts through a provision for doubtful accounts and an adjustment to a valuation allowance. Management reviews and adjusts this allowance periodically based on the aging of accounts receivable balances, historical write-off experience, customer concentrations, customer creditworthiness and current industry and economic trends. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to accounts receivable.

Inventory

Inventories are comprised of raw materials (consisting of alloys and scrap metal), semi-finished goods (billets) and finished goods. Inventory costs include material, labor and manufacturing overhead. Inventories are valued at the lower of average cost or market. The average cost of the billets and scrap metal is adjusted periodically to reflect current changes in cost inputs. The market value of billet and scrap metal inventories was determined using replacement costs.

Property, Plant and Equipment

Property, plant and equipment are recorded at cost. Expenditures for routine maintenance and repairs are charged to expense as incurred. Expenditures for equipment renewals and improvements, which extend the useful life of an asset, are capitalized. Certain equipment held under capital lease is classified as property, plant and equipment, and the related obligation is recorded as a liability. Lease amortization is included in depreciation expense.

Depreciation is provided on the straight-line method over the estimated useful lives of the assets, generally 3 to 20 years for machinery and equipment, and 20 to 40 years for buildings and improvements. Equipment under capital lease is amortized using the straight-line method over the primary lease term.

Revenue Recognition

The Company recognizes revenue when there is persuasive evidence that an arrangement exists, delivery of the product has occurred and title has passed, the selling price is both fixed and determinable, and collectibility is reasonably assured, all of which generally occur either upon shipment of the Company's product or delivery of the product to the destination specified by the customer.

Stock-Based Compensation

On June 30, 2006, the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123R"), a revision to SFAS No. 123, "Accounting for Stock-Based Compensation." SFAS No. 123R superseded APB Opinion No. 25, "Accounting for Stock Issued to Employees," and amended SFAS No. 95, "Statement of Cash Flows." SFAS No. 123R requires that the Company measure the cost of employee services received in exchange for equity awards based on the grant date fair value of the awards. The cost will be recognized as compensation expense over the vesting period of the awards.

Under this method, the Company began recognizing compensation cost for equity-based compensation for all new or modified grants after the date of adoption. The pro forma disclosures previously permitted under SFAS No. 123 are no longer an alternative to financial statement recognition. In addition, the Company will recognize the unvested portion of the grant date fair value of awards issued prior to adoption based on the fair values previously calculated for disclosure purposes over the remaining vesting period of the outstanding options and warrants.

Accordingly, the Company recognizes compensation cost for equity-based compensation for all new or modified grants issued after June 30, 2006.

Pro forma information regarding net loss per share is required by SFAS No. 123 as if the Company had accounted for its employee stock options under the fair value method of such statement.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to operations over the vesting period of the options or the expected period of benefit.

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes related primarily to differences between the bases of certain assets and liabilities for financial and tax reporting. The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will be realized when the assets and liabilities are recovered or settled.

Effective October 1, 2007, the Company adopted Financial Accounting Standards Board ("FASB") Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), an interpretation of Statement of Financial Accounting Standards ("SFAS") No. 109, "Accounting for Income Taxes." FIN 48 requires that a position taken or expected to be taken in a tax return be recognized in the financial statements when it is more likely than not (i.e., a likelihood of more than fifty percent) that the position would be sustained upon examination by tax authorities. A recognized tax position is then measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. The Company's adoption of FIN 48 resulted in no material impact to the financial statements.

Fair Value of Financial Instruments

The Financial Accounting Standards Board has published SFAS No. 157, Fair Value Measurements, to eliminate the diversity in practice that exists due to the different definitions of fair value and the limited guidance for applying those definitions in GAAP that are dispersed among the many accounting pronouncements that require fair value measurements. SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price). SFAS No. 157 also stipulates that, as a market-based measurement, fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability, and establishes a fair value hierarchy that distinguishes between (a) market participant assumption developed based on market data obtained from sources independent of the reporting entity (observable inputs) and (b) the reporting entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs).

SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years, although earlier application is encouraged. Additionally, prospective application of the provisions of SFAS No. 157 is required as of the beginning of the fiscal year in which it is initially applied, except when certain circumstances require retrospective application. The Company has not currently evaluated the impact of this standard.

Concentrations

The Company maintains its cash balances with a number of financial institutions. The balances are insured by the Federal Deposit Insurance Corporation (FDIC) up to $250,000. At times these balances are in excess of the FDIC insured balances.

For the nine month period ending June 30, 2009, the Company had two suppliers that accounted for approximately 41% of raw materials purchases, of which approximately $800,000 was included in accounts payable at June 30, 2009. For the three month period ending June 30, 2009, the Company had three customers that accounted for approximately 21% of net sales, of which approximately $1.4 million was included in accounts receivable at June 30, 2009.

Earnings Per Share

The Company calculates net income (loss) per share as required by SFAS No. 128, "Earnings per Share." Basic earnings (loss) per share excludes any dilution for common stock equivalents and is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the relevant period. Diluted earnings per share reflects the potential dilution that could occur if options or other securities or contracts entitling the holder to acquire shares of common stock of the Company were exercised or converted, resulting in the issuance of additional shares of common stock that would then share in earnings. However, diluted loss per share does not consider such dilution as its effect would be anti-dilutive.

The following table summarizes the basic and dilutive weighted average shares for the three months ending June 30, 2009 and 2008 and the nine months ending June 30, 2009 and 2008:

	Three Months Ended June 30,	Nine Months Ended June 30,

	2009	2008	2009	2008
Weighted average shares outstanding, basic	48,491,494	43,921,530	47,899,083	41,601,042
Dilutive effect of:				
Options to purchase common stock	800,000	2,486,264	1,386,111	2,383,212
Warrants to purchase common stock	--	664,835	250,000	500,000
Weighted average shares outstanding, diluted Basic	49,291,494	47,072,629	49,535,194	44,484,254

Recent Accounting Pronouncements and Developments

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections" ("SFAS No. 154"). SFAS No. 154 is a replacement of APB Opinion No. 20, "Accounting Changes" and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements - (an Amendment of APB Opinion No. 28)" and provides guidance on the accounting for and reporting of accounting changes and error corrections. SFAS No. 154 establishes retrospective application as the required method for reporting a change in accounting principle, and provides guidance for determining whether retrospective application of a change in accounting principle is impracticable and for reporting a change when retrospective application is impracticable. Retrospective application is the application of a different accounting principle to a prior accounting period as if that principle had always been used or as the adjustment of previously issued financial statements to reflect a change in the reporting entity. SFAS No. 154 also addresses the reporting of error corrections by restating previously issued financial statements. SFAS No. 154 is effective for accounting changes and error corrections occurring in fiscal years beginning after December 15, 2005. Accordingly, the Company adopted the provisions of SFAS No. 154 effective October 1, 2006. The adoption of SFAS No. 154 did not have any impact on the Company's financial statement presentation or disclosures.

In December 2007, the FASB used FASB Statement No 141(R), Business Combinations, a revised version of FASB Statement No. 141, which requires an acquirer to measure the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at their fair values on the acquisition date, with goodwill being the excess value over the net identifiable assets acquired. This statement applies prospectively to business combinations where the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 14, 2008. Early adoption is prohibited.

In May 2008, the FASB issued FASB Statement No. 162, The Hierarchy of Generally Accepted Accounting Principles. FASB Statement No. 162 identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in accordance with generally accepted accounting principles. FASB Statement No. 162 will be effective 60 days following the Securities and Exchange Commission's approval of the Public Company Accounting Oversight Board amendments to AU Section 422, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles. Any effect of applying the provisions of FASB Statement No. 162 will be reported as a change in accounting principle in accordance with FASB Statement No. 154, Accounting Changes and Error Corrections. The Company is currently evaluating the impact, if any, of FASB Statement No. 162 on its consolidated financial position, results of operations, and cash flows.

3. Acquisition of Steel Mini-Mill

In September 2003, ALJ invested $125,000 to acquire a 1.00% membership interest in KES Holdings, which was formed to acquire certain assets of Kentucky Electric Steel, Inc., a Delaware corporation, consisting of the Mill. On September 2, 2003, KES Holdings, through its subsidiary, KES Acquisition Company, LLC, a Delaware limited liability company ("KES Acquisition"), completed the acquisition of the Mill pursuant to Section 363 of the United States Bankruptcy Code for cash consideration of $2.6 million, which was funded through the capital contributions of the members of KES Holdings. Members' capital contributions were also used for start-up costs, working capital purposes and payment of deferred maintenance on the Mill. The Mill had ceased production on or about December 16, 2002 and its prior owner had filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on February 5, 2003.

The Mill had been in operation for approximately forty years and was refurbished by KES Acquisition subsequent to its acquisition. The refurbished Mill has been generating revenues since late January 2004. The current production capacity of the Mill for finished products, based on the current operating structure and man-hours worked, is approximately 200,000 short-tons per year, and the Mill is currently operating at approximately 55% of such annualized capacity. Management is focusing on developing the business and improving operating efficiencies.

The Mill produces bar flats that are produced to a variety of specifications and fall primarily into two general quality levels – merchant bar quality steel bar flats ("MBQ Bar Flats") for generic types of applications, and special bar quality steel bar flats ("SBQ Bar Flats"), where more precise customer specifications require the use of alloys, customized equipment and special production procedures to insure that the finished product meets critical end-use performance characteristics.

The Mill manufactures over 2,600 different Bar Flat items which are sold to volume niche markets, including original equipment manufacturers ("OEMs"), cold drawn bar converters, steel service centers and the leaf-spring suspension market for light- and heavy-duty trucks, mini-vans and utility vehicles. The Mill was specifically designed to manufacture wider and thicker bar flats up to three inches in thickness and twelve inches in width that are required by these markets. In addition, the Mill employs a variety of specially designed equipment which is necessary to manufacture SBQ Bar Flats to the specifications of the Mill's customers.

On March 9, 2005, ALJ completed the acquisition of KES Acquisition (the "Acquisition"), which was deemed effective March 1, 2005. Pursuant to definitive agreements executed with KES Holdings and Atacama Capital Holdings, Ltd., a British Virgin Islands company ("Atacama," and together with KES Holdings, collectively, the "Sellers"), ALJ, through its newly-formed subsidiary, YouthStream Acquisition Corp., a Delaware corporation ("Acquisition Corp."), acquired 100% of the membership interests of KES Acquisition by acquiring (i) a 37.45% membership interest from KES Holdings and (ii) all of the capital stock of Atacama KES Holding Corporation, a Delaware corporation and wholly-owned subsidiary of Atacama ("Atacama KES"), the owner of the remaining 62.55% membership interest in KES Acquisition. As consideration for the Acquisition, Acquisition Corp. issued to the Sellers (i) $40 million in promissory notes (the "Subordinated Notes"), (ii) 25,000 shares of 13% Series A Non-Convertible Preferred Stock with an aggregate liquidation value of $25 million (the "13% Series A Preferred Stock") and (iii) 15,992 shares (comprising 100%) of its authorized shares of Series B Non-Voting Common Stock. With respect to the $65 million of purchase consideration, $19 million of the Subordinated Notes, $10 million of the 13% Series A Preferred Stock and 5,997 shares of Series B Common Stock were issued to KES Holdings, and $21 million of the Subordinated Notes, $15 million of the 13% Series A Preferred Stock and 9,995 shares of Series B Common Stock were issued to Atacama. ALJ also contributed an aggregate of $500,000 of cash to Acquisition Corp. as consideration for the issuance by Acquisition Corp. of 100% of its Series A Voting Common Stock to ALJ.

As a result of these transactions, ALJ owned 80.01% of the common stock, and 100% of the voting stock, of Acquisition Corp. The remaining 19.99% common stock interest in Acquisition Corp. was owned 62.55% by Atacama and 37.45% by KES Holdings. ALJ has consolidated the operations of the Mill through its ownership of KES Acquisition (which subsequently merged with Acquisition Corp. and is now known as KES, as described in detail under the caption "2007 Restructuring" below) commencing March 1, 2005. As a result of the Acquisition, the Company's financial statements for periods ending after March 1, 2005 are materially different from and are not comparable to its financial statements prior to that date.

Subsequent to the Acquisition, the management of the Mill continued unchanged. The Acquisition did not result in any change in the Mill's business operations or financial condition, and, other than as set forth herein, the working capital, operating cash flow, debt service obligations and credit profile of the Mill were not affected in any way by the Acquisition.

2007 Restructuring

On February 23, 2007 (the "Restructuring Date"), ALJ effected a financial and corporate restructuring designed to reduce outstanding obligations and streamline corporate operations. On the Restructuring Date, Atacama Holdings and KES Acquisition were merged into Acquisition Corp. (the "Merger"), with Acquisition Corp., which immediately changed its name to KES Acquisition Company (the surviving entity, which is referred to herein as "KES"), surviving the Merger (the "Restructuring"). As a result of the Merger, ALJ now has only one operating subsidiary, KES, in which it owns 80.21 % of the common stock and 100% of the voting stock.

Also, on the Restructuring Date, KES entered into the Financing Agreement providing for the Credit Facility with Ableco Finance LLC ("Ableco") and PNC Bank, National Association ("PNC", and together with Ableco, the "Senior Lenders"). The Credit Facility is comprised of a revolving line of credit, which is an asset-based loan with a maximum availability of $23 million (the "Revolver"), and two term loans (together, the "Term Loan") in the amount of $19 million. The Credit Facility initially had a maturity date of February 23, 2010 (which has been extended to February 22, 2011) and amortized at $1 million per quarter for the first four quarters and $1.25 million per quarter until March 1, 2009, then $750,000 (which has been reduced to $500,000) per quarter thereafter. Both the Revolver and the Term Loan bear interest at variable rates based on the Libor or the base commercial lending rate of PNC as publicly announced from time to time. In addition, the Credit Facility contains financial covenants requiring KES to maintain certain levels of EBITDAM (earnings before interest, taxes, depreciation, amortization and incentive-based management fees), fixed charge coverages and leverage ratios.

As part of the Restructuring, KES repurchased, $18 million in principal amount of the Subordinated Notes plus certain accrued interest thereon, including certain notes previously issued to reflect a portion of such interest which was unpaid (the "Repurchased Notes") for $18 million and restructured the remaining $22 million in Subordinated Notes (the "Remaining Notes") and the accrued interest thereon (including certain notes previously issued to reflect a portion of such interest that was unpaid), to: (1) eliminate scheduled principal payments, (2) extend the final maturity until 2017, (3) capitalize the accrued but unpaid interest on such notes, and (4) provide that in the future KES has the ability to capitalize, in its discretion, future interest payments on the Subordinated Notes. Therefore, upon the purchase of the Repurchased Notes, KES recognized a gain of $3 million and as of the Restructuring Date there were $25.7 million in principal amount of Remaining Notes outstanding. The interest rate on the Remaining Notes remains at 8%. The Remaining Notes are subordinated to the Credit Facility. The Remaining Notes were non-recourse to the assets of ALJ, but provide for a springing security interest on substantially all of KES' assets upon repayment of the Credit Facility.

On the Restructuring Date, KES also repurchased $12.5 million of its 13% Series A Preferred Stock and accrued dividends thereon for $1.25 million. The Company has recorded the $11.25 million difference as a credit to additional paid in capital and recognized a gain of approximately $3.2 million related to accrued dividends forgiven. The remaining Series A Preferred Stock continues to have a 13% cumulative dividend. The 13% Series A Preferred Stock contains a liquidation preference equal to $1,000 per share, plus accrued but unpaid dividends, and is redeemable out of, and to the extent of, legally available funds, at a redemption price equal to the sum of $1,000 and all accrued but unpaid dividends on the first anniversary of KES' full and complete repayment of the Remaining Notes. As of June 30, 2009, the balance outstanding on the 13% Series A Preferred Stock was $12.5 million and related accrued dividends payable were $7.1 million.

Subsequent to the acquisition of the Mill by the Sellers, KES Acquisition issued an aggregate of $7 million of subordinated promissory notes to the Sellers and certain of their respective associates (the "Subordinated Promissory Notes"). In August 2006, KES Acquisition repaid an aggregate of $4 million of the Subordinated Promissory Notes. On the Restructuring Date, KES retired the remaining $3 million of the Subordinated Promissory Notes.

Pursuant to the terms of the Credit Facility, ALJ is currently limited in its ability to receive cash distributions from KES but is permitted to receive tax sharing payments subject to satisfaction of certain financial conditions. For taxable periods beginning after February 28, 2005, KES has been included in the consolidated federal income tax return filed by ALJ as the common parent. KES has entered into a Tax Sharing Agreement with ALJ pursuant to which it has agreed to pay ALJ an amount equal to 50% of its respective "separate company tax liability" (as such term is defined in the Tax Sharing Agreement). ALJ has approximately $276 million net operating loss carryovers currently available to offset the consolidated federal taxable income of the affiliated group in the future. There have been no tax sharing payments accrued for the nine month period ending June 30, 2009.

Substantially all of the Company's assets are owned by KES, its consolidated subsidiary. As a result of various contractual restrictions contained in various financing agreements (as previously described) and documents relating to the Acquisition, there are limits on the Company's ability to transfer assets from KES to ALJ, whether in the form of loans and advances, cash dividends, tax-sharing payments, or otherwise, without notice to and/or consent of one or more third parties. Additionally, all of KES' assets are pledged to secure its obligations under the Credit Facility and the Subordinated Financing Agreement.

Since the acquisition of the Mill by the Sellers, the Mill has been operating under a Management Services Agreement (the "Pinnacle Agreement") with Pinnacle Steel, LLC ("Pinnacle"). The principals of Pinnacle have significant experience and expertise in the steel industry. As part of the Restructuring, the Pinnacle Agreement was extended through October 2013, subject to earlier termination or extension based on the financial performance of the Mill. Pinnacle is entitled to a monthly management fee and a management incentive fee as provided in the Pinnacle Agreement.

November 2007 Repurchase Transaction

On November 29, 2007, ALJ repurchased $600,000 of aggregate principal amount and all related accrued interest of its outstanding 4% Subordinated Promissory Note dated January 24, 2003 in exchange for $300,000 in cash and 600,000 shares of its common stock. In addition, ALJ repurchased 187,500 shares of its Series A Preferred Stock, with an aggregate liquidation value of $750,000, plus accrued but unpaid dividends, from certain affiliated parties in exchange for $300,000 in cash and 450,000 shares of its common stock.

May 2008 Repurchase Transaction

On May 6, 2008, ALJ exchanged 437,944 shares of the Company's outstanding Series A Preferred Stock, with a value of $1.8 million plus accrued dividends of $733,892 for 4,957,515 shares of the Company's common stock at a value of $0.50 per share. The value of the stock as of the date of the exchange was $0.47 per share.

November 2008 Repurchase Transaction

On November 10, 2008, ALJ repurchased a portion of the outstanding 4% Subordinated Restated Promissory Note dated January 24, 2003. The face value of the portion of the Note repurchased was $713,810, comprised of $500,000 in principal and $213,810 of accrued interest. The purchase price paid for the repurchase was $365,000, which is comprised of $250,000 in cash and 500,000 shares of the Company's common stock (valued at $115,000 or $0.23 per share based on the closing price of the Company's common stock as quoted on the Pink Sheets on November 10, 2008). The agreement further provided that ALJ could purchase an additional $500,000 of principal under the note plus accrued interest on these same terms at its option at any time through June 30, 2009. The Company did not exercise this option.

