

VERICEL CORP

FORM 8-K/A (Amended Current report filing)

Filed 06/02/17 for the Period Ending 05/10/17

Address	64 SIDNEY ST. CAMBRIDGE, MA 02139
Telephone	7349305555
CIK	0000887359
Symbol	VCEL
SIC Code	2836 - Biological Products, Except Diagnostic Substances
Industry	Pharmaceuticals
Sector	Healthcare
Fiscal Year	12/31

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

FORM 8-K/A

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): **May 10, 2017**

Vericel Corporation

(Exact name of registrant as specified in its charter)

Michigan
(State or other jurisdiction
of incorporation)

001-35280
(Commission
File Number)

94-3096597
(I.R.S. Employer
Identification No.)

64 Sidney St.
Cambridge, Massachusetts
(Address of principal executive offices)

02139
(Zip Code)

Registrant's telephone number, including area code: **(734) 418-4400**

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Emerging growth company

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

Explanatory Note:

Vericel Corporation (the “Company”), a Michigan corporation, is filing this amendment to the Current Report on Form 8-K filed by the Company on May 10, 2017 (the “Original Report”) for the purpose of filing as an exhibit the Second Loan Modification Agreement dated May 9, 2017 between the Company, as borrower, Silicon Valley Bank, in its capacity as Administrative Agent, and Silicon Valley Bank, MidCap Funding IV Trust, MidCap Funding III Trust, and ELM 2016-1 Trust as lenders (the “Loan Modification Agreement”).

Item 1.01 Entry into a Material Definitive Agreement.

As disclosed in the Original Report, on May 9, 2017, the Company entered into the Loan Modification Agreement. The description of the Loan Modification Agreement included in the Original Report is hereby incorporated by reference into this Form 8-K/A. The Loan Modification Agreement is attached to this Form 8-K/A as Exhibit 10.1.

Item 2.02 Results of Operations and Financial Condition.

The information set forth in Item 2.02 of the Original Report is incorporated by reference as if fully set forth herein.

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

The information set forth in Item 2.03 of the Original Report is incorporated by reference as if fully set forth herein.

Item 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1 *†	Second Loan Modification Agreement dated May 9, 2017 between Vericel Corporation, as borrower, Silicon Valley Bank, in its capacity as Administrative Agent, and Silicon Valley Bank, MidCap Funding IV Trust, MidCap Funding III Trust, and ELM 2016-1 Trust as lenders
99.1 ††	Press Release of Vericel Corporation, “Vericel Reports First-Quarter 2017 Financial Results” dated May 10, 2017

* Confidential treatment has been requested as to certain portions thereto, which portions are omitted and will be filed separately with the Securities and Exchange Commission.

† Filed herewith.

†† Previously filed.

SIGNATURES

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

Vericel Corporation

Date: June 2, 2017

By: /s/ Gerard Michel

Name: Gerard Michel

Title: Chief Financial Officer and Vice President, Corporate Development

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1 *†	Second Loan Modification Agreement dated May 9, 2017 between Vericel Corporation, as borrower, Silicon Valley Bank, in its capacity as Administrative Agent, and Silicon Valley Bank, MidCap Funding IV Trust, MidCap Funding III Trust, and ELM 2016-1 Trust as lenders
99.1 ††	Press Release of Vericel Corporation, "Vericel Reports First-Quarter 2017 Financial Results" dated May 10, 2017

* Confidential treatment has been requested as to certain portions thereto, which portions are omitted and will be filed separately with the Securities and Exchange Commission.

† Filed herewith.

†† Previously filed.

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

SECOND LOAN MODIFICATION AGREEMENT

This Second Loan Modification Agreement (this “**Loan Modification Agreement**”) is entered into as of May 9, 2017, by and among (a) **SILICON VALLEY BANK**, a California corporation (“**SVB**”), in its capacity as Administrative Agent (“**Agent**”), (b) SVB, as a Revolving Line Lender and as a Term Loan Lender, **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as a Revolving Line Lender (in such capacity and together with its successors and assigns, “**MidCap Revolving Line Lender**”), **MIDCAP FUNDING III TRUST**, a Delaware Statutory Trust and **ELM 2016-1 TRUST**, a Delaware statutory trust, each as a Term Loan Lender (in such capacity and together with their respective successors and assigns, “**MidCap Term Loan Lender**”; SVB, the MidCap Revolving Line Lender and the MidCap Term Loan Lender are each referred to herein as a “**Lender**” and collectively, the “**Lenders**”), and (c) **VERICEL CORPORATION**, a Michigan corporation (the “**Borrower**”).