July 2009 Refinancing Transaction

On July 20, 2009, KES entered into the Amendment, which amended the terms of the Credit Facility and related security agreement. The Amendment provides for an extension of the final maturity date of one year to February 22, 2011. Additionally, certain financial covenants and metrics, including the EBITDAM covenant were reduced and the borrowing base multiplier was increased. The interest rate was increased by one percentage point and the quarterly principal payments under the Term Loan were reduced from $750,000 to $500,000 given the longer term.

On July 20, 2009, KES also entered into the Subordinated Financing Agreement, pursuant to which the Remaining Notes were exchanged for the Subordinated Loans. The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the subordinated lenders, subject to the rights of the Senior Lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Remaining Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The subordinated lenders include Ableco, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on ALJ's board. Ableco required that the Remaining Notes be exchanged as a condition to the modifications to the Credit Facility.

Stockholder Rights Plan

On May 13, 2009, the Company adopted a stockholder rights plan (the "Rights Plan") designed to preserve the value of certain tax assets primarily associated with net operating loss carryforwards ("NOLs") and built in losses under Section 382 of the Code ("Section 382").

At June 30, 2008, the Company had approximately $276 million in net operating losses and the use of such losses to offset federal income tax would be limited, if the Company experiences an "ownership change" under Section 382. This would occur if stockholders owning (or deemed under Section 382 to own) 5% or more of the Company's stock by value increase their collective ownership of the aggregate amount of the Company's stock by more than 50 percentage points over a defined period of time. The Rights Plan was adopted to reduce the likelihood of an "ownership change" occurring as defined by Section 382.

In connection with the Rights Plan, the Company has declared a dividend of one preferred share purchase right for each share of its common stock outstanding as of the close of business on May 21, 2009. Pursuant to the Rights Plan, any stockholder or group that acquires beneficial ownership of 4.9 percent or more of the Company's outstanding stock (an "**Acquiring Person**") without the approval of the Company's Board would be subjected to significant dilution of its holdings. Any existing stockholder holding 4.9% or more of the Company's stock will not be considered an Acquiring Person unless such stockholder acquires additional stock of the Company; provided, however, that existing stockholders actually known to the Company to hold 4.9% or more of its stock as of April 30, 2009 will be permitted to purchase up to an additional 5% of the Company's stock without triggering the Rights Plan. In addition, in its discretion, the Board may exempt certain persons whose acquisition of securities is determined by the Board not to jeopardize the Company's deferred tax assets and may also exempt certain transactions. The Rights Plan will continue in effect until May 13, 2019, unless it is terminated or redeemed earlier by the Board. The Rights Plan was approved by the Company's stockholders at the annual meeting of stockholders on June 4, 2009.

In addition to the Rights Plan, the Company also adopted an amendment to its certificate of incorporation that imposes restrictions on transfer of stock that may result in an ownership change under Section 382.

Related Party Transaction

Libra Securities, LLC ("Libra Securities"), was engaged as a financial advisor to assist ALJ and its subsidiaries with respect to the Restructuring. Libra Securities was paid $630,000 for its services in connection with the Restructuring. Mr. Ravich, who is the Chairman of the Board of Directors of ALJ (the "Board") and a director of KES, a securities holder of ALJ, a holder of Subordinated Notes and Series B Common Stock of KES, was the Chief Executive Officer and principal of Libra Securities. In addition, Mr. Ravich and certain of his family trusts participated in the November 2007 Repurchase Transaction described above. Mr. Ravich, either directly or through his family trusts, holds 2,060,000 shares of ALJ's common stock, an option to purchase 2,000,000 shares of common stock exercisable through May 2018 and 305,156 shares of ALJ's redeemable preferred stock. Mr. Ravich and a certain trust for the benefit of members of his family also personally guaranteed $5 million of the Term Loan, in consideration for payments to be made by KES Libra Securities' engagement, the terms of the guaranty by Mr. Ravich and the November 2007 Repurchase Transaction were approved by the independent members of the Board.

Additional related parties with respect to the Restructuring and the November 2007 Repurchase Transaction include Robert Scott Fritz and Hal G. Byer, both directors of ALJ, who are holders of $292,594 and $161,055, respectively, of the aggregate principal amount of the Subordinated Loans and 144 and 79, respectively, of the shares of Series B common stock of KES, after giving effect to the Restructuring. Messrs. Fritz and Byer and Jon Diamond, who is also a director of ALJ, own 25,390, 33,854 and 10,156 shares, respectively, of ALJ Regional's Series A Preferred Stock and participated in the May 2008 Repurchase Transaction.

On January 2, 2009, Mr. Fritz exercised a stock option to purchase 200,000 shares of common stock at $0.04 per share for $8,000. The stock option was granted to Mr. Fritz in May 2003 and was fully vested at the time of exercise. On March 3, 2009, Mr. Byer exercised a stock option to purchase 200,000 shares of stock at $0.04 per share, using a cashless exercise of 72,727 shares. The stock option was granted to Mr. Byer in May 2003 and was fully vested at the time of exercise.

On May 6, 2008, in consideration for their past uncompensated services as members of the Board, the Board provided for a one-time cash payment of $37,500 and also issued 93,750 shares of restricted common stock at a fair market value of $0.40 per share, which provided for immediate vesting, for all members of the Board. The Company recognized a one-time non-cash compensation expense of $78,750 related to these restricted stock grants.

The Board also approved an additional stock option grant to Mr. Ravich to purchase 2,000,000 shares of common stock for his services as Chairman of the Board. The option was issued at a fair market value of $0.40 per share and vests in equal monthly installments over a three-year period. The option is subject to immediate acceleration in full upon a change in control of the Company. The Company will recognize non-cash compensation expense of $483,200, related to Mr. Ravich's option, on a pro rata basis over the next three years. Directors may be reimbursed for any out-of-pocket expenses they incur in the performance of their responsibilities.

In June 2008, the Board issued an option to purchase an aggregate of 200,000 shares of common stock to T. Robert Christ, the Company's Chief Financial Officer, exercisable at the fair market value of $0.59 per share, vesting on a pro rata basis over a period of three years. The Company will recognize a non-cash compensation expense of $71,000, with respect to Mr. Christ's option, on a pro rata basis over the next three years.

In June 2008, Mr. Ravich, exercised a warrant to purchase 500,000 shares of common stock at $0.12 per share, using a cashless exercise of 83,000 shares. On October 17, 2008, Mr. Ravich, exercised a stock option to purchase 200,000 shares of common stock with an exercise price of $0.12 per share for $24,000 in the aggregate. The stock option was granted to Mr. Ravich on June 2006 and was fully vested at the time of exercise.

On June 20, 2008, the Board approved a director compensation program providing for an annual payment of $12,500 in cash and $12,500 in stock to each director, to be granted at the current fair market value. On June 20, 2008, pursuant to this program, each member of the Board received a restricted stock grant of 21,186 shares of common stock at the fair market value of $0.59 per share on that date. On June 4, 2009, pursuant to the program, each member of the Board received a restricted stock grant of 69,444 shares of common stock at the fair market value of $0.18 per share on that date. Mr. Byer exchanged his 69,444 restricted share grant for Mr. Ravich's $12,500 cash compensation. The restricted stock vests monthly and will become fully vested after 12 months. Vesting is contingent upon continued service on the Board. The Company will recognize non-cash compensation expense of approximately $28,000 on a pro rata basis over the next twelve months for the June 4, 2009 restricted stock grants.

On July 20, 2009, KES entered into the Subordinated Financing Agreement. Pursuant to the Subordinated Financing Agreement the Sub Notes were exchanged for the Subordinated Loans. The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the subordinated lenders, subject to the rights of the senior lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Sub Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The subordinated lenders include Ableco, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on the Board. Ableco required that the Sub Notes be exchanged as a condition to the modifications to the Credit Facility.

4. Inventories

Inventories are comprised of the following at June 30, 2009 and September 30, 2008:

	June 30, 2009 Unaudited	September 30, 2008 Unaudited
Raw materials	$ 2,678,138	$ 4,006,400
Semi-finished goods	8,241,160	16,271,558
Finished goods	4,709,729	12,039,392
Total	$ 15,629,027	$ 32,317,350

Inventories are comprised of raw materials, semi-finished goods and finished goods. Inventory costs include material, labor and manufacturing overhead. Inventories are valued at the lower of average cost or market. The average cost of the billets and scrap metal is adjusted periodically to reflect current changes in cost inputs.

5. Notes Payable and Long-Term Debt

Credit Facility

Effective February 23, 2007, KES entered into a Financing Agreement for a Credit Facility with Senior Lenders. The Credit Facility provides for a Revolver with a maximum availability of $23 million and provided for a Term Loan in an original amount of $19 million. As of June 30, 2009, the outstanding term loan portion of the Credit Facility was $6.1 million and the Revolver was $5.0 million. On July 20, 2009, KES and the Senior Lenders extended the maturity date of the Revolver and the Term Loan to February 22, 2011. Additionally, KES and the Senior Lenders agreed to reduce the quarterly payment amount under the Term Loan to $500,000 given the extended maturity date. Both the Revolver and the Term Loan have variable interest rates based on the Libor or the base commercial lending rate of PNC as publicly announced from time to time. In addition, the Credit Facility contains financial covenants requiring KES to maintain certain levels of EBITDAM (earnings before interest, taxes, depreciation, amortization and management incentive fees), fixed charge coverage and leverage ratios.

6. Commitments and Contingencies

Operating Commitments

The Mill has been operating under the Pinnacle Agreement, which is effective through October 31, 2013. Pursuant to the Pinnacle Agreement, Pinnacle Steel, LLC, provides, at its expense, employees to serve as the General Manager of the Mill and provide oversight and general management of the operations of the Mill, in exchange for an annual fee of $700,000, payable monthly, and bonus payments equal to 16.6% of defined earnings before interest, taxes, depreciation and amortization in excess of $6 million for the fiscal years ending September 30, 2007 and thereafter. Management had accrued $163,000 for the annual management fee to Pinnacle Steel, LLC for the nine months ending June 30, 2009.

The Company has various short-term commitments for the purchase of materials, inventory, supplies and energy arising in the ordinary course of business which aggregated approximately $200,000 and $1.97 million at June 30, 2009 and September 30, 2008, respectively.

7. Income Taxes

The Company accrued $145,915 for federal or state income taxes due for the nine months ended June 30, 2009. The income tax provision was computed based on the projected AMT due for the year, after utilization of the Company's net operating loss carry-forwards as described below.

At June 30, 2008, the Company had net operating loss carry-forwards for federal income tax purposes of approximately $276 million that expire from 2019 through 2025. The use of approximately $36 million of this net operating loss in future years may be restricted under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code").

The Company is subject to periodic audits by federal, state and local tax authorities for various tax liabilities incurred in prior periods from the parent entity and its subsidiaries, including previously discontinued businesses. The amount of any tax assessments and penalties may be material and may negatively impact the Company's operations. Given the uncertainty in the amount and the difficulty in estimating the probability of the assessments arising from future tax audits, the Company has not made any accruals for such tax contingencies.

For taxable periods beginning after February 28, 2005, KES (see Note 2 to Consolidated Financial Statements) is included in the consolidated federal income tax return filed by ALJ as common parent. KES has entered into a Tax Sharing Agreement with ALJ, pursuant to which it has agreed to pay ALJ an amount equal to 50% of its "separate company tax liability," subject to compliance with the Credit Facility. The term "separate company tax liability" is defined as the amount, if any, of the federal income tax liability (including, without limitation, liability for any penalty, fine, additions to tax, interest, minimum tax and other items applicable to such subsidiary in connection with the determination of the subsidiary's tax liability), which such subsidiary would have incurred if its federal income tax liability for the periods during which it is includible in a consolidated federal income tax return with

ALJ were determined generally in the same manner in which its separate return liability would have been calculated under Section 1552(a)(2) of the Code.

8. Share-based Compensation and Stock Options

The Company determines the fair value of all stock-based compensation, including stock options and warrants by using the Black-Scholes option-pricing model. Included in the selling, general and administrative expenses for the nine month-period ending June 30, 2009, the Company recognized share-based share compensation expense of $23,077 related to the issuance of restricted stock in a prior period and $138,620 related to the issuance of stock options in a prior period.

FASB Statement No. 123(R) requires all share-based payments to employees be recognized in the financial statements as compensation expense based on the fair value on the date of grant. The Company determines fair value of such awards using the Black-Scholes option-pricing model. The Black-Scholes model requires input of certain assumptions, including volatility, expected term, risk-free interest rates, and dividend yield. The Company computed volatility of 126% for the restricted stock issued in June 2009 and 94% for the options and restricted stock granted during the year ending September 30, 2008. Volatility was computed over the most recent period commensurate with the expected term of the options and restricted stock. The risk-free interest rate of 0.47% was used for the restricted stock granted in June 2009 and 3.08% for the options issued during the year ending September 30, 2008, which was based on the rate of U.S. Treasury securities with maturities consistent with the expected term of the options and restricted stock. The Company has not paid dividends on its common stock and does not anticipate paying a cash dividend in the foreseeable future and accordingly, uses an expected dividend yield of zero.

The summary of stock option activity for the nine months ending June 30, 2009 is as follows:

	Number of Options	Weighted Average Exercise Price per Share	Weighted Average Contractual Term
Balance outstanding as of September 30, 2008	3,950,000	$0.29	
Granted	0	$0.00	
Exercised	(800,000)	$0.09	
Balance outstanding as of June 30, 2009	3,150,000	$0.31	9.1 years
Options vested as of June 30, 2009	1,738,889	$0.35	8.8 years

9. Subsequent Events

On July 20, 2009, KES entered into the Amendment, which amended the terms of the Credit Facility and related security agreement. The Amendment provides for an extension of the final maturity date of one year to February 22, 2011. Additionally, certain financial covenants and metrics, including the EBITDAM covenant were reduced and the borrowing base multiplier was increased. The interest rate was increased by one percentage point and the quarterly principal payments under the Term Loan were reduced from $750,000 to $500,000 given the longer term.

On July 20, 2009, KES also entered into the Subordinated Financing Agreement, pursuant to which the Remaining Notes were exchanged for the Subordinated Loans. The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the subordinated lenders, subject to the rights of the senior lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Remaining Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The subordinated lenders include Ableco, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on ALJ's board. Ableco required that the Remaining Notes be exchanged as a condition to the modifications to the Credit Facility.

ITEM 4. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION

General Overview

Commencing March 1, 2005, the Company has included the operations of the Mill, which represents the only business segment in which the Company currently operates, in its consolidated financial statements. The Company completed the acquisition of the Mill on March 9, 2005 (see Note 3 to Consolidated Financial Statements).

Critical Accounting Policies and Estimates

The Company prepared its financial statements in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Management periodically evaluates the estimates and judgments made. Management bases its estimates and judgments on historical experience and on various factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates as a result of different assumptions or conditions.

The Company believes that of its significant accounting policies, which are described in Note 2 to the accompanying consolidated financial statements and in the Company's annual report for the year ended September 30, 2008, the following accounting policies involve a greater degree of judgment and complexity. Accordingly, these are the policies the Company believes are the most critical to aid in fully understanding and evaluating the Company's consolidated financial condition and results of operations.

Revenue Recognition

The Company recognizes revenue when there is persuasive evidence that an arrangement exists, delivery of the product has occurred and title has passed, the selling price is both fixed and determinable, and collectability is reasonably assured, all of which generally occur either upon shipment of the Company's product or delivery of the product to the destination specified by the customer.

Accounts Receivable

The Company grants credit to its customers generally in the form of short-term trade accounts receivable. Management evaluates the credit risk of its customers utilizing historical data and estimates of future performance. Accounts receivable are stated at the amount management expects to collect from outstanding balances. When appropriate, management provides for probable uncollectible amounts through a provision for doubtful accounts and an adjustment to a valuation allowance. Management reviews and adjusts this allowance periodically based on the aging of accounts receivable balances, historical write-off experience, customer concentrations, customer creditworthiness, and current industry and economic trends. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to accounts receivable.

Inventories

Inventories are comprised of raw materials, semi-finished goods and finished goods. Inventory costs include material, labor and manufacturing overhead. Inventories are valued at the lower of average cost or market. The average cost of the billets, scrap metal, and finished goods is adjusted monthly.

Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." Under this method, deferred income taxes are provided for differences between the carrying amounts of the Company's assets and liabilities for financial reporting purposes and the amounts used for income tax purposes using expected tax rates in effect for the year in which those temporary differences are expected to be recovered or settled.

The Company records a valuation allowance to reduce its deferred tax assets to the amount that is more likely than not to be realized. In the event the Company was to determine that it would be able to realize its deferred tax assets in the future in excess of its recorded amount, an adjustment to the deferred tax assets would be credited to operations in the period such determination was made. Likewise, should the Company determine that it would not be able to realize all or part of its deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to operations in the period such determination was made.

Discontinued Operations

The Company has accounted for the operations of one of its subsidiaries as discontinued operations for all periods presented in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (see Note 4 to Consolidated Financial Statements).

Results of Operations for the Nine Months Ending June 30, 2009 and 2008

The following tables set forth selected unaudited consolidated statements of operations data for each of the periods indicated as a percentage of total revenues for the respective periods.

	Three Months Ended June 30,				Nine Months Ended June 30,			
	2009		2008		2009		2008	
Net Sales	$19,381,341	100%	$51,063,145	100%	$85,778,622	100%	$133,396,838	100%
Cost of sales	17,373,423	90%	43,170,858	85%	77,563,830	90%	113,497,806	85%
Gross Profit	2,007,918	10%	7,892,287	15%	8,214,792	10%	19,899,032	15%
Selling	393,705	2%	475,999	1%	1,315,880	2%	1,256,154	1%
General and administrative	1,368,234	7%	2,469,713	5%	3,814,597	4%	6,430,162	5%
Income from operations	245,979	1%	4,946,575	10%	3,084,315	4%	12,212,716	9%

For the three months ended June 30, 2009 and 2008

Net Sales

Net sales for the three months ending June 30, 2009 were $19.4 million, a decrease of $31.7 million, or 62%, over net sales of $51.1 million for the three months ending June 30, 2008. The decrease in net sales was primarily attributable to a decrease of 50% in tons of finished goods shipped partially offset by an increase of 26% in the average selling price per ton of finished goods.

Cost of Sales and Gross Profit

Cost of Sales for the three months ending June 30, 2009 were $17.4 million, a decrease of $25.8 million, or 60%, over cost of sales of $43.2 million for the three months ending June 30, 2008. Cost of sales as a percentage of sales increased for the three months ending June 30, 2009 to 90% as compared to the cost of sales as a percentage of sales of 85% for the three months ending June 30, 2008. Gross profit for the three months ending June 30, 2009 was $2.0 million, a decrease of $5.9 million, or 75%, over gross profit of $7.9 million for the three months ending June 30, 2008. Gross profit as percentage of sales decreased for the three months ending June 30, 2009 to 10% as compared to the gross profit as a percentage of sales of 15% for the three months ending June 30, 2008. The decreased gross profit as a percentage of sales was primarily attributable to the deleveraging of fixed costs over a smaller revenue base, offset by a decrease in raw materials and inventory costs.

Selling Expenses

Selling expenses for the three months ending June 30, 2009 were $393,705, a decrease of $82,294, or 17% over selling expenses for the three months ending June 30, 2008 of $475,999. Selling expenses as a percentage of sales increased for the three months ending June 30, 2009 to 2% as compared to the cost of sales as a percentage of sales of 1% for the three months ending June 30, 2008, which was primarily attributable to similar salary expenses absorbed over a smaller revenue base.

General and Administrative Expenses

General and administrative expenses for the three months ending June 30, 2009 were $1.4 million, a decrease of $1.1 million, or 45%, over general and administrative expenses of $2.5 million for the three months ending June 30, 2008. General and administrative expenses as a percentage of sales increased for the three months ending June 30, 2009 to 7% as compared to general and administrative expenses as a percentage of sales of 5% for the three months ending June 30, 2008, which was primarily attributable to the deleveraging of fixed costs over a smaller revenue base, offset by a decrease in insurance and property tax expense and incentive management fees.

For the nine months ended June 30, 2009 and 2008

Net Sales

Net sales for the nine months ending June 30, 2009 were $85.8 million, a decrease of $47.6 million, or 36%, over net sales of $133.4 million for the nine months ending June 30, 2008. The decrease in net sales was primarily attributable to a decrease in tons of finished goods shipped of 37%.

Cost of Sales and Gross Profit

Cost of Sales for the nine months ending June 30, 2009 were $77.6 million, a decrease of $36.0 million, or 32%, over cost of sales of $113.5 million for the nine months ending June 30, 2008. Cost of sales as a percentage of sales increased for the nine months ending June 30, 2009 to 90% as compared to the cost of sales as a percentage of sales of 85% for the nine months ending June 30, 2008. Gross profit for the nine months ending June 30, 2009 was $8.2 million, a decrease of $11.7 million, or 59%, over gross profit of $19.9 million for the nine months ending June 30, 2008. Gross profit as percentage of sales decreased for the nine months ending June 30, 2009 to 10% as compared to the gross profit as a percentage of sales of 15% for the nine months ending June 30, 2008. The decreased gross profit as a percentage of sales was primarily attributable to the deleveraging of fixed costs over a smaller revenue base, offset by a decrease in raw materials and inventory costs.

Selling Expenses

Selling expenses for the nine months ending June 30, 2009 were $1,315,880, an increase of $59,726, or 5% over selling expenses for the nine months ending June 30, 2008 of $1,256,154. Selling expenses as a percentage of sales increased for the nine months ending June 30, 2009 to 2% as compared to the cost of sales as a percentage of sales of 1% for the nine months ending June 30, 2008, which was primarily attributable to similar salary expenses absorbed over a smaller revenue base.

General and Administrative Expenses

General and administrative expenses for the nine months ending June 30, 2009 were $3.8 million, a decrease of $2.6 million, or 41%, over general and administrative expenses of $6.4 million for the nine months ending June 30, 2008. General and administrative expenses as a percentage of sales decreased for the nine months ending June 30, 2009 to 4% as compared to general and administrative expenses as a percentage of sales of 5% for the nine months ending June 30, 2008, which was primarily attributable to a decrease in insurance expense and incentive management fees.

Liquidity and Capital Resources – June 30, 2009

On February 23, 2007, (the "Restructuring Date") ALJ implemented a financial and corporate restructuring designed to reduce outstanding debt and streamline its corporate structure. On the Restructuring Date, Atacama Holdings and KES Acquisition were merged into Acquisition Corp. (the "Merger") with Acquisition Corp., which immediately changed its name to KES Acquisition Company ("KES"), surviving the Merger (the "Restructuring"). As a result of

the Merger, ALJ now has only one operating subsidiary, KES, in which it owns 80.21 % of the common stock and 100% of the voting stock.

Also, on the Restructuring Date, KES entered into a Financing Agreement providing for a revolving line of credit (the "Revolver") and two new term loans (collectively, the "Term Loan" and together with the Revolver, the "Credit Facility") with Ableco Finance LLC ("Ableco") and PNC Bank, National Association ("PNC"), and together with Ableco, the "Senior Lenders"). The Revolver is an asset-based loan with a maximum availability of $23 million and had an original term of 3 years. On July 2009, KES and the Senior Lenders modified the Credit Facility to, among other things: (1) extend the maturity date of the $19 million Term Loan to February 22, 2011; (2) reduce the quarterly principal payment with respect to the Term Loan to $500,000; (3) adjust certain financial covenants and metrics, including reducing the EBITDAM covenant increasing the borrowing base multiplier; and (4) increase the interest rate by one percentage point. Both the Revolver and the Term Loan bear interest at variable rates based on the Libor or the base commercial lending rate of PNC as publicly announced from time to time. In addition, the Credit Facility contains financial covenants requiring KES to maintain certain levels of EBITDAM (earnings before interest, taxes, depreciation, amortization and incentive-based management fees), fixed charges coverage and leverage ratios.

As part of the February 23, 2007 Restructuring, KES repurchased $18 million in principal amount of the $40 million in subordinated promissory notes issued in connection with the acquisition of KES in March of 2005 (the "Subordinated Notes") plus certain accrued interest thereon, including certain notes previously issued to reflect a portion of such interest which was unpaid (the "Repurchased Notes") for $18 million and restructured the remaining $22 million in Subordinated Notes (the "Remaining Notes") and the accrued interest thereon (including certain notes previously issued to reflect a portion of such interest that was unpaid), to eliminate scheduled principal payments, extend the final maturity until 2017, capitalize the accrued but unpaid interest on such notes, and provide that in the future KES has the ability to capitalize, in its discretion, future interest payments on the Subordinated Notes. Therefore, upon the purchase of the Repurchased Notes, KES recognized a gain of $3.0 million and, as of the Restructuring Date, there were $25.6 million in principal amount of Remaining Notes outstanding. The interest rate on the Remaining Notes remains at 8%. The Remaining Notes are subordinated to the Credit Facility. The Remaining Notes were non-recourse to the assets of ALJ, but provided for a springing security interest on substantially all of KES' assets upon repayment of the Credit Facility.

On July 20, 2009, KES also entered into the Subordinated Financing Agreement (the "Subordinated Financing Agreement") by and among KES, the lenders a party thereto (the "Subordinated Lenders"), and Ableco LLC, as collateral and administrative agent. Pursuant to the Subordinated Financing Agreement the Remaining Notes were exchanged for term loans in the same amounts (including interest paid-in-kind) issued pursuant to the Subordinated Financing Agreement (the "Subordinated Loans"). The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the Subordinated Lenders, subject to the rights of the senior lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Sub Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The Subordinated Lenders include Ableco, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on ALJ's Board of Directors (the "Board"). Ableco required that the Sub Notes be exchanged as a condition to the modifications to the Credit Facility.

As of June 30, 2009, the balance outstanding on the Credit Facility was $11.1 million ($5.0 million under the Revolver and an aggregate of $6.1 million under the Term Loan). The obligations under the Credit Facility have been presented as a current liability.

At June 30, 2009, KES was in compliance with all financial covenants under the Credit Facility based on its consolidated financial statements.

To the extent that the Mill generates taxable income in the future, the Tax Sharing Agreement with KES will generate cash payments to ALJ equal to 50% of KES' "separate company tax liability," subject to compliance with the Credit Facility. For the three months ended June 30, 2009, the Company did not accrue any tax sharing payments. ALJ has approximately $276 million of federal net operating loss carryovers currently available to offset any federal income tax liability of KES in subsequent periods. ALJ expects that its federal net operating loss carryovers will be sufficient to absorb the majority of future federal income tax liability of KES.

The long-term economic viability of the Mill and its ability to fund its operations and debt service requirements, including maintaining compliance with various debt covenants and servicing the interest and principal obligations on the Credit Facility and Subordinated Notes and the dividends and redemption features on the Series A Preferred Stock issued in connection with the acquisition of the Mill, is dependent on various internal and external factors, including the Mill's ability to operate on a sustained basis at 45% or more of its annual capacity of 200,000 tons per year, as currently configured. Due to recent cost reductions over the past few quarters, the Mill is able to operate more cost effectively on a lower operating capacity. To the extent that the Mill is not able to maintain this operating threshold, the ability of the Mill to generate sufficient cash flows to fund its operations and debt service requirements and maintain compliance with various debt covenants may be impaired. Currently the Mill is operating at approximately 55% of its capacity.

Operating Activities

During the nine months ending June 30, 2009, the Company generated $15.0 million in operating activities, primarily attributable to a decrease in inventory of $16.7 million and a decrease in accounts receivable of $11.7 million, partially offset by a decrease in accounts payable of $10.9 million.

Investing Activities

For the nine months ending June 30, 2009, the Company used $578,921 in investing activities related to a capital lease.

Financing Activities

For the nine months ending June 30, 2009, the Company used $14.8 million in financing activities primarily attributable to repayments of $13.2 million on the Revolver and $4.5 million on the Term Loan.

On November 10, 2008, the Company repurchased a portion of the outstanding 4% Subordinated Restated Promissory Note dated January 24, 2003. The face value of the portion of the Note repurchased was $713,810, comprised of $500,000 in principal and $213,810 of accrued interest. The purchase price paid for the repurchase was $365,000, which is comprised of $250,000 in cash and 500,000 shares of the Company's common stock (valued at $115,000, or $0.23 per share based on the closing price of the Company's common stock as quoted on the Pink Sheets on November 10, 2008). The agreement further provided that the Company may purchase an additional $500,000 of principal under the note plus accrued interest on these same terms at its option at any time through June 30, 2009. The Company did not exercise this option.

On May 13, 2009, the Company adopted a stockholder rights plan (the "Rights Plan") designed to preserve the value of certain tax assets primarily associated with net operating loss carryforwards ("NOLs") and built in losses under Section 382 of the Code ("Section 382").

At June 30, 2008, the Company had approximately $276 million in net operating losses and the use of such losses to offset federal income tax would be limited, if the Company experiences an "ownership change" under Section 382. This would occur if stockholders owning (or deemed under Section 382 to own) 5% or more of the Company's stock by value increase their collective ownership of the aggregate amount of the Company's stock by more than 50 percentage points over a defined period of time. The Rights Plan was adopted to reduce the likelihood of an "ownership change" occurring as defined by Section 382.

In connection with the Rights Plan, the Company has declared a dividend of one preferred share purchase right for each share of its common stock outstanding as of the close of business on May 21, 2009. Pursuant to the Rights Plan, any stockholder or group that acquires beneficial ownership of 4.9 percent or more of the Company's outstanding stock (an "Acquiring Person") without the approval of the Company's Board would be subjected to significant dilution of its holdings. Any existing stockholder holding 4.9% or more of the Company's stock will not be considered an Acquiring Person unless such stockholder acquires additional stock of the Company; provided, however, that existing stockholders actually known to the Company to hold 4.9% or more of its stock as of April 30, 2009 will be permitted to purchase up to an additional 5% of the Company's stock without triggering the Rights Plan. In addition, in its discretion, the Board may exempt certain persons whose acquisition of securities is determined by the Board not to jeopardize the Company's deferred tax assets and may also exempt certain

transactions. The Rights Plan will continue in effect until May 13, 2019, unless it is terminated or redeemed earlier by the Board.

On July 20, 2009, KES entered into the Third Amendment to the Financing Agreement and First Amendment to Security Agreement (the "Amendment") by and among KES, the lenders a party thereto (the "Senior Lenders"), Ableco Finance LLC, as collateral agent, and PNC Bank, National Association, as administrative agent. The Amendment modifies the Credit Facility and the related security agreement. The Amendment provides for an extension of the final maturity date of one year to February 22, 2011. Additionally, certain financial covenants and metrics, including the EBITDAM covenant were reduced and the borrowing base multiplier was increased. The interest rate was increased by one percentage point and the quarterly principal payments under the Term Loan were reduced from $750,000 to $500,000 given the longer term.

On July 20, 2009, KES also entered into the Subordinated Financing Agreement, pursuant to which the Remaining Notes were exchanged for the Subordinated Loans. The Subordinated Financing Agreement did not impact the amount of KES' indebtedness with respect to the subordinated debt, but provides for certain rights and remedies in favor of the subordinated lenders, subject to the rights of the senior lenders, including a second priority security interest in substantially all of KES' assets. By comparison, the terms of the Remaining Notes and related loan agreement, provided for covenants and a security interest only once the senior debt was paid in full. The subordinated lenders include Ableco LLC, ALJ and Jess Ravich, Hal Byer and Scott Fritz, all of whom serve on the Board. Ableco required that the Remaining Notes be exchanged as a condition to the modifications to the Credit Facility.

Principal Commitments

At June 30, 2009, the Company's principal commitments consisted of the following obligations:

	Payments Due by 12 Month Periods Ending June 30, (in thousands)					
Contractual cash obligations	**Total**	**2010**	**2011**	**2012**	**2013**	**Thereafter**
4% notes payable	$ 2,796	$ ---	$ 2,796	$ ---	$ ---	$ ---
8% subordinated term loans	27,857	---	---	---	---	27,857
Term Loan – B – Ableco	6,092	2,000	4,092	---	---	---
Revolver – PNC	4,997	---	4,997	---	---	---
Operating leases	191	45	45	45	45	11
Capital lease obligation	581	155	155	155	116	---
Management services agreement	3,033	700	700	700	700	233
4% Series A Preferred Stock subject to mandatory redemption	2,199	---	2,199	---	---	---
13% Series A Preferred Stock of subsidiary subject to mandatory redemption, including accrued dividends	19,561	---	---	---	---	19,561
Total contractual cash obligations	$ 67,307	$ 2,900	$ 14,984	$ 900	$ 861	$ 47,662

At June 30, 2009, the Company did not have any material commitments for capital expenditures.

At June 30, 2009, the Company has various short-term commitments for the purchase of materials, supplies and energy arising in the ordinary course of business which aggregated approximately $200,000.

Off-Balance Sheet Arrangements

The Company does not have any transactions, obligations or relationships that could be considered off-balance sheet arrangements at June 30, 2009.

ITEM 5. LEGAL PROCEEDINGS

From time to time the Company may be involved in litigation arising from its activities. Presently the Company is not involved in any material litigation.

ITEM 6. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 7. OTHER INFORMATION

MATTERS SUBMITTED TO VOTE OF STOCKHOLDERS

We held our 2009 Annual Meeting of Stockholders on June 4, 2009 at the Los Angeles offices of Morrison & Foerster LLP, 555 West Fifth Street, Suite 3500, Los Angeles, California 90013. The following proposals were submitted to the stockholders:

- To elect one (1) Class III director to hold office until the Company's 2012 Annual Meeting of Stockholders or until his successor is elected and duly qualified or until his earlier resignation or removal.
- To ratify the selection of Mountjoy & Bressler, LLP as independent auditor of the Company's operating subsidiary KES Acquisition Company, for its fiscal year ending September 30, 2009.
- To approve an amendment and restatement to the Company's Certificate of Incorporation to add a new Article IX which restricts certain transfers of common stock in order to preserve the tax treatment of the Company's net operating losses and built-in losses ("**NOL Protective Amendment**").

- To approve the Board of Directors' decision to adopt and implement a stockholder rights plan in order to preserve the tax treatment of the Company's net operating losses and built-in losses (the "**Rights Plan**").
- To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

Holders of our common stock are entitled to one vote per share. The holders of our common stock voted as follows:

Board of Director Election Results.

	Votes For	Votes Withheld
Jess M. Ravich	42,652,181	646,047

Mr. Ravich will serve as a director until the 2012 Annual Meeting of Stockholders and until a successor is elected and qualified, or until such director's earlier resignation or removal.

Ratify Mountjoy & Bressler, LLP as independent auditor of the Company's operating subsidiary.

The results of the voting included 43,030,618 votes for, 267,310 votes against, 300 votes abstained, and 0 votes were non-votes. The appointment was ratified.

Approval of the NOL Protective Amendment.

The results of the voting included 42,747,746 votes for, 190,175 votes against, 360,306 votes abstained, and 0 votes were non-votes. The amendment was approved.

Approval of the Board of Directors' decision to adopt and implement the "Rights Plan."

The results of the voting included 9,755,927 votes for, 22,490 votes against, 41,450 votes abstained, and 0 votes were non-votes. The Rights Plan was approved.

RISK FACTORS

The following risk factors and other information included in this Report should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us may impair our business operations. If any of the following risks actually occur, our business, financial condition and operating results could be significantly harmed.

Risks Related to Our Business

Payments under our Tax Sharing Agreement are uncertain.

For taxable periods beginning after February 28, 2005, our subsidiary, KES is included in the consolidated federal income tax return filed by ALJ as the common parent. KES has entered into a Tax Sharing Agreement with ALJ, pursuant to which it has agreed to pay ALJ an amount equal to 50% of its "separate company tax liability," (as defined in the agreement) subject to compliance with KES' Credit Facility. Periodic tax sharing payments from KES are currently the sole source of funds distributed to ALJ from the operations of the Mill. The tax sharing payments are necessary to fund corporate overhead at the ALJ level and the receipt of such payments is dependent upon the availability of sufficient cash resources from Mill operations. There can be no assurance that there will be sufficient levels of cash resources generated from Mill operations to support tax sharing payments or to pay our operating expenses. The Company has not received a tax sharing payment over the past three quarters and based on the current economic climate, we do not expect a tax sharing payment in the current quarter.

Our industry is cyclical and prolonged economic declines could have a material adverse effect on our business.

Demand for most of our products is cyclical in nature and sensitive to general economic conditions. Our business supports cyclical industries such as commercial construction, energy, and manufacturing all of which have been adversely impacted by the recent economic downturn. As a result, our results of operations and cash flows may suffer. Because mini-mills generally have high fixed costs, reduced volumes result in operating inefficiencies. A further decline in the U.S. economy could materially adversely affect our business, results of operations and financial condition and cash flows.

Our level of production and our sales and earnings are subject to significant fluctuations.

The U.S. steel industry has experienced a significant economic downturn beginning in late 2008. This decline has led to deterioration in backlog and, therefore, average capacity utilization in producing mills worldwide.

The price of steel and steel products may fluctuate significantly due to many factors beyond our control. Such fluctuation would directly affect our levels of production, sales and earnings. The domestic steel industry has been highly cyclical in nature, influenced by a combination of factors, including periods of economic growth or recession, strength or weakness of the U.S. dollar, worldwide production capacity, levels of steel imports and applicable tariffs. The demand for steel products is generally affected by macroeconomic fluctuations in the United States and the global economies in which steel companies sell their products. We have experienced a drop in demand for our products as a result of the current economic downturn and further economic decline, stagnation, or currency fluctuations could further decrease the demand for products or increase the amount of imports of steel into the United States, which could negatively impact our sales, margins and profitability. In addition, prolonged weakness in any industries in which we sell our products could materially adversely affect our results of operations and cash flows.

Our business requires maintenance expenditures and may require capital investment which we may be unable to provide.

We require capital for, among other purposes, maintaining the condition of KES' existing equipment and maintaining compliance with environmental laws and regulations. From time to time, KES may also require capital to acquire new equipment. To the extent that cash generated internally and cash available under our Credit Facility is not sufficient to fund capital requirements, KES will require additional debt and/or equity financing. However, this type of financing may not be available or, if available, may not be on satisfactory terms, particularly given the current credit crisis. Future debt financings, if available, will require the approval of KES' existing lenders and may result in increased interest and amortization expense. In addition, future debt financings by KES may limit our ability to withstand competitive pressures and render us more vulnerable to economic downturns. If KES fails to generate or obtain sufficient additional capital in the future, KES could be forced to reduce or delay capital expenditures, sell assets or restructure or refinance its indebtedness, which in turn would also have an adverse effect on the amount of the tax sharing payments KES makes to us. These tax sharing payments are ALJ's sole source of cash to pay its operating expenses.

Unexpected equipment failures or unanticipated events may lead to production curtailments or shutdowns resulting in lost revenues and increased costs.