1. DESCRIPTION OF EXISTING INDEBTEDNESS AND OBLIGATIONS. Among other indebtedness and obligations which may be owing by Borrower to the Lenders, Borrower is indebted to the Lenders pursuant to a loan arrangement dated as of September 9, 2016, evidenced by, among other documents, a certain Loan and Security Agreement dated as of September 9, 2016, by and among Borrower, Agent and the Lenders, as amended by that certain First Loan Modification Agreement, dated as of December 30, 2016 (as amended, the “**Loan Agreement**”). Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Agreement.

2. DESCRIPTION OF COLLATERAL. Repayment of the Obligations is secured by the Collateral as described in the Loan Agreement (together with any other collateral security granted to the Lenders, the “**Security Documents**”).

Hereinafter, the Security Documents, together with all other documents evidencing or securing the Obligations shall be referred to as the “**Existing Loan Documents**”.

3. DESCRIPTION OF CHANGE IN TERMS.

A. Modifications to Loan Agreement.

1 Section 6.9(a) of the Loan Agreement shall be deleted in its entirety and replaced with the following:

(a) Minimum Revenue. Achieve minimum net revenue (determined in accordance with GAAP), measured on a trailing twelve month basis ending as of the date of measurement, on a consolidated basis of Borrower and its Subsidiaries, in an amount equal to or greater than the amount listed below for each corresponding trailing twelve month period:

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

<u>Trailing Twelve Month Period Ended</u>	<u>Minimum Net Revenue</u>
August 31, 2016	\$ 52,000,000.00
September 30, 2016	\$ 52,000,000.00
October 31, 2016	\$ 52,280,500.00
November 30, 2016	\$ 50,695,400.00
December 31, 2016	\$ 52,000,000.00
January 31, 2017	\$ 52,000,000.00
February 28, 2017	\$ 52,000,000.00
March 31, 2017	\$ [***]
April 30, 2017	\$ [***]
May 31, 2017	\$ [***]
June 30, 2017	\$ [***]
July 31, 2017	\$ [***]
August 31, 2017	\$ [***]
September 30, 2017	\$ [***]
October 31, 2017	\$ [***]
November 30, 2017	\$ [***]
December 31, 2017	\$ 51,723,000.00
January 31, 2018	\$ [***]
February 28, 2018	\$ [***]
March 31, 2018	\$ [***]
April 30, 2018	\$ [***]
May 31, 2018	\$ [***]
June 30, 2018	\$ [***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

July 31, 2018	\$	[***]
August 31, 2018	\$	[***]
September 30, 2018	\$	[***]
October 31, 2018	\$	[***]
November 30, 2018	\$	[***]
December 31, 2018	\$	[***]

Minimum net revenue financial covenant requirements for the monthly periods ending after December 31, 2018 will be determined by the Lenders in their reasonable discretion after consultation with Borrower, no later than December 31 of the year immediately preceding each applicable fiscal year, based on the projections delivered by Borrower to Agent and the Lenders in accordance with Section 6.2(e) (which for the avoidance of doubt shall be delivered by Borrower no later than November 30 of the year immediately preceding each applicable fiscal year); provided that, such minimum net revenue threshold for any month following December 31, 2018 shall not be less than the corresponding month for the immediately preceding year.

- 2 The definitions of “Availability Amount” and “Term Loan Final Payment” appearing in Section 13.1 of the Loan Agreement shall be deleted in their entirety and replaced with the following:

“ **Availability Amount** ” is (a) the lesser of (i) the Revolving Line or (ii) (X) the amount available under the Borrowing Base minus (Y) the Ineligible Reserve; minus (b) the outstanding principal balance of any Advances.

“ **Term Loan Final Payment** ” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest, and supplemental of all other fees and expenses due and owing in connection with the Term Loan Advances), in an amount equal to the aggregate original principal amount of the Term Loan Advances advanced to Borrower multiplied by seven percent (7.00%).

- 3 The following new terms and their respective definitions shall be inserted in Section 13.1, each in its applicable alphabetical order:

“ **Ineligible Reserve** ” is (i) from the Second Loan Modification Effective Date through and including the Ineligible Reserve Release Date, [***] Dollars (\$[***]); and (ii) commencing on the first day after the Ineligible Reserve Release Date and thereafter, Zero Dollars (\$0.00).

“ **Ineligible Reserve Release Date** ” is the date occurring after the Second Loan Modification Effective Date, so long as no Default or Event of Default has occurred and is continuing, on which Borrower provides Bank evidence satisfactory to Bank, in its sole but reasonable discretion, that Borrower has complied with the Minimum Revenue financial covenant described in Section 6.9(a) for two (2) consecutive quarters.