Interruptions in production capabilities will inevitably increase production costs and reduce KES' sales and earnings. KES' manufacturing processes depend on critical pieces of steelmaking equipment, such as furnaces, continuous casters and rolling equipment, as well as electrical equipment, such as transformers, and this equipment may, on occasion, be out of service as a result of unanticipated failures. In the future, KES may experience material plant shutdowns or periods of reduced production as a result of equipment failures. Furthermore, any interruption in production capability may require KES to make large capital expenditures to remedy the situation, which could have a negative effect on our profitability and cash flows. In addition to equipment failures, KES' facilities are also subject to the risk of catastrophic loss due to unanticipated events such as fires, explosions, adverse weather conditions or transportation interruptions. KES maintains business interruption insurance to offset these potential lost revenues or increased costs; however, there can be no assurance that our coverage is sufficient to fully offset the

lost revenues or increased costs that we may experience. In addition to the revenue losses, longer-term business disruption could result in a loss of customers. If this were to occur, KES' future sales levels, and therefore our profitability and cash flows, could be adversely affected, which in turn would also have an adverse effect on the amount of the tax sharing payments KES makes to us. These tax sharing payments are ALJ's sole source of cash to pay its operating expenses.

Competition from other materials may materially adversely affect our business.

In many applications, steel competes with other materials, such as aluminum, cement, composites, glass, plastic and wood. Increased use of these materials in substitution for steel products could materially adversely affect prices and demand for KES' steel products.

Environmental regulations impose substantial costs and limitations on operations.

KES is subject to various federal, state and local environmental, health and safety laws and regulations, and is required to maintain numerous permits and governmental approvals for operation, concerning issues such as air emissions, wastewater discharges, solid and hazardous waste management and disposal and the investigation and remediation of contamination. These laws and regulations are becoming increasingly stringent. While we believe that KES' facilities are in material compliance with all permits, governmental approvals, applicable environmental laws and regulations, the risks of substantial unanticipated costs and liabilities related to compliance with these permits, governmental approvals, laws and regulations are an inherent part of KES' business. It is possible that future conditions may develop, arise or be discovered that create new environmental compliance or remediation liabilities and costs. While we believe that we can comply with environmental legislation and regulatory requirements and that the costs of compliance have been included within budgeted cost estimates, compliance may prove to be more limiting and costly than anticipated. There can also be no assurance that KES' facilities will continue to operate in accordance with the conditions and restrictions established by the permits or approvals. Similarly, we cannot assure you that the requirements contained in such permits will not change or that KES' facilities will be able to renew or to maintain all permits and approvals required for continued operation of the facilities.

If any substances are found at KES' facilities that are classified by applicable environmental laws, ordinances or regulations as hazardous materials, we could become liable for the investigation and removal of those substances, regardless of their source. Failure to comply with these laws, ordinances or regulations, or any change in the requirements of these laws, ordinances or regulations could result in liabilities, imposition of cleanup liens and fines and large expenditures to bring the facilities into compliance. We may also be subject from time to time to legal proceedings brought by private parties or governmental agencies with respect to environmental matters, including matters involving alleged property damage or personal injury.

The potential presence of radioactive materials in the scrap that we melt in our electric arc furnaces presents significant risks.

The potential presence of radioactive materials in our scrap supply presents significant economic risks. The cost to clean up the contaminated material and the loss of revenue resulting from the loss in production time could be material to our business, results of operations and financial condition. While we have three detection devices at the Mill, radioactive scrap could go undetected. If we fail to detect radioactive material in the scrap we receive, we may incur significant costs to clean up the contamination of our facilities and to dispose of the contaminated material, which could have a material adverse effect on our results of operation and financial condition. In addition, there can be no assurance that we will have sufficient financial resources to fund the cleanup costs in such event resulting in a potential suspension or curtailment of operations at the Mill.

The results of our operations are sensitive to volatility in steel prices and changes in the cost of raw materials, particularly scrap steel.

The dramatic decrease in steel industry demand late in 2008 has resulted in sharply reduced demand for raw materials, particularly for scrap steel. The rapid and steep declines in scrap prices has also resulted in similar drops in billet and finished goods pricing, which has adversely impacted our sales which declined sequentially from $52.2 million in the fourth quarter of fiscal 2008 to $26.4 million in the second quarter of fiscal 2009. Further, as a result

of sharply lower inventory costs we previously decreased the carrying value of inventory to account for the lower of cost or market. If demand and prices for steel continue to deteriorate, our sales may continue to decline and we may be required to recognize further losses on the carrying value of our inventory.

We rely to a substantial extent on outside vendors to supply KES with raw materials that are critical to the manufacture of its products. KES acquires its primary raw material, steel scrap, from one broker. Although we believe that the supply of scrap is adequate to operate KES' facilities and prices of scrap are declining, we are subject to risks due to the volatility of the purchase prices of this critical raw material.

At any given time, KES may be unable to obtain an adequate supply of scrap at a price and other terms acceptable to us. Additionally, any change in our relationship with our scrap broker could make it more difficult or costly for us to obtain scrap, which could have an adverse impact on our financial condition and results of operations.

If KES' suppliers increase the price of its critical raw materials, it may not be able to locate alternative sources of supply. If KES is unable to obtain adequate and timely deliveries of its required raw materials, KES may be unable to timely and cost effectively manufacture sufficient quantities of its products. This could cause KES to lose sales, incur additional costs and suffer harm to its reputation, financial condition and results of operations, which in turn would also have an adverse effect on the amount of tax sharing payments KES makes to us. These tax sharing payments are ALJ's sole source of cash to pay its operating expenses.

The availability and cost of electricity and natural gas are subject to volatile market conditions that could adversely affect our business.

Our Mill is a large consumer of electricity and natural gas. We rely upon third parties for the supply of energy resources consumed in the manufacture of KES' products. The prices for and availability of electricity, natural gas, oil and other energy resources are subject to volatile market conditions. These market conditions often are affected by weather, political and economic factors, all of which are beyond our control. Disruptions in the supply of the energy resources could temporarily impair KES' ability to manufacture its products. Increases in our energy costs could materially adversely affect KES' business, results of operations, financial condition and cash flows, which in turn would also have an adverse effect on the amount of tax sharing payments KES makes to us. These tax sharing payments are ALJ's sole source of cash to pay its operating expenses.

Mill management may be difficult to replace if they leave.

Management of the Mill is currently conducted by employees of Pinnacle Steel, LLC pursuant to the Pinnacle Agreement which expires October 31, 2013. The loss of the services of one or more members of our Mill management team or the inability to attract, retain and maintain additional Mill management personnel could harm our business, financial condition, results of operations and future prospects. Our operations and prospects depend in large part on the performance of our Mill management team. We may not be able to find qualified replacements for any members of the Mill management team if their services are no longer available. The term of the Pinnacle Agreement may be further extended through 2014 as a result of the attainment of certain performance thresholds set forth therein; however, there can be no assurances that such performance thresholds will be achieved.

Our level of indebtedness and other demands on our cash resources could materially adversely affect our ability to execute our business strategy.

Our total debt obligations (including preferred stock considered as debt obligations in our consolidated financial statements) are approximately $67 million on a consolidated basis as of June 30, 2009. Subject to the limits contained in the Credit Facility and Subordinated Financing Agreement, we may also incur additional debt in the future. In addition to interest and principal payments on our outstanding debt and dividends and repurchase obligations with respect to our preferred stock, we, and in particular KES, have other demands on our cash resources, including, among others, capital expenditures that may arise from time to time and operating expenses.

Our significant indebtedness levels could have a material effect on our operations and our ability to execute our business strategy. Specifically, our current debt has the following impacts on our operations, among others:

- Except for periodic tax sharing payments, all of KES' cash flows must be used to fund its operations and service its debt obligations, including interest, dividends, required principal payments, and required preferred stock repurchase obligations, and therefore is not available for use in KES' business, including working capital needs;

- Our ability to obtain additional debt financing for working capital, capital expenditures, general corporate purposes or other purposes could be impaired by the terms and amount of KES' existing debt and if additional funding is required we may be required to seek additional equity financings, which may have a dilutive impact on our existing stockholders or may not be unavailable on acceptable terms or at all;

- Our failure to comply with restrictions and covenants contained in the terms of our debt agreements, in particular the Credit Facility and Subordinated Financing Agreement, could lead to a default which could cause all or a significant portion of our debt to become immediately payable; if such default is not cured or waived, our lenders could foreclose on our assets, which could result in a complete loss of our stockholders' investments;

- Restrictions in our debt agreements could limit our flexibility in planning for, or reacting to, changes in the industries in which we compete;

- Our level of indebtedness could place us at a competitive disadvantage compared to our competitors, some of which have less debt service obligations and greater financial resources than we do; and

- Our level of indebtedness could increase our vulnerability to general adverse economic and industry conditions.

To service our indebtedness, we will require a significant amount of cash, and our ability to generate cash depends on many factors beyond our control.

Our ability to make payments on our indebtedness and to fund any future capital expenditures required by KES will depend on our ability to generate cash in the future. This, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control.

We cannot assure you that KES' business will generate sufficient cash flow from operations, or that future borrowings will be available to us under the Credit Facility in an amount sufficient to enable us to pay our indebtedness, or to fund our other liquidity needs. We have determined that the Mill needs to operate at or above 45% of its operating capacity in order to pay our indebtedness and we cannot assure you that the Mill will operate at such capacity. We may need to refinance all or a portion of our indebtedness, on or before maturity. We cannot assure you that we will be able to refinance any of our indebtedness, including our Credit Facility, on commercially reasonable terms or at all, particularly given the current state of credit markets.

We have variable rate indebtedness that subjects us to interest rate risk, which could cause our annual debt service obligations to increase significantly.

A portion of our current borrowings, namely KES' Credit Facility ($5.0 million Revolver and $6.1 million Term Loan at June 30, 2009), and possibly future borrowings, are and may continue to be at variable rates of interest, thus exposing us to interest rate risk. If interest rates increase, our debt service obligations on our variable rate indebtedness would increase even if the amount borrowed remained the same, resulting in a decrease in our net income. For example, pursuant to the recent amendment to the Credit Facility the interest rate on KES' Revolver and Term Loan increased by 100 basis points which will result in an increase in our quarterly interest expense of approximately $28,000, based on the loan balances at June 30, 2009.

Our net operating loss carryforwards could be substantially limited if we experience an "ownership change" as defined in Section 382 of the Internal Revenue Code.

Our ability to utilize net operating losses ("NOLs") and tax credit carryforwards to offset our future taxable income and/or to recover previously paid taxes would be limited if we were to undergo an "ownership change" within the meaning of Section 382 ("Section 382") of the Internal Revenue Code (the "Code").

Section 382 of the Code contains rules that limit the ability of a company that undergoes an "ownership change," which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its NOLs and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes among stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company.

If we undergo an ownership change for purposes of Section 382 as a result of future transactions involving our common stock, including purchases or sales of stock between 5% shareholders, our ability to use our NOLs and to recognize certain built-in losses would be subject to the limitations of Section 382. Depending on the resulting limitation, a significant portion of our NOLs could expire before we would be able to use them. We had approximately $276 million of (pre-tax) NOLs as of September 30, 2008. The NOLs do not begin to expire until 2019 and are available to be used at some level through 2025. Our inability to utilize our NOLs could have a negative impact on our financial position and results of operations.

We have not experienced an "ownership change" as defined by Section 382. However, whether a change in ownership occurs in the future is largely outside of our control, and there can be no assurance that such a change will not occur.

In May 2009, we announced that our Board adopted a shareholder rights plan designed to preserve shareholder value and the value of certain tax assets primarily associated with NOLs and built in losses under Section 382 of the Code.

We also amended our certificate of incorporation to add certain restrictions on transfers of our stock that may result in an ownership change under Section 382.

Our ability and the ability of KES to engage in some business transactions may be limited by the terms of our debt.

The Subordinated Term Loans and KES' Credit Facility contain a number of financial covenants requiring them to meet financial ratios and financial condition tests, as well as covenants restricting their ability to:

- incur additional debt;
- make certain capital expenditures;
- incur or permit liens to exist;
- enter into transactions with affiliates;
- guarantee the debt of other entities, including joint ventures;
- merge or consolidate or otherwise combine with another company; and
- transfer or sell our assets.

KES' ability to borrow under its Credit Facility will depend upon its ability to comply with certain covenants and borrowing base requirements. Its ability to meet these covenants and requirements may be affected by events beyond its control and it may not meet these obligations. The failure of KES to comply with these covenants and requirements could result in an event of default under its Credit Facility or Subordinated Financing Agreement that, if not cured or waived, could terminate its ability to borrow further, permit acceleration of the relevant debt (and other indebtedness based on cross default provisions) and permit foreclosure on any collateral granted as security under its Credit Facility or Subordinated Financing Agreement. There can also be no assurance that KES' Senior Lenders will grant waivers on covenant violations, if they occur. Any such event of default would have a material adverse effect on us as KES is our principal asset and cash generated to us through our tax sharing payments from KES is our sole source of cash to pay our operating expenses.

We rely upon a small number of major customers for a substantial percentage of our sales.

A loss of any large customer or group of customers could materially reduce our sales and earnings. We have substantial business relationships with a few large customers. In the fiscal quarter ended June 30, 2009, our top ten customers accounted for approximately 41% of our consolidated net sales. During this period, our largest customer accounted for approximately 10% of our consolidated net sales. We expect to continue to depend upon a small number of customers for a significant percentage of our net sales, and cannot assure you that any of them will continue to purchase steel from us.

Our internal controls and procedures may be deficient.

Our internal controls and procedures may be subject to deficiencies or weaknesses. Remedying and monitoring internal controls and procedures distracts our management from its operations, planning, oversight and performance functions, which could harm our operating results. Additionally, any failure of our internal controls or procedures could harm our operating results or cause us to fail to meet our obligation to maintain adequate public information.

We may encounter difficulties in acquiring other companies.

We acquired the Mill effective March 1, 2005 and may in the future acquire other companies. If we identify suitable candidates, we may not be able to make investments or acquisitions on commercially acceptable terms. Acquisitions may cause a disruption in our ongoing business, distract management, require other resources and make it difficult to maintain our standards, controls and procedures. We may not be able to retain key employees of the acquired companies or maintain good relations with their clients or suppliers. We may be required to incur additional debt and to issue equity securities, which may be dilutive to existing stockholders, to effect and/or fund acquisitions.

We cannot assure you that any acquisitions we make will enhance our business.

We cannot assure you that any completed acquisition will enhance our business. Since we anticipate that acquisitions could be made with both cash and our common stock, if we consummate one or more significant acquisitions, the potential impacts are:

- a substantial portion of our available cash could be used to consummate the acquisitions and/or we could incur or assume significant amounts of indebtedness; and
- our stockholders could suffer significant dilution of their interest in our common stock.

Also, we are required to account for acquisitions under the purchase method, which would likely result in our recording significant amounts of goodwill or other tangible and intangible assets. The inability of a subsidiary to sustain profitability may result in an impairment loss in the value of long-lived assets, principally goodwill and other tangible and intangible assets, which would adversely affect our financial statements.

Decreases in the demand for steel could have a material adverse impact on our business.

The U.S. steel industry experienced a significant economic downturn in late 2008, which has continued into 2009. This decline has led to deterioration in backlog and, therefore, average capacity utilization in producing mills worldwide, which has already resulted in a sequential decrease in our sales and may adversely impact our sales, financial condition and results of operations going forward. Further, while we operate in the U.S., the global steel industry has suffered significant deterioration in demand, which has had an adverse affect on steel prices in the U.S.

We may face significant price and other forms of competition from other steel producers, which could have a material adverse effect on our business, financial condition, results of operation or prospects.

The global markets in which steel companies conduct business are highly competitive. Increased competition could cause us to lose market share or reduce pricing, either one of which could have a material adverse effect on our business, financial condition, results of operations or prospects. We compete primarily on the basis of price, quality and the ability to meet our customers' product needs and delivery schedules. Some of our competitors may have

advantages due to greater capital resources, different technologies, lower raw material costs, lower energy costs or favorable exchange rates.

Risks Related to our Common Stock

Our common stock is illiquid and stockholders may be unable to sell their shares.

Our common stock is currently quoted on the "Pink Sheets" under the symbol "ALJJ.PK." There is currently only a limited market for our common stock and we can provide no assurance to investors that a more robust market will develop. If a broader market for our common stock does not develop, our stockholders may encounter difficulties selling their common stock from time to time.

Our stock is a penny stock and, as a result, our stockholders are more limited in their ability to sell their stock.

The Securities and Exchange Commission has adopted rules that regulate broker-dealer practices in connection with the sale of penny stocks, or low-priced securities other than securities registered on certain exchanges, to persons other than established customers and institutional accredited investors. Because our securities constitute penny stocks within the meaning of the rules, the rules apply to us and our securities. For transactions covered by these rules, prior to effecting a transaction in a penny stock, a broker-dealer must, among other things: (a) make a special suitability determination for the purchaser; (b) deliver a standardized risk disclosure document to the customer; (c) receive written acknowledgement of the receipt of the disclosure statement; (d) provide to customers current bids and offers, including the number of shares to which such bid and offer prices apply; (e) disclose to customers the broker-dealer and sales representation compensation; and (f) receive the purchaser's written consent to the transaction prior to the sale. These suitability requirements and disclosure requirements may have the effect of reducing the trading activity in the secondary market for our stock.

Volatility in the market price of our common stock.

The market price of our common stock could fluctuate substantially in the future in response to a number of factors, including the following:

- our quarterly operating results or the operating results of other companies in the steel industry;
- changes in general conditions in the economy, the financial markets or the steel industry;
- announcements by us or our competitors of significant acquisitions; and
- increases in raw materials and other costs.

In addition, in recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to their operating performance. These broad market fluctuations may materially adversely affect our stock price, regardless of our operating results.

We do not currently plan to pay dividends to holders of our common stock.

We do not currently anticipate paying cash dividends to the holders of our common stock. Accordingly, holders of our common stock must rely upon price appreciation as the sole method to realize a gain on their investment. There can be no assurances that the price of our common stock will ever appreciate in value.

ITEM 8. EXHIBITS

A list of exhibits required to be filed as part of this report is set forth in the Index to Exhibits, which immediately precedes such exhibits, and is incorporated herein by reference.

INDEX TO EXHIBITS

Exhibit No.	Description
1*	Restated Certificate of Incorporation of ALJ Regional Holdings, Inc as filed with the Secretary of State of the State of Delaware on June 16, 2009.
2**	Agreement and Plan of Merger by and among YouthStream Acquisition Corp., Atacama KES Holding Corporation and KES Acquisition Company, LLC dated February 23, 2007.
3**	Third Restated Certificate of Incorporation of YouthStream Acquisition Corp. as filed with the Secretary of State of the State of Delaware on February 23, 2007.
4	Restated Bylaws of ALJ Regional Holdings, Inc. (incorporated by reference to Exhibit 7 to the Company's Quarterly Report for the quarter ended March 31, 2009 posed on the Pink Sheets website.
5	YouthStream Media Networks, Inc. 2000 Stock Incentive Plan (incorporated by reference to Exhibit 10.28 to YouthStream's Form 10-KSB filed with the SEC for the fiscal year ended June 30, 1999).
6	Securities Purchase Agreement, dated as of February 25, 2005, by and among YouthStream Media Networks, Inc., YouthStream Acquisition Corp., KES Holdings, LLC and Atacama Capital Holdings, Ltd. (incorporated by reference to Exhibit 10.81 to YouthStream's Form 8-K, filed with the SEC on March 14, 2005).
7**	Amended and Restated KES Acquisition Company, 8.0% Subordinated Secured Notes, Note Purchase Agreement originally dated as of February 28, 2005 and amended and restated as of February 23, 2007.
8	Amended and Restated Management Services Agreement, February 28, 2005, by and between KES Acquisition Company, LLC and Pinnacle Steel, LLC (incorporated by reference to Exhibit 10.83 to YouthStream's Form 8-K, filed with the SEC on March 14, 2005).
9**	First Amendment to the Amended and Restated Management Services Agreement by and among KES Acquisition Company and Pinnacle Steel, LLC dated February 23, 2007.
10**	Form of KES Acquisition Company, 8.0% Subordinated Secured Note Due February 22, 2017.
11	Form of YouthStream Media Networks, Inc. Limited Guaranty and Pledge Agreement in favor of Atacama Capital Holdings, Ltd. (incorporated by reference to Exhibit 10.87 to YouthStream's Form 8-K, filed with the SEC on March 14, 2005).
12	Form of YouthStream Media Networks, Inc. Limited Guaranty and Pledge Agreement in favor of KES Holdings, LLC (incorporated by reference to Exhibit 10.87 to YouthStream's Form 8-K, filed with the SEC on March 14, 2005).
13**	Financing Agreement by and among KES Acquisition Company, Ableco Finance LLC and PNC Bank, National Association dated February 23, 2007.
14**	Amended and Restated Tax Sharing Agreement by and between KES Acquisition Company and ALJ Regional Holdings, Inc.
15	Rights Agreement dated May 13, 2009 by and between ALJ Regional Holdings, Inc. and American Stock Transfer and Trust Company, LLC (incorporated by reference to Annex B to ALJ Regional Holdings proxy statement dated May 15, 2009 available at www.pinksheets.com).

Exhibit No.	Description
16*	Third Amendment to the Financing Agreement and First Amendment to Security Agreement, dated July 20, 2009, by and among KES, the lenders a party thereto, Ableco Finance LLC, as collateral agent, and PNC Bank, National Association, as administrative agent.

* - Filed herewith
** - Filed with the Company's Quarterly Report for the period ended March 31, 2007.

ITEM 9. CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

Certification of the Chief Executive Officer

I, John Scheel, hereby certify that:

1. I have reviewed this quarterly disclosure statement of ALJ Regional Holdings, Inc. for the fiscal quarter ended June 30, 2009;

2. Based on my knowledge, this disclosure statement 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 disclosure statement; and

3. Based on my knowledge, the financial statements and other financial information included or incorporated by reference in this disclosure statement, fairly present, in all material respects, the financial position, results of operations and cash flows of ALJ Regional Holdings, Inc., as of, and for, the fiscal quarter ended June 30, 2009.

Date:

/S/ John Scheel
John Scheel,
Chief Executive Officer

Certification of the Chief Financial Officer

I, T. Robert Christ, hereby certify that:

1. I have reviewed this quarterly disclosure statement of ALJ Regional Holdings, Inc. for the fiscal quarter ended June 30, 2009;

2. Based on my knowledge, this disclosure statement 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 disclosure statement; and

3. Based on my knowledge, the financial statements and other financial information included or incorporated by reference in this disclosure statement, fairly present, in all material respects, the financial position, results of operations and cash flows of ALJ Regional Holdings, Inc., as of, and for, the fiscal quarter ended June 30, 2009.

Date:

/S/ T. Robert Christ
T. Robert Christ,
Chief Financial Officer

RESTATED CERTIFICATE OF INCORPORATION
OF
ALJ REGIONAL HOLDINGS, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

ALJ REGIONAL HOLDINGS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST. The name of the corporation is ALJ Regional Holdings, Inc. (the "***Corporation***"). The name under which the Corporation was originally incorporated was Nuparent, Inc., and the date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of the State of Delaware was June 22, 1999. A Restated Certificate of Incorporation of this Corporation was filed with the Secretary of State of the State of Delaware on February 24, 2000 under its previous name, YouthStream Media Networks, Inc. A Certificate of Designation of Series A Preferred Stock, and a Certificate of Correction to such Certificate of Designation for this Corporation were filed with the Secretary of State of the State of Delaware on January 21, 2003 and January 20, 2004, respectively, under the name YouthStream Media Networks, Inc. A Certificate of Ownership and Merger of this Corporation was filed with the Secretary of State of the State of Delaware on October 23, 2006, under the name YouthStream Media Networks, Inc., which effected the change of the Corporation's name to ALJ Regional Holdings, Inc.

SECOND. The provisions set forth in Article VII regarding election of directors were originally adopted by the corporation on February 24, 2000 and are not amended pursuant to this Restated Certificate of Incorporation. The provisions of Paragraph A of Article VII shall not reduce the term of any director in office as of the date hereof who was duly elected by the Stockholders in accordance with the Corporation's Restated Certificate of Incorporation as in effect prior to the date hereof and bylaws. Notwithstanding the foregoing, the names of the initial directors of the Corporation have been omitted from Article VII of this Restated Certificate of Incorporation, as their successors were duly elected in accordance with the terms of the Restated Certificate of Incorporation.

THIRD. This Restated Certificate of Incorporation has been duly adopted by the directors and stockholders of the Corporation in accordance with Sections 245 and 242 of the General Corporation Law of the State of Delaware. This Restated Certificate of Incorporation amends and restates the provisions of the Restated Certificate of Incorporation of this Corporation as filed with the Secretary of State of the State of Delaware on February 24, 2000.

FOURTH. The Restated Certificate of Incorporation of this Corporation shall be amended and restated in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer, this 16th day of June, 2009.

ALJ REGIONAL HOLDINGS, INC.

By: /s/ John Scheel
Name: John Scheel
Title: *President & Chief Executive Officer*

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ALJ REGIONAL HOLDINGS, INC.

ARTICLE I

The name of the corporation is ALJ Regional Holdings, Inc. (the "***Corporation***").

ARTICLE II

The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "***Delaware General Corporation Law***").

ARTICLE III

The registered office of the Corporation in the State of Delaware is to be located at 615 South DuPont Highway, Dover, Kent County, DE 19901. The name of its registered agent at that address is National Corporate Research, Ltd.

ARTICLE IV

The duration of the corporation is to be perpetual.

ARTICLE V

The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "common stock" and "preferred stock." The total number of shares of capital stock the Corporation shall have authority to issue is One Hundred Five Million (105,000,000) shares. One Hundred Million (100,000,000) shares shall be common stock, $0.01 par value per share (the "***Common Stock***"), and Five Million (5,000,000) shares shall be preferred stock, $0.01 par value per share (the "***Preferred Stock***"), of which One Million (1,000,000) shares shall be designated as Series A Preferred Stock (the "***Series A Preferred Stock***") and Five Hundred Fifty Thousand (550,000) shares shall be designated as Series B Preferred Stock (the "***Series B Preferred Stock***"). The Board of Directors may authorize, without further stockholder approval, the issuance from time to time of the preferred stock in one or more series with such designations and such powers, preferences and rights, and such qualifications, limitations, or restrictions (which may differ with respect to each series) as the Board of Directors may fix by resolution. Shares of capital stock of the Corporation may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the Board of Directors, and shares issued for such consideration shall be fully paid and nonassessable.

A.

The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Section A of Article V.

(1) Certain Definitions. For purposes of this Section A of Article V, the following terms shall have the following meanings:

sd-485312

(a) "***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

(b) "***Change of Control***" means (i) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Corporation and its Subsidiaries, taken as a whole, to any "person" (as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) that does not include the holder of a majority of the shares of Series A Preferred Stock then outstanding or any person controlling, controlled by, or under common control with such holder ("***Affiliate***"); or (ii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that a "person" (as such term is defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) or related group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended), that does not include the holder of a majority of the shares of Series A Preferred Stock then outstanding or any Affiliate of such holder, owns more than 50% of the total voting power entitled to vote in the election of directors.

(c) "***Person***" means an individual, a partnership, a corporation, a limited liability company, a limited liability, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

(d) "***Redemption Date***" as to any share means the date specified in the notice of any redemption at the Corporation's option or at the holder's option or the applicable date specified herein in the case of any other redemption; provided that no such date shall be a Redemption Date unless the Purchase Price of such share (plus all accrued and unpaid dividends thereon and any required premium with respect thereto) is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

(2) Dividend Provisions. The holders of shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the board of directors, out of any funds legally available for that purpose, cumulative preferential dividends in cash at the rate of 4% a year on the Face Amount (as defined in Section A(3)(a) of this Article V below), and no more, payable quarterly on the first day of each July, October, January and April in each year (each such date being called a "***Dividend Payment Date***"), beginning with the first such date following the issuance of the shares. Dividends on the Series A Preferred Stock shall be cumulative from the date of issue (whether or not declared and whether or not in any dividend period or dividend periods there shall be net profits or net assets of the Corporation legally available for the payment of those

dividends) from the date of issue. Accumulated and unpaid dividends on the Series A Preferred Stock shall not bear interest.

(3) Liquidation Preference.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, the holders of shares of Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation, for each such share of Series A Preferred Stock, cash in an amount (the "***Face Amount***") equal to the sum of $4.00 plus an amount equal to all accumulated and unpaid dividends per share (whether or not earned or declared) for all dividend periods (including a prorated quarterly dividend from the last preceding Dividend Payment Date to the date of final distribution on those shares of Series A Preferred Stock) before any payment or distribution shall be made on the preferred stock, the common stock or any other class or series of stock ranking junior to the Series A Preferred Stock upon liquidation.

(b) If the Corporation's assets available for distribution to the holders of shares of Series A Preferred Stock upon any dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which holders of Series A Preferred Stock are entitled pursuant to this Section A(3) of Article V, no such distribution shall be made on account of any shares of any other class of stock or series of preferred stock ranking on a parity with the shares of Series A Preferred Stock unless the distribution is made pro rata, so that the ratio of the amount distributed per share on the Series A Preferred Stock to the amount distributed per share on such other class or series shall be the same as the ratio of the amount of the liquidation preference per share of the Series A Preferred Stock to the amount of the liquidation preference per share of such other class or series.

(c) After the payment in cash to the holders of shares of Series A Preferred Stock of the full preferential amounts set forth above, the holders of shares of Series A Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

(4) Redemption.

(a) Mandatory Redemption. The Corporation shall redeem all of the Series A Preferred Stock (or such lesser number then outstanding) on December 31, 2010 (the "***Mandatory Redemption Date***"), at a price per share equal to the Face Amount thereof (plus all accrued and unpaid dividends thereon). "***Purchase Price***" shall mean the purchase price described in this Section A(4)(a) of Article V for redemptions pursuant to this Section and the purchase price described in Section A(4)(i) of this Article V for redemptions pursuant to such Section.

(b) Redemption Payments. Except as otherwise provided in Section A(4)(i) of this Article V, for each share which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such share) an amount in cash equal to the Purchase Price of such share (plus all accrued and unpaid dividends thereon). If the funds of the Corporation legally available for redemption of shares on any Redemption Date are insufficient to redeem the total number of shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares pro rata among the holders of the shares to be redeemed based upon the aggregate Purchase Price of such shares held by each such holder (plus all

accrued and unpaid dividends thereon). At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares, such funds shall immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(c) Notice of Redemption. Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of any Series A Preferred Stock to each record holder thereof not more than 60 nor less than 30 days prior to the date on which such redemption is to be made. Upon mailing any notice of redemption which relates to a redemption at the Corporation's option, the Corporation shall become obligated to redeem the total number of shares specified in such notice at the time of redemption specified therein. In case fewer than the total number of shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within five business days after surrender of the certificate representing the redeemed shares.

(d) Determination of the Number of Each Holder's Shares to be Redeemed. The number of shares of Series A Preferred Stock to be redeemed from each holder thereof in redemptions hereunder shall be the number of shares determined by multiplying the total number of shares to be redeemed times a fraction, the numerator of which shall be the total number of shares then held by such holder and the denominator of which shall be the total number of shares then outstanding.

(e) Dividends After Redemption Date. No share shall be entitled to any dividends accruing after the date on which the Purchase Price of such share (plus all accrued and unpaid dividends thereon) is paid to the holder of such share. On such date, all rights of the holder of such share shall cease, and such share shall no longer be deemed to be issued and outstanding.

(f) Redeemed or Otherwise Acquired Shares. Any shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(g) Other Redemptions or Acquisitions. The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any shares of Series A Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro rata to all holders of Series A Preferred Stock on the basis of the number of shares owned by each such holder.

(h) Payment of Accrued Dividends. The Corporation may not redeem any Series A Preferred Stock, unless all dividends accrued on the outstanding Series A Preferred Stock through the immediately preceding Dividend Payment Date have been declared and paid in full.

(i) Change of Control Redemptions.

(i) If a Change of Control has occurred or the Corporation obtains knowledge that a Change of Control is proposed to occur, the Corporation shall give prompt written notice of such Change of Control describing in reasonable detail the material terms and date of consummation thereof to each holder of Series A Preferred Stock, but in any event such notice shall not be given later than five days after the occurrence of such Change of Control, and the Corporation shall give each holder of Series A Preferred Stock prompt written notice of any material

change in the terms or timing of such transaction. Any holder of Series A Preferred Stock may require the Corporation to redeem all or any portion of the Series A Preferred Stock owned by such holder or holders at a price per share equal to the Face Amount thereof (plus all accrued and unpaid dividends thereon) by giving written notice to the Corporation of such election prior to the later of (A) 21 days after receipt of the Corporation's notice and (B) five days prior to the consummation of the Change of Control (the "***Expiration Date***"). The Corporation shall give prompt written notice of any such election to all other holders of Series A Preferred Stock within five days after the receipt thereof, and each such holder shall have until the later of (X) the Expiration Date or (Y) ten days after receipt of such second notice to request redemption hereunder (by giving written notice to the Corporation) of all or any portion of the Series A Preferred Stock owned by such holder.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of shares specified therein on the later of (A) the occurrence of the Change of Control or (B) five days after the Corporation's receipt of such election(s). If any proposed Change of Control does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Series A Preferred Stock may rescind such holder's request for redemption by giving written notice of such rescission to the Corporation.

(ii) Redemptions made pursuant to this Section A(4)(i) of Article V shall not relieve the Corporation of its obligation to redeem Series A Preferred Stock on the Mandatory Redemption Date pursuant to Section A(4)(a) of this Article V above.

(5) Voting Rights. Holders of shares of Series A Preferred Stock shall not be entitled to vote on any matter, except as otherwise required by law or as expressly provided in this resolution. With respect to any matter on which the holders of shares of Series A Preferred Stock shall be entitled to vote, holders of shares of Series A Preferred Stock shall be entitled to one vote for each share held.

(6) Protective Provisions. As long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, nor shall it permit any Subsidiary to, directly or indirectly, by amendment to the Certificate of Incorporation, by resolution of the board of directors, by consolidation of the Corporation with, or merger of the Corporation into, another corporation, or in any other manner, without the consent of the holders of two-thirds of the then-outstanding shares of Series A Preferred Stock, either given by vote in person or by proxy at a meeting called for that purpose or given in writing:

(a) authorize, or increase the authorized amount of, any class or series of stock having preference or priority over the Series A Preferred Stock as to dividends or the distribution of assets upon liquidation;

(b) alter any provision of the Series A Preferred Stock; or

(c) increase the authorized number of shares of Series A Preferred Stock or authorize, or increase the authorized amount of, any class or series of stock ranking as to dividends or the distribution of assets upon liquidation on a parity with the Series A Preferred Stock; or

(d) redeem, purchase or otherwise acquire directly or indirectly any class or series of stock ranking as to dividends or the distribution of assets upon liquidation junior to shares of Series A Preferred Stock, nor shall the Corporation

directly or indirectly pay or declare any dividend or make any distribution upon any shares of such class or series.

Notwithstanding anything to the contrary contained in this Section A(6) of Article V, the board of directors from time to time, without a vote of the holders of shares of Series A of Preferred Stock, may decrease the number of shares constituting the Series A Preferred Stock, but not below such number of shares of Series A Preferred Stock as are actually outstanding at any such time.

(7) Priority of Stock. For purposes of this Section A of Article V, any stock of any class or series of the Corporation shall be deemed to rank:

(a) prior to shares of Series A Preferred Stock, either as to dividends or upon liquidation, if the holders of that stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding-up of the Corporation, as the case may be, in preference or priority to the holders of shares of Series A Preferred Stock;

(b) on a parity with shares of Series A Preferred Stock, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates, redemption or liquidation prices per share or sinking fund provisions, if any, are different from those of the Series A Preferred Stock, if the holders of that stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding-up of the Corporation, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority, one over the other, as between the holders of that stock and the holders of shares of Series A Preferred Stock; and

(c) junior to shares of Series A Preferred Stock, either as to dividends or upon liquidation, if the holders of shares of Series A Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding-up of the Corporation, as the case may be, in preference or priority to the holders of shares of that stock.

(8) Events of Noncompliance.

(a) An "***Event of Noncompliance***" shall have occurred if:

(i) the Corporation fails to make any redemption payment with respect to the Series A Preferred Stock which it is required to make hereunder, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject;

(ii) if the Corporation breaches any representation, warranty or covenant contained in the Restructuring Agreement dated as of January 20, 2003 by and among, the Corporation, the initial holders of Series A Preferred Stock and the other parties thereto or in any writing furnished by the Corporation to any holder of Series A Preferred Stock pursuant to the Restructuring Agreement;

(iii) the Corporation or any Subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any

Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any Subsidiary, or of any substantial part of the assets of the Corporation or any Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of any Subsidiary) relating to the Corporation or any Subsidiary under any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any Subsidiary and either (A) the Corporation or any such Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (B) such petition, application or proceeding is not dismissed within 60 days;

(iv) a judgment in excess of $1.0 million is rendered against the Corporation or any Subsidiary and, within 60 days after entry thereof, such judgment is not discharged in full or execution thereof stayed pending appeal, or within 60 days after the expiration of any such stay, such judgment is not discharged in full;

(v) the Corporation or any Subsidiary defaults in the performance of any obligation if the effect of such default is to cause an amount exceeding $1.0 million to become due prior to its stated maturity or to permit the holder or holders of such obligation to cause an amount exceeding $1.0 million to become due prior to its stated maturity; or

(vi) the Corporation or its successors fails to redeem all outstanding shares of Series A Preferred Stock (and/or fails to pay in full all accumulated but unpaid dividends on any and all outstanding shares of Series A Preferred Stock), whether or not such redemption or payment is legally permissible or is prohibited by any agreement to which the Corporation is subject, within 5 business days following a Change of Control or on the Mandatory Redemption Date.

(b) Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance has occurred and continues for a period of 30 days or any other Event of Noncompliance has occurred and is continuing, the dividend rate on the Series A Preferred Stock shall increase immediately by an increment of 1 percentage point. Thereafter, until such time as no Event of Noncompliance exists, the dividend rate shall increase automatically at the end of each succeeding 90-day period by an additional increment of 1 percentage point(s) (but in no event shall the dividend rate exceed 10%). Any increase of the dividend rate resulting from the operation of this subparagraph shall terminate as of the close of business on the date on which no Event of Noncompliance exists, subject to subsequent increases pursuant to this paragraph.

(ii) If an Event of Noncompliance has occurred and is continuing (other than an Event of Noncompliance pursuant to Section 6(a)(iii) above), the holder or holders of a majority of the Series A Preferred Stock then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all or any portion of the Series A Preferred Stock owned by such holder or holders at a price per share equal to the Face Amount thereof (plus all accrued and unpaid dividends thereon). The Corporation shall give prompt written notice of such election

to the other holders of Series A Preferred Stock (but in any event within five days after receipt of the initial demand for redemption), and each such other holder may demand immediate redemption of all or any portion of such holder's Series A Preferred Stock by giving written notice thereof to the Corporation within 7 days after receipt of the Corporation's notice. The Corporation shall redeem all Series A Preferred Stock as to which rights under this paragraph have been exercised within 15 days after receipt of the initial demand for redemption.