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Notwithstanding the foregoing, nothing herein shall be deemed a waiver of or release by Bank of any other right or remedy of Bank under this Agreement following the occurrence and during the continuance of an Event of Default, including, without limitation, an Event of Default arising by virtue of Borrower failing to achieve the Minimum Revenue financial covenant requirements described in Section 6.9(a) for any monthly period.

“ **Second Loan Modification Effective Date** ” is May 9, 2017.

4. **Compliance Certificate** . The Compliance Certificate attached as Exhibit B to the Loan Agreement is deleted in its entirety and replaced with Exhibit A attached hereto.

4. **FEES** . Borrower shall reimburse the Lenders for all legal fees and expenses reasonably incurred in connection with the Existing Loan Documents and this Loan Modification Agreement.

5. **RATIFICATION OF PERFECTION CERTIFICATE** . Except as set forth on **Schedule 5** of the Loan Modification, Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate, dated as of September 9, 2016, as updated from time to time through the date hereof, and acknowledges, confirms and agrees the disclosures and information above Borrower provided to the Agent and the Lenders in such Perfection Certificate remains true and correct in all material respects as of the date hereof.

6. **AUTHORIZATION TO FILE** . Borrower hereby authorizes Agent to file UCC financing statements without notice to Borrower, with all appropriate jurisdictions, as Bank deems appropriate, in order to further perfect or protect Agent’s interest in the Collateral, including a notice that any disposition of the Collateral, by either the Borrower or any other Person, shall be deemed to violate the rights of the Agent under the Code.

7. **CONSISTENT CHANGES** . The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.

8. **RATIFICATION OF LOAN DOCUMENTS** . Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of the Loan Agreement, each other Loan Document and all security or other collateral granted to the Lenders, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations.

9. **NO DEFENSES OF BORROWER** . Borrower hereby acknowledges and agrees that Borrower has no offsets, defenses, claims, or counterclaims against the Lenders with respect to the Obligations, or otherwise, and that if Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against any of the Lenders, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and Borrower hereby RELEASES each of the Lenders from any liability thereunder.

10. **CONTINUING VALIDITY** . Borrower understands and agrees that in modifying the existing Obligations, each Lender is relying upon Borrower’s representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Loan Modification Agreement, the terms of the Existing Loan Documents remain unchanged and in full force and effect. The Lenders’ agreement to modifications to the existing Obligations pursuant to this Loan Modification Agreement in no way shall obligate any Lender to make any future modifications to the Obligations. Nothing in this Loan Modification Agreement shall constitute a satisfaction of the Obligations. It is the intention of the Agent, each Lender and Borrower to retain as liable parties all makers of Existing Loan Documents, unless the party is expressly released by the Agent and the Lenders in writing. No maker will be released by virtue of this Loan Modification Agreement.

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

11. RIGHT OF SET-OFF. In consideration of Lenders’ agreement to enter into this Loan Modification Agreement, Borrower hereby reaffirms and hereby grants to Agent for the benefit of the Lenders, a lien, security interest and right of set off as security for all Obligations owed to the Lenders, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Agent or any entity under the control of Agent or any Lender (including a Subsidiary thereof) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Agent may set off the same or any part thereof and apply the same to any Obligations of Borrower then due regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE ANY LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER. Section 12 of the Loan Agreement is hereby incorporated by reference in its entirety.

13. COUNTERSIGNATURE. This Loan Modification Agreement shall become effective only when it shall have been executed by Borrower, Agent and each Lender.

[The remainder of this page is intentionally left blank]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

TERM LOAN LENDERS:

ELM 2016-1 TRUST

By: MidCap Financial Services Capital
Management, LLC, as Servicer

By: /s/ Adam Day
Name: Adam Day
Title: Authorized Signatory

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Exhibit A to Second Loan Modification Agreement

EXHIBIT B
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK, as Agent
FROM: VERICEL CORPORATION