(iii) If an Event of Noncompliance of the type described in Section 6(a)(iii) above has occurred, all of the Series A Preferred Stock then outstanding shall be subject to immediate redemption by the Corporation (without any action on the part of the holders of the Series A Preferred Stock) at a price per share equal to the Face Amount thereof (plus all accrued and unpaid dividends thereon). The Corporation shall immediately redeem all Series A Preferred Stock upon the occurrence of such Event of Noncompliance.

(iv) If any Event of Noncompliance has occurred and is continuing, the number of directors constituting the Corporation's board of directors shall, at the request of the holders of a majority of the Series A Preferred Stock then outstanding, be increased by such number which shall constitute a minimum majority of the Board of Directors, and the holders of Series A Preferred Stock shall have the special right, voting separately as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Corporation's stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the holders of Series A Preferred Stock to elect members of the Board of Directors may be exercised at the special meeting called pursuant to this Section 6(b)(iv), at any annual or other special meeting of stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a stockholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Series A Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holder of at least 10% of the Series A Preferred Stock then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Series A Preferred Stock for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least 10% of the Series A Preferred Stock then outstanding. If such meeting has not been called by a proper officer of the Corporation within 10 days after personal service of such written request upon the secretary of the Corporation or within 20 days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least 10% of the Series A Preferred Stock then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of stockholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of at least 10% of the Series A Preferred Stock then outstanding. Any holder of Series A Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to this subparagraph.

At any meeting or at any adjournment thereof at which the holders of Series A Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Series A Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Series A Preferred Stock exercising such special right. The vote of a majority of such quorum shall be required to elect or remove any such director.

Any director so elected by the holders of Series A Preferred Stock shall continue to serve as a director until the expiration of the lesser of (A) a period of six months following the date on which there is no longer any Event of Noncompliance in existence or (B) the remaining period of the full term for which such director has been elected. After the expiration of such six-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the board of directors of the Corporation shall decrease to such number as constituted the whole board of directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

(v) If any Event of Noncompliance exists, each holder of Series A Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

(9) Miscellaneous.

(a) Sinking Fund. The shares of Series A Preferred Stock shall not be entitled to the benefit of any sinking fund.

(b) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series A Preferred Stock. Upon the surrender of any certificate representing Series A Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series A Preferred Stock represented by the surrendered certificate.

(c) Replacement of Certificates. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

(d) Notices. Except as otherwise expressly provided hereunder, all notices referred to this Section A of Article V shall be in writing and shall be

delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder.

B.

The rights, preferences, privileges, and restrictions granted to and imposed on the Series B Preferred Stock are as set forth below in this Section B of Article V.

(1) Certain Definitions. For purposes of this Section B of Article V, the following terms shall have the following meanings:

(a) "***junior stock***" (i) as used in Section B(3) of this Article V, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series B Preferred Stock has preference or priority as to dividends and (ii) as used in Section B(4) of this Article V, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series B Preferred Stock has preference or priority in any liquidation, dissolution or winding up of the Corporation.

(b) "***parity stock***" (i) as used in Section B(3) of this Article V, shall mean any class or series of capital stock of the Corporation hereafter authorized or issued ranking pari passu with the Series B Preferred Stock as to dividends and (ii) as used in Section B(4) of this Article V, shall mean any class or series of capital stock of the Corporation ranking pari passu with the Series B Preferred Stock in any liquidation, dissolution or winding up.

(2) Dividend Provisions.

(a) Subject to the prior and superior rights of the holders of any shares of any other series of Preferred Stock or any other shares of stock of the Corporation ranking prior and superior to the shares of Series B Preferred Stock with respect to dividends, each holder of one one-hundredth (1/100) of a share (a "***Unit***") of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for that purpose, (i) quarterly dividends payable in cash on the last day of February, May, August and November in each year (each such date being a "***Quarterly Dividend Payment Date***"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a Unit of Series B Preferred Stock, in an amount per Unit (rounded to the nearest cent) equal to the greater of (A) $0.01 or (B) subject to the provision for adjustment hereinafter set forth, the aggregate per share amount of all cash dividends declared on shares of the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series B Preferred Stock, and (ii) subject to the provision for adjustment hereinafter set forth, quarterly distributions (payable in kind) on each Quarterly Dividend Payment Date in an amount per Unit equal to the aggregate per share amount of all non-cash dividends or other distributions (other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise) declared on shares of Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series B Preferred Stock. In the event that the Corporation shall at any time after May 11, 2009 (the "***Rights Declaration Date***")

(x) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (y) subdivide outstanding shares of Common Stock or (z) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the amount to which the holder of a Unit of Series B Preferred Stock was entitled immediately prior to such event under clause (i)(B) or clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on Units of Series B Preferred Stock as provided in Section B(2)(a) of this Article V above immediately after it declares a dividend or distribution on the shares of Common Stock (other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise).

(c) Dividends shall begin to accrue and shall be cumulative on each outstanding Unit of Series B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of a Unit of Series B Preferred Stock, unless the date of issuance of such Unit is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such Unit shall begin to accrue from the date of issuance of such Unit, or unless the date of issuance is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of Units of Series B Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on Units of Series B Preferred Stock in an amount less than the aggregate amount of all such dividends at the time accrued and payable on such Units shall be allocated pro rata on a Unit-by-Unit basis among all Units of Series B Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of Units of Series B Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

(3) Certain Restrictions.

(a) Whenever quarterly dividends or other dividends or distributions payable on Units of Series B Preferred Stock as provided herein are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on outstanding Units of Series B Preferred Stock shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, or make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of junior stock;

(ii) declare or pay dividends on, or make any other distributions on, any shares of parity stock, except dividends paid ratably on Units of Series B Preferred Stock and shares of all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of such Units and all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any parity stock, provided, however, that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any junior stock; or

(iv) redeem or purchase or otherwise acquire for consideration any Units of Series B Preferred Stock, or any shares of parity stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such Units and shares of parity stock upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series and classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation, unless the Corporation could, under Section B(3)(a) of this Article V, purchase or otherwise acquire such shares at such time and in such manner.

(4) Liquidation Preference.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of junior stock, unless the holders of Units of Series B Preferred Stock shall have received, subject to adjustment as hereinafter provided in Section B(3)(b) of this Article V, the greater of either (A) $1.00 per Unit plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not earned or declared, to the date of such payment, or (B) the amount equal to the aggregate per share amount to be distributed to holders of shares of Common Stock, or (ii) to the holders of shares of parity stock, unless simultaneously therewith distributions are made ratably on Units of Series B Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of Units of Series B Preferred Stock are entitled under clause (i)(A) of this sentence and to which the holders of shares of such parity stock are entitled, in each case upon such liquidation, dissolution or winding up.

(b) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of Units of Series B Preferred Stock were entitled immediately prior to such event pursuant to clause (i)(B) of Section B(3)(a) of this Article V shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(5) Redemption. The Units of Series B Preferred Stock and shares of Series B Preferred Stock shall not be redeemable.

(6) Voting Rights. The holders of Units of Series B Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each Unit of Series B Preferred Stock shall entitle the holder thereof to one vote on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall, at any time after the Rights Declaration Date, (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, then in each such case the number of votes per Unit to which holders of Units of Series B Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein, in the Certificate of Incorporation or the Bylaws of the Corporation or as required by law, the holders of Units of Series B Preferred Stock and the holders of shares of Common Stock and any other stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(7) Reacquired Shares. Any Units of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such Units shall, upon their cancellation, become authorized but unissued shares (or fractions of shares) of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

(8) Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, then in any such case Units of Series B Preferred Stock shall at the same time be similarly exchanged for or converted into an amount per Unit (subject to the provision for adjustment hereinafter set forth) equal to the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the immediately preceding sentence with respect to the exchange or conversion of Units of Series B Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(9) Priority of Stock. The Units of Series B Preferred Stock and shares of Series B Preferred Stock shall rank junior to all other series of the Preferred Stock and to any other class of Preferred Stock that hereafter may be issued by the Corporation as to the payment of dividends and the distribution of assets, unless the terms of any such series or class shall provide otherwise.

(10) Fractional Shares. The Series B Preferred Stock may be issued in Units or other fractions of a share, which Units or other fractions shall entitle the holder, in proportion to such holder's Units or other fractional shares, to exercise voting rights,

receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series B Preferred Stock.

(11) Amendment. At any time when any Units of Series B Preferred Stock are outstanding, the certificate of incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Units of Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Units of Series B Preferred Stock, voting separately as a class.

ARTICLE VI

Action required or permitted to be taken at a meeting of the stockholders of the Corporation may not be taken by consent or consents in writing in lieu of meeting. The stockholders of the Corporation owning 80% of the outstanding shares of Common Stock may, by a vote of stockholders present, in person or by proxy, at a meeting in which a quorum is present, amend or repeal this Article VI. The stockholders of the Corporation may not otherwise amend or repeal this Article VI.

ARTICLE VII

A.

The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors (which shall not be fewer than three, unless otherwise determined by the Board of Directors) constituting the whole board permits, with the term of office of one class expiring each year. At the next election of directors, the director of the first class shall be selected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Subject to the foregoing, at each annual meeting of stockholders, the successors to the class of directors whose term shall then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting and each director so elected shall hold office until his successor is elected and qualified, or until his earlier resignation or removal. If the number of directors is changed, any increase or decrease in the number of directors shall be apportioned among the three classes to make all classes as nearly equal in number as possible, and the Board of Directors shall decide which class shall contain an unequal number of directors.

B.

General. Nominations of persons for election to the Board of Directors may be made at an annual meeting of stockholders or special meeting of stockholders called by the Board of Directors for the purpose of electing directors. Nominations may be made only (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation entitled to vote for the election of directors at such meeting who complies with the notice procedures set forth in this Section B of Article VII. Such nominations, other than those made by or at direction of the Board of Directors, shall be made pursuant to timely notice in writing to the secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not fewer than 50 days or more than 80 days prior to the scheduled date of the stockholders' meeting, regardless of any postponement, deferral or adjournment of that meeting to a later date; provided, however, that, if fewer than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so delivered or mailed and received not later than the close of business on the tenth day following the earlier of (x) the day on which such notice of the date of the meeting was mailed or (y) the day on which such public disclosure was made.

Notice. A stockholder's notice to the secretary shall set forth: (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name,

age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the Corporation beneficially owned by such person on the date of such stockholder's notice and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities & Exchange Act of 1934 or any successor statute (the "***Exchange Act***"), including, without limitation, such person's written consent to be in a named in the proxy statement as a nominee and to serving as a director if elected; (b) as to the stockholder given notice, (i) the name and address, as such information appears on the Corporation's books, of such stockholder and any other stockholders known by such stockholder to be supporting such nominee(s), (ii) the class and number of shares of the Corporation beneficially owned by such stockholder and each other Stockholder known by such stockholder to be supporting such nominee(s) on the date of such stockholder notice and (iii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; and (c) a description of all arrangements or understandings between the stockholder and each nominee and other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder.

Determinations. No person shall be eligible for election as a director of the Corporation, unless nominated in accordance with the procedures set forth in this Section B. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by this Section B, and, if the chairman of the meeting should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

C.

The stockholders of the Corporation owning 80% of the outstanding shares of Common Stock may, by a vote of stockholders present, in person or by proxy, at a meeting in which a quorum is present, amend or repeal this Article VII. The stockholders of the Corporation may not otherwise amend or repeal this Article VII.

ARTICLE VIII

A.

No director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty by such director as a director, provided that this Article VIII shall not eliminate or limit the liability or a director (1) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions of such director not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the Delaware General Corporation Law, or (4) for any transaction from which such director derived an improper personal benefit, in respect of which such breach of fiduciary duty occurred. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

B.

Right of Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, (a) is or was a director or officer of the Corporation or (b) is or was serving at the request of the Corporation a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee

or agent), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section B(2) of this Article VIII, the Corporation shall indemnify any such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article VIII shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Delaware General Corporation law requires, the payment of such expenses incurred by a director or officer in his or her capacity as such (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service with respect to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article VIII or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

Right of Claimant to Bring Suit. If a claim under Section B(1) of this Article VIII is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also ·the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, its independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Expenses as a Witness. To the extent any director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the

Corporation, a witness in any action, suit or proceeding, he shall be indemnified against all costs and expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Indemnity Agreements. The Corporation may enter into an agreement with any director, officer, employee or agent of the Corporation providing for indemnification to the fullest extent permitted by the Delaware General Corporation Law.

ARTICLE IX

A.

As used in this Article IX, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treasury Regulation § 1.382-2T shall include any successor provisions):

"***5-percent Transaction***" means any Transfer described in clause (a) or (b) of Section 9.2.

"***5-percent Stockholder***" means a Person or group of Persons that would be treated as a "5-percent shareholder" of the Corporation pursuant to Treasury Regulation § 1.382-2T(g).

"***Agent***" has the meaning set forth in Section 9.5.

"***Board of Directors***" or "***Board***" means the board of directors of the Corporation.

"***Code***" means the United States Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations promulgated thereunder.

*"**Corporation Security**"* or "***Corporation Securities***" means (i) shares of common stock of the Corporation, (ii) shares of preferred stock of the Corporation (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (including options within the meaning of Treasury Regulation § 1.382-2T(h)(4)(v)) to purchase securities of the Corporation, and (iv) any interest that would be treated as "stock" of the Corporation pursuant to Treasury Regulation § 1.382-2T(f)(18).

"***Effective Date***" means the date of filing of this Restated Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware.

"***Excess Securities***" has the meaning given such term in Section 9.4.

"***Expiration Date***" means the earlier of (i) the repeal of Section 382 of the Code or any successor statute if the Board of Directors determines that this Paragraph NINTH is no longer necessary for the preservation of Tax Benefits or (ii) such date as the Board of Directors shall fix in accordance with Section 9.11 of this Paragraph NINTH.

"***Percentage Stock Ownership***" means the percentage stock ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with the Treasury Regulation § 1.382-2T(g), (h), (j) and (k) or any successor provision.

"***Person***" means any individual, firm, corporation or other legal entity, and includes any successor (by merger or otherwise) of such entity; provided, however, that a Person shall not mean a Public Group.

"***Prohibited Distributions***" means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.

"***Prohibited Transfer***" means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Paragraph NINTH.

"***Public Group***" has the meaning set forth in Treasury Regulation § 1.382-2T(f)(13).

"***Purported Transferee***" has the meaning set forth in Section 9.4.

"***Tax Benefits***" means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or deduction attributable to a "net unrealized built-in loss" of the Corporation or any direct or indirect subsidiary thereof, within the meaning of Section 382 of the Code.

"***Transfer***" means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition or other action taken by a person, other than the Corporation, that alters the Percentage Stock Ownership of any Person or Public Group. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation § 1.382-2T(h)(4)(v)). For the avoidance of doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Corporation Securities by the Corporation.

"***Transferee***" means any Person to whom Corporation Securities are Transferred.

"***Treasury Regulations***" means the regulations, including temporary regulations or any successor regulations promulgated under the Code, as amended from time to time.

9.2 TRANSFER AND OWNERSHIP RESTRICTIONS. In order to preserve the Tax Benefits, from and after the Effective Date of this Paragraph NINTH any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date, shall be prohibited and void *ab initio* to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (1) any Person or group of Persons would become a 5-percent Stockholder or (2) the Percentage Stock Ownership in the Corporation of any 5-percent Stockholder would be increased; provided, however, that any 5-percent Stockholder actually known to the Corporation as of April 30, 2009 may increase its Percentage Stock Ownership by up to five (5) percentage points.

9.3 EXCEPTIONS. The restrictions set forth in Section 9.2 shall not apply to an attempted Transfer that is a 5-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Directors or a duly authorized committee thereof. As a condition to granting its approval pursuant to this Section 9.3, the Board of Directors, may, in its discretion, require (at the expense of the transferor and/or transferee) an opinion of counsel selected by the Board of Directors that the Transfer shall not result in the application of any Section 382 of the Code limitation on the use of the Tax Benefits; provided that the Board may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. The Board of Directors may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Transferee to Transfer Corporation Securities acquired through a Transfer. Approvals of the Board of Directors hereunder may be given prospectively or retroactively. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this Paragraph NINTH through duly authorized officers or agents of the Corporation. Nothing in this Section 9.3 shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

9.4 EXCESS SECURITIES.

(a) No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the "***Purported Transferee***") shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of (i) the Corporation Securities which are the subject of the Prohibited Transfer and (ii) in the case of a Prohibited Transfer of Corporation Securities that are not Common Stock to a holder of Common Stock, the shares of Common Stock of such Purported Transferee (the "***Excess Securities***"). Until and unless the Excess Securities are acquired by another person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section 9.5 or until an approval is obtained under Section 9.3(b). After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of this Section 9.4 or Section 9.5 shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to all the direct or indirect ownership interests in such Corporation Securities. The Corporation may make such

arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this Paragraph NINTH, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of stock and other evidence that a Transfer will not be prohibited by this Paragraph NINTH as a condition to registering any transfer.

9.5 TRANSFER TO AGENT. If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer then, upon written demand by the Corporation sent within thirty days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the *"**Agent**"*). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); provided, however, that any such sale must not constitute a Prohibited Transfer and provided, further, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 9.6 if the Agent rather than the Purported Transferee had resold the Excess Securities.

9.6 APPLICATION OF PROCEEDS AND PROHIBITED DISTRIBUTIONS. The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows: (a) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (b) second, any remaining amounts shall be paid to the Purported Transferee, in an amount equal to the lesser of the proceeds of a sale of Excess Securities or the amount paid by the Purported Transferee for the Excess Securities which amount shall be determined at the sole discretion of the Board of Directors; and (c) third, any remaining amounts shall be paid to one or more organizations qualifying under section 501(c)(3) of the Code (or any comparable successor provision) selected by the Board of Directors. The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any transferor of Excess Securities. The Purported Transferee's sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Section 9.6. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 9.6 inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by Agent in performing its duties hereunder.

9.7 LEGAL PROCEEDINGS; PROMPT ENFORCEMENT. If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within thirty days from the date on which the Corporation makes a written demand pursuant to Section 9.5 (whether or not made within the time specified in Section 9.5), then the Corporation shall promptly take all cost effective actions which it believes are appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Section 9.7 shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this Paragraph NINTH being void *ab initio*; (b) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand; or (c) cause any failure of the Corporation to act within the time periods set forth in Section 9.5 to constitute a waiver or loss of any right of the Corporation under this Paragraph NINTH. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Paragraph NINTH.

9.8 LIABILITY. To the fullest extent permitted by law, any stockholder subject to the provisions of this Paragraph NINTH who knowingly violates the provisions of this Paragraph NINTH and any Persons

controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

9.9 OBLIGATION TO PROVIDE INFORMATION. As a condition to the registration of the Transfer of any Stock, any Person who is a beneficial, legal or record holder of Corporation Securities, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this Paragraph NINTH or the status of the Tax Benefits of the Corporation.

9.10 LEGENDS. The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of Corporation Securities that are subject to the restrictions on transfer and ownership contained in this Paragraph NINTH bear the following legend:

> "THE RESTATED CERTIFICATE OF INCORPORATION, AS AMENDED (THE "CERTIFICATE OF INCORPORATION"), OF THE CORPORATION CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF CORPORATION SECURITIES OF THE CORPORATION (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE CORPORATION (THE "BOARD OF DIRECTORS") IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF CORPORATION SECURITIES OF THE CORPORATION (WITHIN THE MEANING OF SECTION 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER), THAT IS TREATED AS OWNED BY A FIVE PERCENT SHAREHOLDER UNDER THE CODE AND SUCH REGULATIONS. IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID *AB INITIO* AND THE PURPORTED TRANSFEREE OF THE CORPORATION SECURITIES WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE CORPORATION'S AGENT. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION, CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS. ANY HOLDER WHO KNOWINGLY VIOLATES THE TRANSFER RESTRICTIONS AND ANY PERSONS CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH SUCH HOLDER SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE CORPORATION FOR, AND SHALL INDEMNIFY AND HOLD THE CORPORATION HARMLESS AGAINST, ANY AND ALL DAMAGES SUFFERED AS A RESULT OF SUCH VIOLATION, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM A REDUCTION IN, OR ELIMINATION OF, THE CORPORATION'S ABILITY TO UTILIZE ITS TAX BENEFITS (AS DEFINED IN THE CERTIFICATE OF INCORPORATION)."

The Board of Directors may also require that any certificates issued by the Corporation evidencing ownership of Corporation Securities that are subject to conditions imposed by the Board of Directors under Section 9.3 of this Paragraph NINTH also bear a conspicuous legend referencing the applicable restrictions.

9.11 AUTHORITY OF BOARD OF DIRECTORS.

(a) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this Paragraph NINTH, including, without limitation, (i) the identification of 5-percent Stockholders; (ii) whether a Transfer is a 5-percent Transaction or a Prohibited Transfer; (iii) the Percentage Stock Ownership in the Corporation of any 5-percent Stockholder; (iv) whether an instrument constitutes a Corporation Security; (v) the fair market value of the Corporation Securities acquired by and the amount due to a Purported Transferee pursuant to Section 9.6; and (vi) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this Paragraph NINTH. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or

rescind by-laws, regulations and procedures of the Corporation not inconsistent with the provisions of this Paragraph NINTH for purposes of determining whether any Transfer of Corporation Securities would jeopardize the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this Paragraph NINTH. In the case of an ambiguity in the application of any of the provisions of this Paragraph NINTH, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances.

9.12 RELIANCE. To the fullest extent permitted by law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the Corporation or of the Corporation's legal counsel, independent auditors, transfer agent, or other employees and agents in making the determinations and findings contemplated by this Paragraph NINTH, and the members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of Corporation Securities owned by, any stockholder, the Corporation and the members of the Board of Directors will be entitled to rely on record stockholder lists and non-objecting beneficial ownership lists as of any date, subject to our actual knowledge of the ownership of our Corporation Securities.

9.13 BENEFITS OF THIS PARAGRAPH NINTH. Nothing in this Paragraph NINTH shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Paragraph NINTH. This Paragraph NINTH shall be for the sole and exclusive benefit of the Corporation and the Agent.

9.14 SEVERABILITY. The purpose of this Paragraph NINTH is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Paragraph NINTH or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Paragraph NINTH.

9.15 WAIVER. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Paragraph NINTH, (1) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (2) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

ARTICLE X

The directors of the Corporation may, by a vote of a majority of directors present at a meeting in which a quorum is present, adopt, amend or repeal any Bylaw. The stockholders of the Corporation owning 80% of the outstanding shares of Common Stock may, by a vote of stockholders present, in person or by proxy, at a meeting in which a quorum is present, adopt, amend or repeal any Bylaw. The stockholders of the Corporation may not otherwise adopt, amend or repeal any Bylaw.

This Restated Certificate of Incorporation shall be effective on and as of the date of filing this Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware.

* * *

THIRD AMENDMENT TO FINANCING AGREEMENT AND FIRST AMENDMENT TO SECURITY AGREEMENT

THIS THIRD AMENDMENT TO FINANCING AGREEMENT AND FIRST AMENDMENT TO SECURITY AGREEMENT (this "Agreement"), dated as of July 20, 2009, by and among **KES ACQUISITION COMPANY**, a Delaware corporation (the "Borrower"), each subsidiary of the Borrower listed as a "Guarantor" on the signature pages hereto (each a "Guarantor" and collectively, jointly and severally, the "Guarantors"), the lenders party hereto (each a "Lender" and collectively, the "Lenders"), **ABLECO FINANCE LLC**, a Delaware limited liability company ("Ableco"), as collateral agent for the Lenders (in such capacity, together with any successor collateral agent, the "Collateral Agent"), and **PNC BANK, NATIONAL ASSOCIATION**, a national banking association ("PNC"), as administrative agent for the Lenders (in such capacity, together with any successor administrative agent, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

W I T N E S S E T H

WHEREAS, the Borrower, the Guarantors, the Lenders and the Agents are parties to that certain Financing Agreement, dated as of February 23, 2007 (as amended, restated, supplemented, or modified from time to time, the "Financing Agreement"; capitalized terms used herein without definition shall have the meanings ascribed thereto in the Financing Agreement);

WHEREAS, there is an issue as to whether the Borrower failed to (i) make the payment permitted to be made in respect of the Fiscal Year ended September 30, 2008 pursuant to Section 7.02(h)(D)(4) of the Financing Agreement (such permitted payment, the "2008 Permitted YAC Subordinated Payment") and (ii) pay the dividend that may have been permitted to be paid in respect of the Fiscal Year ended September 30, 2008 under the 13% KES Preferred Stock (the "2008 Preferred Dividend");

WHEREAS, the Borrower has informed the Agents that the Borrower erroneously included certain tracts of land identified as Tract II and Tract III (the "Tracts") in that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated February 26, 2007 (the "2007 Mortgage"), by and between the Borrower, as Mortgagor, and the Collateral Agent, as Mortgagee and recorded in Mortgage Book 1048 on Page 361 in the Office of Boyd County court Clerk of Kentucky and that the 2007 Mortgage is to be revised to exclude and release the Tracts therefrom (the "Permitted Mortgage Correction");

WHEREAS, as of June 30, 2009, the Borrower was not in compliance with the financial covenants set forth in Sections 7.03(a), 7.03(b) and 7.03(c) of the Financing Agreement for the fiscal quarter ending June 30, 2009 (the "Financial Covenant Default");

WHEREAS, the Borrower has requested that the Lender Group agree to amend certain terms of the Financing Agreement, as more fully set forth herein;

WHEREAS, the Lender Group has agreed to make such amendments to the Financing Agreement, on and subject to the terms and conditions hereof.

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

Section 1. Amendments to Financing Agreement and Security Agreement. Subject to the satisfaction of the conditions precedent specified in Section 3 below, but effective as of the date hereof, the Financing Agreement and the Security Agreement shall be amended as follows:

1.01. Certain Defined Terms. Section 1.01 of the Financing Agreement is hereby amended and modified by:

(i) deleting the definitions of "Permitted YAC Subordinated Amount", "Permitted YAC Subordinated Payments", "Subordinated Notes," "YAC Subordinated Note Purchase Agreement", "YAC Subordinated Secured Notes" and "YAC Subordinated Documents";

(ii) amending the definition of "Applicable LIBOR Rate Margin" by replacing the table contained therein with the following table:

Level	Leverage Ratio	Applicable LIBOR Rate Margin
I	If the Leverage Ratio is greater than or equal to 2.50 to 1.00 or	6.00 percentage points
II	If the Leverage Ratio is less than 2.50 to 1.00 and greater than or equal to 2.00 to 1.00	5.50 percentage points
III	If the Leverage Ratio is less than 2.00 to 1.00	5.00 percentage points

(iii) amending the definition of "Applicable Reference Rate Margin" by replacing the table contained therein with the following table:

Level	Leverage Ratio	Applicable Reference Rate Margin
I	If the Leverage Ratio is greater than or equal to 2.50 to 1.00 or	5.00 percentage points
II	If the Leverage Ratio is less than 2.50 to 1.00 and greater than or equal to 2.00 to 1.00	4.50 percentage points
III	If the Leverage Ratio is less than 2.00 to 1.00	4.00 percentage points

(iv) amending the definition of "Borrowing Base" by inserting, immediately after the words "for which financial statements have been delivered" appearing in clause (a)(ii)(y)(I) thereof, the words "(or Borrower's Annualized TTM EBITDAM with respect to any date of determination for which the most recently delivered financial statements are dated as of June 30, 2009, July 31, 2009 or August 31, 2009)";

(v) amending the definition of "Collateral" by inserting immediately at the end of the definition the words "The Collateral shall not include any Capital Stock, property or assets of any Unrestricted Subsidiary."

(vi) amending the definition of "Consolidated EBITDAM" by inserting, immediately after the words "(including the Restructuring Transaction)" appearing in clause (E) thereof, the words "and fees and expenses related to the consummation of the transactions contemplated to be closed on the Third Amendment Effective Date (including all fees and expenses related to the transactions contemplated by the Subordinated Secured Financing Agreement any upfront fees payable under Section 3.04 of the Third Amendment)";

(vii) amending the definition of "Consolidated Funded Indebtedness" to read in full as follows:

> "Consolidated Funded Indebtedness" means, with respect to any Person at any date, all Indebtedness for borrowed money or letters of credit of such Person, determined on a consolidated basis in accordance with GAAP, which by its terms matures more than one year after the date of calculation, and any such Indebtedness maturing within one year from such date which is renewable or extendable at the option of such Person to a date more than one year from such date, including, in any event, but without duplication, with respect to the Borrower and its Subsidiaries, the Revolving Loans (regardless of the maturity date thereof), the Term Loans (regardless of the maturity date thereof), and the amount of their Capitalized Lease Obligations. The foregoing notwithstanding, Indebtedness evidenced by the Subordinated Secured Loans and any Subordinated Debt shall not be included in Consolidated Funded Indebtedness."

(viii) amending the definition of "Excess Cash Flow" by (w) amending clause (ii)(B) thereof to read in full follows: "(B) all principal payments made on other Indebtedness (other than the Revolving Loans, with the exception of any portion of Revolving Loans repaid with the proceeds of Excess Cash Flow pursuant to Section 2.05(c)(iv)) of such Person or any of its Subsidiaries during such period to the extent permitted to be paid under the terms of this Agreement and, if applicable, the Subordination Agreement"; (x) replacing the words "the YAC Subordinated Secured Notes" appearing in the parenthetical clauses contained in clause (ii)(D) thereof with the words "the Subordinated Secured Loans", (y) replacing the words "Permitted YAC Subordinated Payments" appearing in clause (ii)(I) thereof with the words "Permitted Subordinated Payments" and (z) inserting, immediately prior to the period at the end thereof, the words ", (J) to the extent actually paid during such period, the amount of any

upfront fees payable under Section 3.04 of the Third Amendment and (K) to the extent actually paid during such period, the amount of the investment banking fee permitted to be paid to the Libra Securities Division of Oak Ridge Financial Services Group pursuant to Section 6 of the Third Amendment";

(ix) amending the definition of "Final Maturity Date" by replacing "February 22, 2010" with "February 22, 2011";

(x) amending the definition of "Fixed Charge Coverage Ratio" by (x) replacing the parenthetical in clause (ii)(A) of the first sentence thereof with the following words: "(other than (x) the Revolving Loans, (y) any principal of the Term Loans prepaid pursuant to the provisions of Section 2.05(c)(iv), (v), (vi) or (vii) hereof, and (z) to the extent permitted by the terms of the Subordination Agreement, any mandatory principal payments paid in cash under the Subordinated Secured Financing Agreement)"; (y) replacing the words "(without regard to any interest expense in respect of the YAC Subordinated Secured Notes)" appearing in clause (ii)(B) of the first sentence thereof with the words "(including any interest expense in respect of the Subordinated Secured Loans to the extent permitted to be paid under the terms of the Subordination Agreement, and paid in cash)"; (z) inserting, immediately after the words "to the extent permitted to be paid on account of such period" appearing in clause (ii)(G) of the first sentence thereof, the words "and paid in cash during such period";

(xi) adding the following sentence to the end of the definition of GAAP: "Notwithstanding the foregoing and any provision in the Loan Documents that make reference to the calculation of financial covenants in accordance with GAAP, the Borrower may calculate such financial covenants excluding any item of financial performance relating to any Unrestricted Subsidiary."

(xii) amending the definition of "Guarantor" by inserting the following sentence at the end of such definition to read "Notwithstanding anything herein to the contrary, in no event shall an Unrestricted Subsidiary be deemed a Guarantor."

(xiii) amending the definition of "Material Contract" by replacing the words "the YAC Subordinated Documents" appearing in clause (iv) thereof with the words "the Subordinated Secured Loan Documents";

(xiv) amending clause (d) of the definition of "Permitted Dispositions" to read in full as follows: "(d)(i) dispositions of property (including but not limited to Cash or Cash Equivalents) to an Unrestricted Subsidiary in an aggregate amount, together with the aggregate amount of all investments (including but not limited to Permitted Investments) in such Unrestricted Subsidiary and the aggregate purchase price directly or indirectly paid by the Loan Parties (including but not limited to Permitted Acquisitions) in respect of all classes of Capital Stock of such Unrestricted Subsidiary, not to exceed $250,000

during the term of this Agreement for any such Unrestricted Subsidiary and pursuant to a transaction that does not otherwise violate the terms of this Agreement, (ii) the use, transfer or disposition of Cash or Cash Equivalents or Permitted Investments by the Borrower and its Subsidiaries in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, and (iii) the transfer or disposition of any Capital Stock, property or assets of any Unrestricted Subsidiary;"

(xv) amending the definition of "Permitted Indebtedness" by replacing the words "the YAC Subordinated Secured Notes and the other YAC Subordinated Documents" appearing in clause (h) thereof with the words "the Subordinated Secured Loans and the Subordinated Secured Loan Documents";

(xvi) amending the definition of "Permitted Investments" to insert immediately after clause (vi) "and (vii) Capital Stock of any Unrestricted Subsidiary provided that such investment does not involve the use, transfer or disposition (including but not limited to Permitted Dispositions) to such Unrestricted Subsidiary of property (including but not limited to Cash or Cash Equivalents) of the Loan Parties having an aggregate value, together with aggregate purchase price directly or indirectly paid by the Loan Parties (including but not limited to Permitted Acquisitions) in respect of all classes of Capital Stock of such Unrestricted Subsidiary, of more than $250,000 during the term of this Agreement or otherwise violate the terms of this Agreement."

(xvii) amending the definition of "Permitted Liens" by (x) inserting, immediately after the word "Obligations" appearing in clause (a) thereof but prior to the semicolon, the words "or created pursuant to the Subordinated Secured Loan Documents and subordinated pursuant to the Subordination Agreement", (y) inserting immediately after clause (l), "(m) Liens on the Capital Stock of an Unrestricted Subsidiary; and (n) Liens granted by the Borrower pursuant to the Environmental Covenant Agreement, dated June 11, 2008." and (z) deleting the word "and" immediately after the semicolon in clause (k);

(xviii) amending the definition of "Subordination Agreement" by replacing the words "the holders of the YAC Subordinated Secured Notes" appearing therein with the words "the lenders party to the Subordinated Secured Financing Agreement and Ableco, L.L.C., as collateral agent for such lenders";

(xix) amending the definition of "TTM EBITDAM" by adding after the number "12" appearing therein the words "(or, solely for purposes of determining compliance with the financial covenant set forth in Section 7.03(b) in respect of the fiscal quarter ending on June 30, 2009, nine)";

(xx) amending the definition of "Subsidiary" by adding immediately at the end of such definition, "Notwithstanding the foregoing, the term "Subsidiary" as used herein and in each other Loan Document, shall not include an Unrestricted Subsidiary, and references to a Subsidiary or Subsidiaries in any representations and warranties under Article VI, any covenants under Article VII (including the financial covenants in Section 7.03), in the Guaranty provided in Article XI, any Events of Default under Article VIII and any corresponding defined terms, shall not include any Unrestricted Subsidiary."; and

(xxi) amending the following definitions (to the extent already included in Section 1.01 of the Financing Agreement) to read in their entirety as follows and adding the following

definitions (to the extent not already included in Section 1.01 of the Financing Agreement) in the appropriate alphabetical locations:

"13% KES Preferred Stock" means the Preferred Stock Class A issued by Borrower on or about February 23, 2007.

"Annualized TTM EBITDAM" means, with respect to a Person, the Consolidated EBITDAM of such Person and its Subsidiaries for the period of (i) with respect to June 30, 2009, nine consecutive months most recently ended multiplied by 4/3, (ii) with respect to July 31, 2009, ten consecutive months most recently ended multiplied by 6/5 and (iii) with respect to August 31, 2009, eleven consecutive months most recently ended multiplied by 12/11.

"Borrowing Base Multiplier" means (a) during the period from the Effective Date through April 30, 2007, 3.00, (B) during the period from May 1, 2007 through December 31, 2008, 2.75, during the period from January 1, 2009 through March 31, 2009, 2.50, and (d) thereafter, 3.25.

"Permitted Acquisition" has the meaning specified in Section 7.02(c)(ii).

"Permitted Subordinated Amount" means an amount equal to 17.5% of the Borrower's Separate Net Income for the applicable Fiscal Year.

"Permitted Subordinated Payments" means payment of any interest due and owing under the Subordinated Secured Loans (exclusive of interest amounts that previously were paid-in-kind).

"Subordinated Secured Financing Agreement" means the Subordinated Financing Agreement dated as of July 20, 2009 among the Borrower, the lenders from time to time party thereto and Ableco, L.L.C. as administrative agent and collateral agent for such lenders.

"Subordinated Secured Loan Document" has the meaning specified for the term "Loan Document" in the Subordinated Secured Financing Agreement.

"Subordinated Secured Loans" means the loans made to the Borrower pursuant to the Subordinated Secured Financing Agreement.

"Third Amendment" means the Third Amendment to Financing Agreement and First Amendment to Security Agreement dated as of July 20, 2009, by and among the Borrower, the Guarantors, the Lenders party thereto, the Collateral Agent and the Administrative Agent.

"Third Amendment Effective Date" means the date on which the conditions precedent set forth in Section 3 of the Third Amendment are satisfied in full.

"Unrestricted Subsidiary" means, with respect to any Person at any date, a Person that would otherwise constitute a Subsidiary of such Person, but is designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 12.23 hereof.

1.02. Repayment of Loans. Clause (c) of Section 2.03 of the Financing Agreement is hereby amended and restated in its entirety as follows:

"(c) The outstanding principal of the Term Loan B shall be repayable in consecutive quarterly installments, on the first day of each March, June, September, and December commencing on June 1, 2007 and ending on the Final Maturity Date, as follows:

Payment Date	**Amount**
June 1, 2007	$500,000.00
September 1, 2007	$500,000.00
December 1, 2007	$500,000.00
March 1, 2008	$500,000.00
June 1, 2008	$750,000.00
September 1, 2008	$750,000.00
December 1, 2008	$750,000.00
March 1, 2009	$750,000.00
June 1, 2009	$750,000.00
September 1, 2009	$500,000.00
December 1, 2009	$500,000.00
March 1, 2010	$500,000.00
June 1, 2010	$500,000.00
September 1, 2010	$500,000.00
December 1, 2010	$500,000.00

Any principal of the Term Loan B outstanding shall be repaid in full on the Final Maturity Date (notwithstanding that any Payment Date above has not occurred by the Final Maturity Date)."

1.03. Interest on Revolving Loans. Clause (a) of Section 2.04 of the Financing Agreement is hereby amended and restated in its entirety as follows:

"(a) Revolving Loans. Each Revolving Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the making of such Loan until the date on which such principal amount is repaid in accordance herewith, as follows: (i) if the relevant Revolving Loan is a LIBOR Rate Loan, at a rate per annum equal to the LIBOR Rate plus 3.25 percentage points, and (ii) otherwise, at a rate per annum equal to the Reference Rate plus 2.25 percentage points."