Date: _____

The undersigned authorized officer of Vericel Corporation (“**Borrower**”) certifies that under the terms and conditions of the Loan and Security Agreement among Borrower, **SILICON VALLEY BANK**, a California corporation (“**SVB**”), in its capacity as Administrative Agent (“**Agent**”), (b) SVB, as a Revolving Line Lender and as a Term Loan Lender, **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as a Revolving Line Lender (in such capacity and together with its successors and assigns, “**MidCap Revolving Line Lender**”), **MIDCAP FUNDING III TRUST**, a Delaware Statutory Trust and **ELM 2016-1 TRUST**, a Delaware statutory trust, each as a Term Loan Lender (in such capacity and together with their respective successors and assigns, “**MidCap Term Loan Lender**”; SVB, the MidCap Revolving Line Lender and the MidCap Term Loan Lender are each referred to herein as a “**Lender**” and collectively, the “**Lenders**”) (as amended, the “**Loan Agreement**”), (1) Borrower is in compliance for the period ending _____ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, 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; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries, if any, relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

Reporting Covenant	Required	Complies
Monthly financial statements with Compliance Certificate	Monthly within 30 days (for the monthly periods ending March 31, June 30, September 30 and December 31, no later than forty-five (45) days after the last day of each such month)	Yes No
Annual financial statement (CPA Audited) + CC	FYE within 90 days	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
A/R & A/P Agings, Deferred Revenue report and	Monthly within 30 days	Yes No

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

general ledger			
Transaction Reports	(i) With each request for an Advance and (ii) within thirty (30) days after the last day of each month		Yes No
Projections	FYE within 30 days, and as amended/updated		Yes No
Financial Covenant	Required	Actual	Complies
Maintain as indicated:			
Minimum Revenue (monthly, on a trailing 12 month basis)	*	\$	Yes No

* See Section 6.9(a)

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state “No exceptions to note.”)

Vericel Corporation

By: _____
 Name: _____
 Title: _____

BANK USE ONLY

Received by: _____
 AUTHORIZED SIGNER

Date: _____

Verified: _____
 AUTHORIZED SIGNER

Date: _____

Compliance Status: Yes No

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

SCHEDULE 1 TO COMPLIANCE CERTIFICATE

FINANCIAL COVENANTS OF BORROWER

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

Dated: _____

I. **Minimum Revenue** (Section 6.9(a))

Required: Minimum Revenue. Achieve minimum net revenue (determined in accordance with GAAP), measured on a trailing twelve month basis ending as of the date of measurement, on a consolidated basis of Borrower and its Subsidiaries, in an amount equal to or greater than the amount listed below for each corresponding trailing twelve month period:

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

<u>Trailing Twelve Month Period Ended</u>	<u>Minimum Net Revenue</u>
August 31, 2016	\$ 52,000,000.00
September 30, 2016	\$ 52,000,000.00
October 31, 2016	\$ 52,280,500.00
November 30, 2016	\$ 50,695,400.00
December 31, 2016	\$ 52,000,000.00
January 31, 2017	\$ 52,000,000.00
February 28, 2017	\$ 52,000,000.00
March 31, 2017	\$ [***]
April 30, 2017	\$ [***]
May 31, 2017	\$ [***]
June 30, 2017	\$ [***]
July 31, 2017	\$ [***]
August 31, 2017	\$ [***]
September 30, 2017	\$ [***]
October 31, 2017	\$ [***]
November 30, 2017	\$ [***]
December 31, 2017	\$ 51,723,000.00
January 31, 2018	\$ [***]
February 28, 2018	\$ [***]
March 31, 2018	\$ [***]
April 30, 2018	\$ [***]
May 31, 2018	\$ [***]
June 30, 2018	\$ [***]
July 31, 2018	\$ [***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

August 31, 2018	\$	[***]
September 30, 2018	\$	[***]
October 31, 2018	\$	[***]
November 30, 2018	\$	[***]
December 31, 2018	\$	[***]

Minimum net revenue financial covenant requirements for the monthly periods ending after December 31, 2018 will be determined by the Lenders in their reasonable discretion after consultation with Borrower, no later than December 31 of the year immediately preceding each applicable fiscal year, based on the projections delivered by Borrower to Agent and the Lenders in accordance with Section 6.2(e) (which for the avoidance of doubt shall be delivered by Borrower no later than November 30 of the year immediately preceding each applicable fiscal year); provided that, such minimum net revenue threshold for any month following December 31, 2018 shall not be less than the corresponding month for the immediately preceding year.

Actual: all amounts measured on a trailing twelve month basis

A. Aggregate value of net revenue of Borrower and its Subsidiaries \$

Is line A equal to or greater than \$?

No, not in compliance Yes, in compliance

2134797.2

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

SCHEDULE 5

Updates to Perfection Certificate

13

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT WERE OMITTED AND REPLACED WITH “[***]”. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO AN APPLICATION REQUESTING CONFIDENTIAL TREATMENT PURSUANT TO RULE 24B-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[***]