1.04. Representations and Warranties. Section 6.01 of the Financing Agreement is hereby amended by replacing the words "the YAC Subordinated Documents" appearing in clause (kk) thereof with the words "the Subordinated Secured Loan Documents".

1.05. Affirmative Covenants. Section 7.01 of the Financing Agreement is hereby amended by:

(a) adding immediately after the words "in compliance with all of the provisions of this Agreement", "(including, without limitation, clause (g) of the proviso to Section 12.23)" in Section 7.01(a)(iv);

(b) adding immediately prior to the words "(the "New Subsidiary")", "other than an Unrestricted Subsidiary" in Section 7.01(b)(i); and

(c) adding the following clause (iii) at the end of Section 7.01(b):

"and (iii) upon the acquisition or creation of an Unrestricted Subsidiary, the Agents shall take all steps reasonably requested by the Borrower and necessary to evidence that such Unrestricted Subsidiary's Capital Stock and property are not a part of the Collateral."

1.06 Negative Covenants. Section 7.02 of the Financing Agreement is hereby amended by:

(a) adding the following words at the end of Section 7.02(c)(ii): ", and any Loan Party and its Subsidiaries may acquire the Capital Stock of an Unrestricted Subsidiary, provided that, in the case of any such acquisition, (x) no Default or Event of Default has occurred and is continuing or would result therefrom, (y) the Borrower has Availability both immediately before and immediately after giving effect thereto of not less than $5,000,000 and (z) the aggregate purchase price of all classes of Capital Stock of such Unrestricted Subsidiary directly or indirectly paid by the Loan Parties, together with the aggregate amount of dispositions of property (including but not limited to Cash or Cash Equivalent) made to such Unrestricted Subsidiary (including but not limited to Permitted Dispositions) and together with the aggregate amount of all investments (including but not limited to Permitted Investments) in such Unrestricted Subsidiary, shall not exceed $250,000 (each such acquisition, a "Permitted Acquisition") during the term of this Agreement."

(b) replacing the words "the YAC Subordinated Documents" appearing in clause (h)(vi) thereof with the words "the Subordinated Secured Loan Documents";

(c) replacing the words "the YAC Subordinated Notes" appearing in clause (D)(4)(y) of the proviso to clause (h) thereof with the words "the Subordinated Secured Loans";

(d) replacing the words "YAC Subordinated Payments" appearing in clause (D)(4)(z) of the proviso to clause (h) thereof with the words "Permitted Subordinated Payments";

(e) replacing the words "the Borrower may use the Permitted YAC Subordinated Amount to make the Permitted YAC Subordinated Payments" appearing at the end of clause (D)(4) of the proviso to clause (h) thereof with the words "the Borrower may use the Permitted Subordinated Amount to make the Permitted Subordinated Payments";

(f) replacing the words "the YAC Subordinated Documents" appearing in clause (B) of the proviso to clause (k) thereof with the words "the Subordinated Secured Loan Documents"; and

(g) replacing the words "the YAC Subordinated Documents" appearing in clause (m)(vi) thereof with the words "the Subordinated Secured Loan Documents".

1.07. Financial Covenants. Clauses (a), (b) and (c) of Section 7.03 of the Financing Agreement are hereby amended and restated in their entirety as follows:

"(a) Consolidated Leverage Ratio. Permit the ratio of Consolidated Funded Indebtedness of the Borrower and its Subsidiaries as of the last day of each fiscal quarter set forth below to TTM EBITDAM (or, with respect to June 30, 2009, Annualized TTM EBITDAM) of the Borrower and its Subsidiaries for the period ended as of the last day of such fiscal quarter to be greater than the applicable ratio set forth below:

Fiscal Quarter End	Consolidated Leverage Ratio
The last day of each fiscal quarter ending on or prior to December 31, 2008	2.75 : 1.00
March 31, 2009	2.50 : 1.00
June 30, 2009 and the last day of each fiscal quarter thereafter	3.25 : 1.00

(b) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio of the Borrower and its Subsidiaries for the period of four (or, solely in respect of the fiscal quarter ending on June 30, 2009, three) consecutive fiscal quarters ended as of the last day of each fiscal quarter set forth below to be less than the applicable ratio set forth opposite such date:

Fiscal Quarter End	Fixed Charge Coverage Ratio
The last day of each fiscal quarter ending on or prior to March 31, 2009	1.10 : 1.00
June 30, 2009, and the last day of each fiscal quarter thereafter	1.00 : 1.00

(c) TTM EBITDAM. Permit TTM EBITDAM (or, with respect to June 30, 2009, Annualized TTM EBITDAM) of the Borrower and its Subsidiaries for the period ended as of the last day of each fiscal quarter set forth below to be less than the applicable amount set forth opposite such date:

Fiscal Quarter End	TTM EBITDAM
March 31, 2007	$13,500,000
June 30, 2007	$13,000,000
September 30, 2007 and the last day of each fiscal quarter thereafter to and including the fiscal quarter ending on March 31, 2009	$12,500,000

Fiscal Quarter End	TTM EBITDAM
June 30, 2009	$6,000,000
September 30, 2009 and the last day of each fiscal quarter thereafter	$6,500,000

1.08 Miscellaneous. Article XII of the Financing Agreement is hereby amended by inserting a new Section 12.23 which shall read as follows:

"12.23 Unrestricted Subsidiary". From and after the Third Amendment Effective Date, any provisions of this Agreement which refer to a "Subsidiary" or any "Subsidiaries," including the representations in Article VI, the covenants in Article VII (including any calculations of the financial covenants set forth in Section 7.03), the Events of Default in Article IX and the Guaranty in Article XI, shall not be interpreted to include any Person that is designated by the Borrower as an Unrestricted Subsidiary by providing written notice thereof to the Administrative Agent not less than three Business Days prior to the creation or acquisition of such Person (and including each direct or indirect subsidiary of such Person), provided that (a) such Person was formed or acquired after the Third Amendment Effective Date exclusively for the purposes of acquiring the business or assets of another Person (whether by reason of merger, stock purchase, reorganization or otherwise), (b) the aggregate amount of all dispositions of property (including but not limited to Cash or Cash Equivalents) to an Unrestricted Subsidiary (including but not limited to Permitted Dispositions) together with the aggregate amount of all investments (including but not limited to Permitted Investments) in such Unrestricted Subsidiary and the aggregate purchase price directly or indirectly paid by the Loan Parties (including but not limited to Permitted Acquisitions) in respect of all classes of Capital Stock of such Unrestricted Subsidiary, shall not exceed $250,000 during the term of this Agreement (c) no Default or Event of Default exists at the time of, or would result from such creation, acquisition, transfer or designation of such Unrestricted Subsidiary, (d) there shall be no more than two such Persons designated as an Unrestricted Subsidiary during the term of this Agreement, (e) no portion of the Indebtedness or any other obligation (contingent or otherwise) of such Person (i) shall be guaranteed by any Loan Party or any Subsidiary thereof or (ii) shall be recourse to or obligate any Loan Party or any Subsidiary thereof, directly or indirectly, contingently or otherwise, to satisfaction thereof (f) such Person shall have no Indebtedness or any other obligation that, if in default in any respect (including a payment default), would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of any Loan Party or any Subsidiary thereof to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity, (g) the management-level employees of Pinnacle Steel, LLC ("Pinnacle") responsible for fulfilling Pinnacle's management obligations to the Borrower pursuant to the terms of the Management Agreement (including the chief executive officer of the Borrower) shall devote not more than 30% of their working hours in the aggregate during any month in respect of Unrestricted Subsidiaries, except as may be agreed by Ableco or the Required Lenders, such consent not to be unreasonably withheld and (h) the Borrower shall provide to the Collateral Agent, not less than ten Business Days prior to the execution thereof, copies of any documentation evidencing material contractual obligations to which any Unrestricted Subsidiary intends to become a party and as to which the Borrower has reasonably determined that compliance therewith or breach thereof could result in an adverse effect on the operations, business, assets, properties, condition (financial or otherwise) or prospects of the Loan Parties (taken as a whole), and the Collateral Agent shall be reasonably satisfied that compliance with, or breach of, such contractual obligations by such Unrestricted Subsidiary could not reasonably be expected to result in a material adverse effect on the operations, business,

assets, properties, condition (financial or otherwise) or prospects of the Loan Parties (taken as a whole); provided that, upon at least ten (10) Business Days prior written notice to the Agent, and so long as no Event of Default exists or would result therefrom, the Borrower may change the designation of any Unrestricted Subsidiary and make it a "Subsidiary" for the purposes of this Agreement, and, after such designation, such Person shall be subject to all the terms and conditions of any Subsidiary hereunder."

1.09 Amendments to Security Agreement.

(a) Certain Defined Terms. Section 1.01 of the Security Agreement is amended as follows:

(i) amending the definition of "Excluded Property" in the Security Agreement to include a new clause (iii) to read as follows:

"and (iii) Capital Stock and property of any Unrestricted Subsidiary"

(ii) amending the definition of "Grantor" and "Grantors" to insert an additional sentence to read as follows:

"In no event shall an Unrestricted Subsidiary be included as a Grantor."

(iii) amending the definition of "Investment Related Property" to insert an additional sentence to read as follows:

"The term "Investment Related Property" as used herein shall not include Capital Stock of an Unrestricted Subsidiary."

(iv) amending the definition of "Pledged Companies" to insert an additional sentence to read as follows:

"The term "Pledged Company" as used herein shall not include an Unrestricted Subsidiary."

(v) amending the definition of "Pledged Interests" to insert an additional sentence to read as follows:

"The term "Pledged Interests" as used herein shall not include Capital Stock of an Unrestricted Subsidiary."

(vi) inserting the following definition of "Unrestricted Subsidiary" to Section 1.01 of the Security Agreement to read as follows:

""Unrestricted Subsidiary" has the meaning specified therefor in the Financing Agreement."

(b) Further Assurances. Section 8(c) of the Security Agreement is hereby amended to insert an additional sentence at the end of the such section to read as follows:

"Any financing statements filed by Collateral Agent shall indicate that the Collateral does not include the Capital Stock of any Unrestricted Subsidiary (specified by name)."

(c) New Subsidiaries. Section 26 of the Security Agreement is hereby amended to insert the words "other than an Unrestricted Subsidiary" immediately after the words "any new direct or indirect Subsidiary".

Section 2. Waivers. Subject to the satisfaction of the conditions precedent specified in Section 3 below, but effective as of the date hereof, the Lenders hereby waive the following:

(a) any Event of Default arising under Section 2.05(c)(iv) of the Financing Agreement as a result of Borrower's calculation of Excess Cash Flow for the Fiscal Year ending September 31, 2008 by deducting therefrom an amount equal to the 2008 Permitted YAC Subordinated Payment that was proposed to be paid at the Borrower's option and was not paid in cash in such Fiscal Year; and

(b) any Event of Default arising under Section 9.01(c) of the Financing Agreement arising as a result of the Financial Covenant Default.

Section 3. Conditions to Effectiveness. This Agreement shall become effective upon satisfaction in full of the following conditions precedent:

3.01. Execution. The Agents shall have received counterparts of this Agreement that bear the signatures of the Borrower, the Guarantors, the Lenders and each Agent.

3.02. Corporate Resolutions. The Agents shall have received a copy of the resolutions of each Loan Party, certified as of the date hereof by an Authorized Officer thereof, authorizing the execution, delivery and performance by such Loan Party of this Agreement;

3.03. Legal Opinions. The Agents shall have received opinions of counsel to the Loan Parties as to such matters as the Collateral Agent may reasonably request.

3.04. Payment of Fees. The Administrative Agent shall have received evidence satisfactory to it of payment (or irrevocable instructions for payment) by the Borrower in full of an upfront fee for the account of each Lender in an amount equal to $70,000 for such Lender, such upfront fee to aggregate $140,000.

3.05. Subordinated Secured Loan Documents. The Administrative Agent shall have received written notice from Ableco, L.L.C., as administrative agent under the Subordinated Secured Financing Agreement, of the occurrence of the Effective Date, as such term is defined in the Subordinated Secured Financing Agreement. The conditions precedent set forth in Section 4.01 of the Subordinated Secured Financing Agreement, shall not be waived without the prior written consent of the Administrative Agent.

3.06. Waivers. The Administrative Agent shall have received written evidence satisfactory to it in form and substance of the waiver by (i) the holders of the YAC Subordinated Secured Notes of the 2008 Permitted YAC Subordinated Payment and (ii) the holders of the 13% KES Preferred Stock of the 2008 Preferred Dividend.

3.07. Other. Such other information, documents, instruments or approvals as Agents or Agents' counsel may reasonably require.

Section 4. Representations and Warranties. Each Loan Party represents and warrants to each Agent and the Lenders as follows:

4.01. Authorization, Etc. The execution, delivery and performance by each Loan Party of this Agreement, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene its charter or by-laws, its limited liability company or operating agreement or its certificate of partnership or partnership agreement, as applicable, or any applicable law, (iii) do not and will not contravene any Material Contract, (iv) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document or the Subordinated Secured Loan Documents) upon or with respect to any of its properties, and (v) except where any such default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expect to result in a Material Adverse Effect, do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties.

4.02. Governmental Approvals. Other than authorizations and approvals that have been obtained and are still in full force and effect, and filings and notices that have been made or given and are still in full force and effect, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of this Agreement.

4.03. Enforceability. This Agreement has been duly executed and delivered by such Loan Party. This Agreement is a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws.

4.04. No Injunction. To its knowledge, no injunction, writ, restraining order, or other order of any nature prohibiting, directly or indirectly, the consummation of the transactions contemplated hereby has been issued and remains in force by any Governmental Authority against any Loan Party or any member of the Lender Group.

4.05. No Event of Default. No Default or Event of Default has occurred and is continuing on the date hereof or as of the date of the effectiveness of this Agreement (after giving effect to the waiver in Section 2).

4.06. Representations and Warranties. The representations and warranties in this Agreement, in the Financing Agreement as amended by this Agreement and after giving effect hereto, and in each other Loan Document, (except in each case to the extent that any such representations or warranties expressly relate solely to an earlier date) are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof and the date of effectiveness of this Agreement, as applicable, as though made on and as of each such date.

Section 5. Condition to 2008 Permitted YAC Subordinated Payment and 2008 Preferred Dividend. The Borrower agrees that the Borrower shall not directly or indirectly make

payment permitted to be made in respect of the Fiscal Year ended September 30, 2008 pursuant to Section 7.02(h)(D)(4) of the Financing Agreement or (ii) pay the dividend permitted to be paid in respect of the Fiscal Year ended September 30, 2008 under the 13% KES Preferred Stock, in each case without the prior written consent of the Required Lenders. Any failure to comply with the obligation set forth in the immediately preceding sentence shall constitute an Event of Default under Section 9.01(c)(i) of the Financing Agreement.

Section 6. Consents.

(a) Consent to Payment of Investment Banking Fee. The Lenders hereby consent to the payment by the Borrower to the Libra Securities Division of Oak Ridge Financial Services Group of an investment banking fee in an amount not to exceed $75,000, provided that such payment shall not be made unless and until the Borrower has reported after the Third Amendment Effective Date TTM EBITDAM in excess of $12,000,000 and, thereafter, such payment is made within 30 days following such report.

(b) Consent to the Permitted Mortgage Correction. The Lenders hereby consent to the Permitted Mortgage Correction and agree that the "Land", as defined in the 2007 Mortgage, shall not include the Tracts.

Section 7. Continued Effectiveness of Financing Agreement. Each Loan Party hereby (a) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the date hereof all references in any such Loan Document to (i) "the Financing Agreement", "hereto", "hereof, "hereunder", "thereto", "thereof, "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Agreement (b) confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to either Agent, for the ratable benefit of Lenders, or to grant to either Agent, for the ratable benefit of Lenders a security interest in or Lien on, any Collateral as security for the Obligations of the Borrower, or any of its Subsidiaries from time to time existing in respect of the Financing Agreement and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and, confirmed in all respects, provided, however, that the term "Collateral" in each Loan Document shall exclude the stock and assets of each Unrestricted Subsidiary, and the Administrative Agent and Collateral Agent shall take all actions reasonably requested by the Borrower to delete from the definition of "Collateral" in each Loan Document and in each UCC financing statement or other document perfecting any Liens in favor of the Collateral Agent or the Lenders, all of the Capital Stock in, and property or assets of, each Unrestricted Subsidiary, (c) the execution and delivery of this Agreement does not limit any other action that either Agent is entitled to take, or that the Borrower is required to perform (other than as specifically set forth in this Agreement), and (d) confirms and agrees that no amendment of any terms or provisions of the Financing Agreement or the amendments granted hereunder shall relieve the Borrower from complying with such terms and provisions other than as expressly amended or waived hereby or from complying with any other term or provision thereof or herein, except as expressly amended or waived hereby.

In addition to the foregoing the Collateral Agent, as Mortgagee under the 2007 Mortgage, shall take all actions reasonably requested by the Borrower to complete the Permitted Mortgage Correction and will file any

related amendments to the 2007 Mortgage and any fixture filings filed in connection therewith to evidence the foregoing.

Section 8. Miscellaneous.

8.01. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic method shall be equally as effective as delivery of an original executed counterpart of this Agreement.

8.02. Section Headings. Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

8.03. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

8.04. Fees and Expenses. The Borrower will pay on demand all reasonable fees, costs and expenses of the Agents and the Lenders in connection with the preparation, execution and delivery of this Agreement or otherwise payable under the Financing Agreement, including, without limitation, reasonable fees, disbursements and other charges of counsel to the Agents and the Lenders.

8.05. Loan Document. This Agreement is a Loan Document executed pursuant to the Financing Agreement and shall be construed, administered and interpreted in accordance with the terms thereof. Accordingly, it shall be an Event of Default under the Financing Agreement if (i) any representation or warranty made or deemed made by any Loan Party under or in connection with this Agreement shall have been incorrect in any material respect when made or deemed made, (ii) any Loan Party fails to perform or comply with any covenant or agreement contained herein (other than in Section 8.06 hereof) and such failure is not cured in the manner provided in Section 9.01(d) or (iii) the Borrower fails to perform or comply with any covenant or agreement contained in Section 8.06 hereof.

8.06. Control Agreement. As soon as possible, and in any event within 30 days after the date hereof the Borrower shall deliver one or more Control Agreements and other documents as the Agents may request, each in form and substance satisfactory to the Agents, with respect to the Borrower's cash management system (including without limitation, all deposit accounts of the Borrower).

8.07. Confirmation of Ravich Guarantee. Each of the Persons identified under the caption "LIMITED GUARANTORS" on the signature pages hereto is a party to the Ravich Guarantee and by its execution of this Agreement consents to this Agreement and confirms and ratifies that all of such Person's obligations under the Ravich Guarantee shall continue in full force and effect in favor of the Collateral Agent for the benefit of the Term Loan B Lenders after the execution of this Agreement and the occurrence of the Third Amendment Effective Date.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

BORROWER:

KES ACQUISITION COMPANY,
a Delaware corporation

By: ____
Name:
Title:

COLLATERAL AGENT AND LENDER:

ABLECO FINANCE LLC

By: ____
Name:
Title:

ADMINISTRATIVE AGENT AND LENDER:

PNC BANK, NATIONAL ASSOCIATION

By: ____
Name:
Title:

LIMITED GUARANTORS:

____

JESS RAVICH, an individual

____

TIA PALERMO, an individual

THE RAVICH PERMANENT
CHILDREN'S TRUST OF 1995

By: ______________________
Name: ______________________
Title: ______________________